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International Bar Association  
Securities and Capital Markets Committee

# ESG Survey 2024



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## **ESG Survey 2024 regarding the disclosure regime in capital market transactions, conducted by the IBA Securities and Capital Markets Committee (spring/summer 2024)**

The IBA Securities and Capital Markets Committee conducted a first survey in summer 2022 to assess how different jurisdictions regulate environmental, social and governance (ESG) disclosures in capital market transactions. The survey covered more than 30 jurisdictions and was prepared for a session held on 3 November 2022 at the IBA Annual Conference in Miami, in the US, titled ‘To disclose or not to disclose ESG: are ESG public disclosures even a choice anymore given the prevailing regulatory trends and institutional investors’ demands?’. The 2022 survey can be found at the following link: [www.ibanet.org/New-IBA-report-provides-insight-into-growing-importance-of-ESG-considerations-in-capital-market-transactions](http://www.ibanet.org/New-IBA-report-provides-insight-into-growing-importance-of-ESG-considerations-in-capital-market-transactions).

In spring/summer 2024, the Committee updated its ESG survey with new questions added to the questionnaire (questions 20 to 29). The updated 2024 ESG survey was prepared for a session held on 18 September 2024 at the IBA Annual Conference in Mexico City, Mexico, titled ‘ESG and the rising tide of greenwashing in international capital markets’. The survey was conducted in the form of a questionnaire with responses from among the officers of the Committee (which, at that point, was split into two separate entities – the IBA Capital Markets Forum and the IBA Securities Law Committee) and colleagues from other committees of the IBA covering more than 35 jurisdictions around the globe.

The responses to the survey showed several takeaways.

ESG disclosures are mandatorily required to be made in the vast majority of the jurisdictions reviewed (question 2). Most disclosures are required to be made by listed companies and/or large private businesses (question 3). Most of the ESG disclosures are to be made on a continuous basis, typically as part of a standalone ESG report or the annual report (questions 5, 6 and 7). An increasing number of corporations are making voluntary public disclosures, even where not (yet) mandatory (question 8).

The survey also showed that most countries covered by the survey do not (yet) have a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable (question 12). Moreover, most countries require some type of quantitative, or at least qualitative, climate change disclosures as part of the ESG disclosure regime (question 14). However, it is not yet mandatory for the majority of the companies in the jurisdictions covered by the survey to set climate-related targets (question 27). Moreover, the survey showed that sustainability information to be disclosed by companies is mostly verified by the respective statutory auditors or another audit firm (question 23).

According to the survey, it seems that large or listed companies have the capability and resources to make the required disclosures, while SMEs may not yet have them (question 26).

According to the survey, less than 50 per cent of the jurisdictions participating in the survey provide for specific ESG disclosure requirements, including rules aimed at preventing greenwashing in connection with securities issues, other than regular disclosures in connection with financial/non-financial reports (question 20 and 21). Only around 30 per cent of the jurisdictions reported that they are aware of claims brought by investors and/or regulatory authorities due to incorrect/incomplete/misleading ESG disclosures in connection with securities offerings (question 22).

There have been further developments in relation to board oversight and governance of ESG matters which can be seen, *inter alia*, in respect of the setup of designated board committees, ESG board trainings and oversight, specified remuneration structures as well as diversity reports (question 24).

For the respondents of the 2024 survey, the answer to the question whether ESG disclosure regulation aided investor value creation or has created greater compliance burden for companies without creating investor value, lies somewhere in the middle (question 18).

Overall, the survey again provides valuable insights into the growing importance of ESG considerations in capital market transactions around the globe. The results underscore the need for companies to take a more comprehensive approach to ESG in order to build more sustainable and resilient businesses that are better equipped to meet the challenges of the future. It also highlights the need for policymakers to work towards developing more standardised and clearer ESG disclosure frameworks, which will enable better comparability and understanding of ESG risks and opportunities for investors and other stakeholders alike.

It is important to note that the survey results should not be construed as legal advice. The responses were provided during spring/summer 2024 and reflect the state of the law in the respective jurisdictions only as of that time. Readers are invited to get in touch with the contact person in the list below for specific guidance on ESG disclosure requirements in their respective jurisdiction.

We are very grateful to all our colleagues and friends for their very valuable contributions to this survey. We hope you enjoy reading this survey and welcome any questions and comments. As ESG disclosure is a fast-developing topic, we are planning to update this survey from time to time.

Helsinki, Karachi, Zurich, 4 November 2024

Mia Morkkila, IBA Securities and Capital Markets Committee, Borenius Attorneys, Helsinki, Finland

Rabel Z Akhund, IBA Securities and Capital Markets Committee, Akhund Forbes, Karachi, Pakistan

Patrick Schleiffer, IBA Securities and Capital Markets Committee, Lenz & Staehelin, Zurich, Switzerland

## Law firms participating in the ESG Survey 2024

Participant	Law Firm and Contact Person
Argentina	Marval O'Farrell Mairal
Australia	Gilbert + Tobin
Austria	Binder Grösswang Attorneys Schönherr Rechtsanwälte
Belgium	Stibbe
Brazil	BMA Advogados TozziniFreire Advogados
Canada	Borden Ladner Gervais
The People's Republic of China	Fangda Partners
Colombia	Posse Herrera Ruiz: PHR Legal
Denmark	Gorrißen Federspiel
Finland	Borenus Attorneys Krogerus Attorneys
France	Jeanetet Bredin Prat
Germany	Gleiss Lutz Hengeler Müller
Grand Duchy of Luxembourg	Elvinger Hoss Prussen
Greece	Elias Paraskevas Attorneys
Hungary	Szecskey Attorneys at Law
India	Khaitan & Co.
Ireland	A&L Goodbody McCann FitzGerald
Italy	BonelliErede Gatti Pavesi Bianchi Ludovici
Japan	Mori Hamada & Matsumoto
Mexico	Basham Ringe y Correa



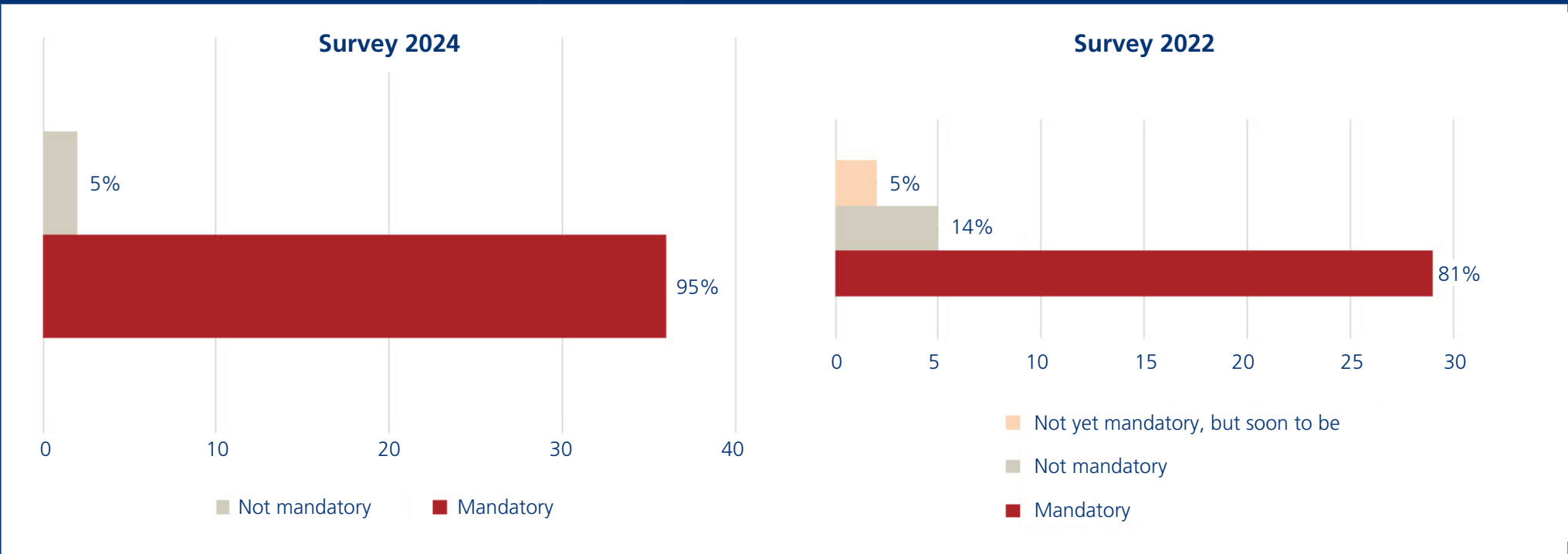
The Netherlands	Stibbe De Brauw Blackstone Westbroek
New Zealand	Russell McVeagh
Nigeria	Ajumogobia & Okeke
Norway	Wiersholm
Pakistan	Akhund Forbes
Peru	Rodrigo, Elías & Medrano Abogados
Poland	Wardyński & Partners
Portugal	PLMJ Advogados
Singapore	Allen & Gledhill
South Korea	K1 Chamber
Spain	Uría Menéndez Abogados
Sweden	Wigge & Partners Advokat
Switzerland	Homburger Lenz & Staehelin Walder Wyss
Thailand and Vietnam	DFDL
Turkey	CCAO Law
United Kingdom	Brodies
United States	Wachtell, Lipton, Rosen & Katz Debevoise & Plimpton

# Analysis of the 2024 ESG Survey

## 1. Which jurisdiction are you covering?

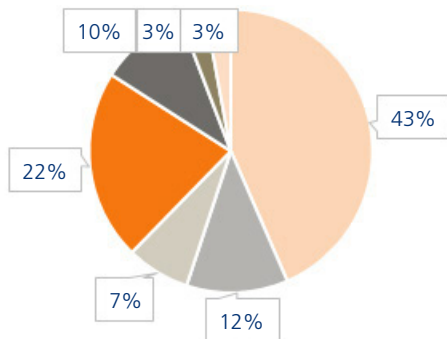
Argentina, Australia, Austria, Belgium, Brazil, Canada, the People's Republic of China ('China'), Colombia, Denmark, Finland, France, Germany, Greece, Hungary, India, Ireland, Italy, Japan, Luxembourg (Grand Duchy of Luxembourg), Mexico, the Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Poland, Portugal, Singapore, South Korea, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom (UK), United States (US), Vietnam

## 2. Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?



<b>Mandatory (for in-scope participants)</b>	36	Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Denmark, Finland, France, Germany, Greece, Hungary, India, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Poland, Portugal, Singapore, Spain, Sweden, Switzerland, Thailand, Turkey, UK, US, Vietnam
<b>Not mandatory</b>	2	Mexico, South Korea

3. If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?



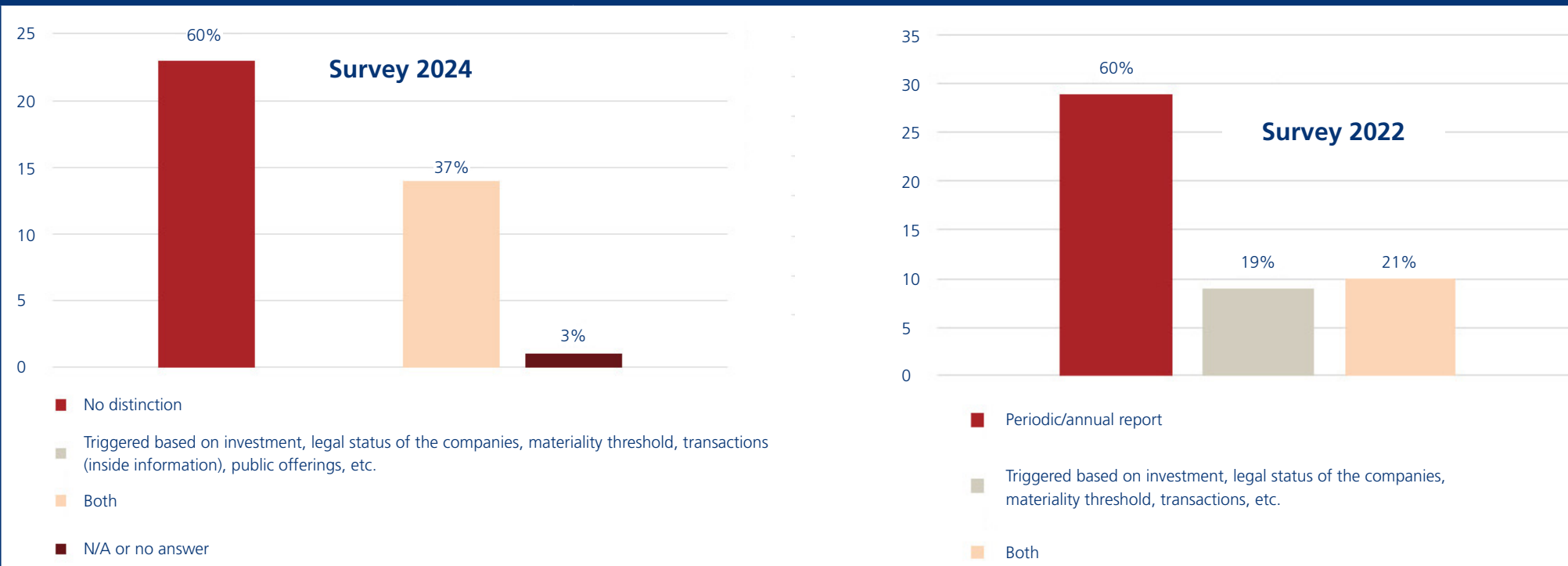
- Listed and/or large companies (based on threshold such as employees/balance sheet)
- (ESG-related or pension) funds, foundations or societies
- Companies engaged in specific high-risk sectors (mining, etc)
- Financial intermediaries (eg, banks, brokers/dealers, insurance companies)
- Other
- Disclosure not required or N/A or no answer
- No distinction

Yes		
Listed and/or large companies (based on thresholds such as employees/balance sheet)	30	Argentina, Austria, Belgium, Brazil, Canada, China, Colombia, Denmark, Finland, France, Germany, Greece, Hungary, India, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Pakistan, Peru, Poland, Portugal, Singapore, Sweden, Switzerland, Turkey, UK, Vietnam
(ESG-related or pension) funds/foundations/societies	8	Canada, Finland, Hungary, Pakistan, Portugal, Sweden, Turkey, UK
Financial intermediaries (eg, banks, brokers/dealers, insurance companies)	15	Belgium, Finland, Germany, Hungary, Italy, Luxembourg, the Netherlands, New Zealand, Pakistan, Poland, Portugal, Switzerland, Turkey, US, UK
Companies engaged in specific high-risk sectors (mining, etc)	5	Belgium, France, Switzerland, Turkey, US
Other	7	Australia, Canada, China (SOEs), Spain, Switzerland, Thailand, US
No distinction	2	Japan, Nigeria
Disclosure not required or N/A or no answer	2	Mexico, South Korea

**4. If there is a distinction, are any of these types of entities not required to make ESG disclosures, or else only limited disclosures are required, depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met prior to mandatory disclosure requirements being triggered?**

This question is omitted.

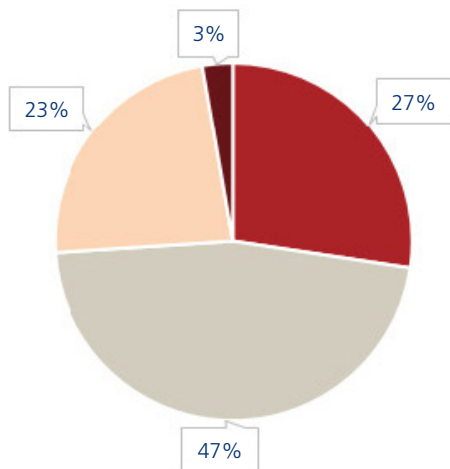
**5. What are the circumstances in which such ESG disclosures are triggered; that is, are ESG disclosures triggered in the case of certain transactions only or are ESG disclosures required to be made on a continuous annual reporting basis or both?**



<b>Periodic/annual report</b>	23	Argentina, Australia, Austria, Belgium, Brazil, China, Denmark, Finland, Greece, India, Ireland, Italy, Luxembourg, Mexico, Nigeria, Pakistan, Peru, Portugal, Singapore, Spain, Sweden, Turkey, US
<b>Triggered based on investments, legal status of the companies, transactions (inside information), public offerings, materiality threshold, etc</b>	0	
<b>Both</b>	14	Canada, Colombia, France, Germany, Hungary, Japan, Netherlands, New Zealand, Norway, Poland, Switzerland, Thailand, UK, Vietnam
<b>N/A or no answer</b>	1	South Korea

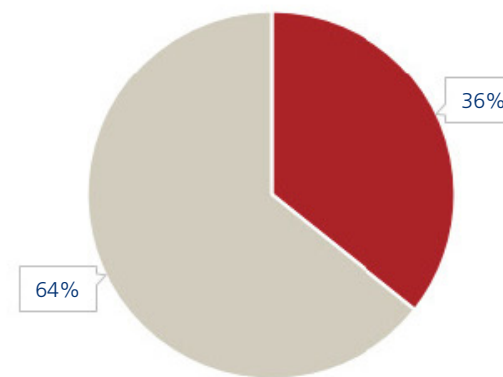
6. In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?

Survey 2024



- Standalone ESG reports and/or
- ESG reports as a part of the annual (management) report
- Other
- Not mandatory or N/A or no answer

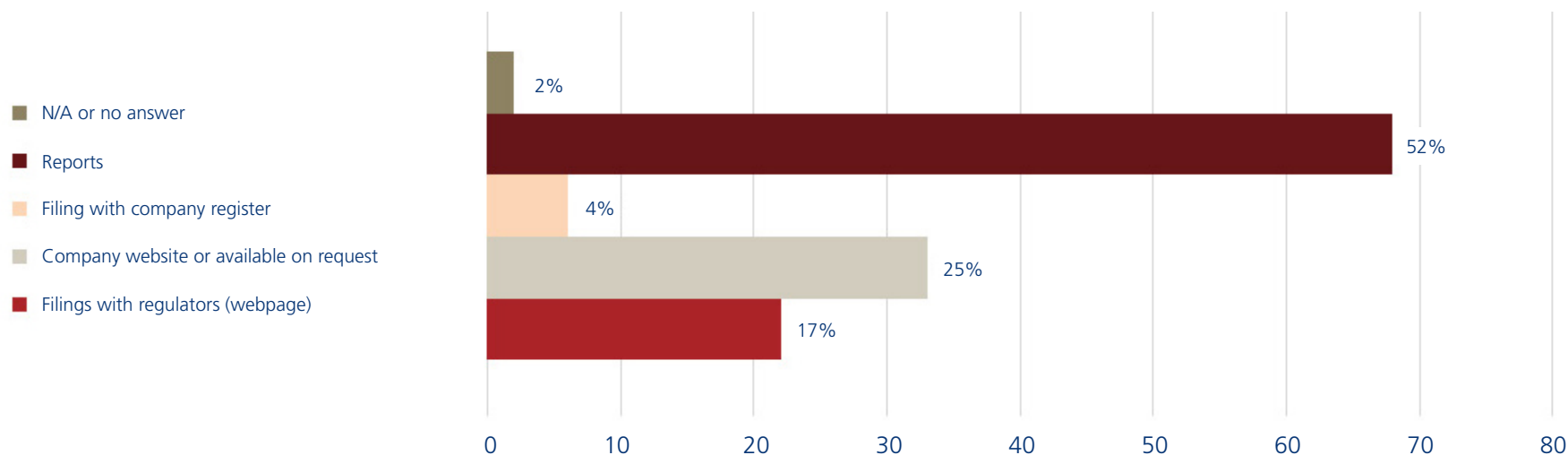
Survey 2022



- Standalone ESG reports
- ESG reports as a part of the annual report

<b>Standalone ESG reports and/or</b>	20	Australia, Austria, Brazil, Canada, China, Colombia, France, Germany, Greece, Hungary, Italy, Nigeria, Norway, Poland, Portugal, Singapore, Spain, Sweden, Switzerland, US
<b>ESG reports are included as part of the annual report</b>	21	Belgium, Brazil, Canada, Colombia, Denmark, Greece, Hungary, India, Japan, New Zealand, Nigeria, Norway, Pakistan, Peru, Singapore, Switzerland, Thailand, Turkey, UK, US, Vietnam
<b>ESG reports are a part of the management report (which is part of the annual report)</b>	13	Argentina, Austria, Finland, France, Germany, Luxembourg, Ireland, Italy, the Netherlands, Spain, Sweden, Poland, Portugal
<b>Other</b>	17	<ul style="list-style-type: none"> <li>• Financial statement/report: 6 (Argentina, Canada, Finland, Hungary, Luxembourg, Switzerland)</li> <li>• Reference form: 1 (Brazil)</li> <li>• Registration statement: 1 (US)</li> <li>• Company's continuous disclosure documents (management information circular (MIC), management's discussion and analysis (MD&amp;A) or annual information form (AIF)): 1 (Canada)</li> <li>• Corporate Sustainability Report: 4 (Norway, Peru, Sweden, US)</li> <li>• Board's statement in the annual report on non-financial performance indicators: 3 (Hungary, the Netherlands, Switzerland)</li> <li>• Included in product documentation: 1 (UK)</li> </ul>
<b>Not mandatory or N/A or no answer</b>	2	Mexico, South Korea

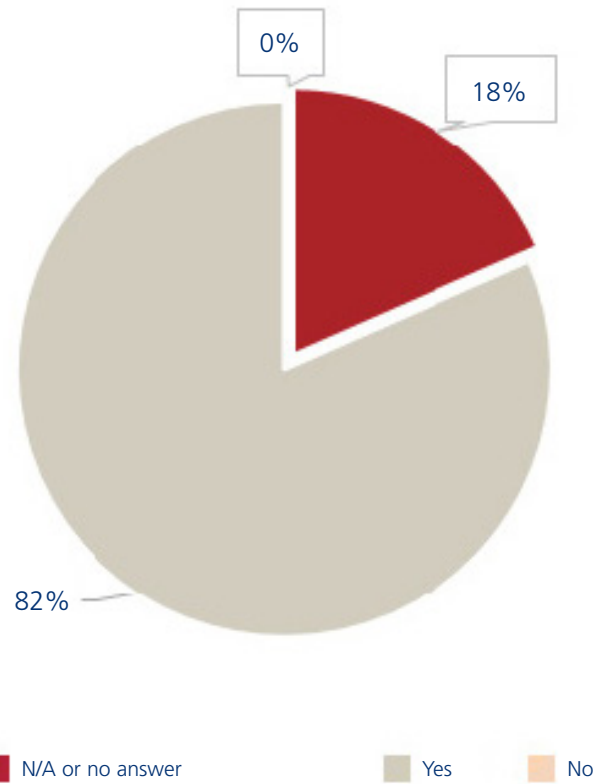
7. What is the location of the ESG disclosure (eg, Securities and Exchange Commission (SEC) filings, sustainability reports and company website)?



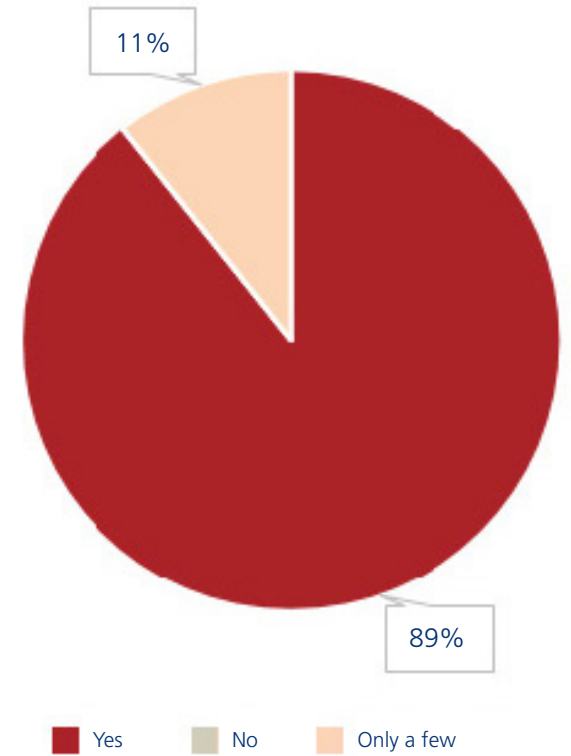
<b>N/A or no answer</b>	2	Mexico, South Korea
<b>Filings with regulators (webpage)</b>	22	Australia, Belgium, Brazil, China, Colombia, France, Germany, Greece, Hungary, India, Japan, Luxembourg, New Zealand, Peru, Poland, Portugal, Singapore, Sweden, Thailand, Turkey, US, Vietnam
<b>Company website or available on request</b>	33	Austria, Belgium, Brazil, Canada, China, Colombia, Denmark, Finland, France, Germany, Greece, Hungary, India, Ireland, Italy, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Pakistan, Peru, Poland, Portugal, Singapore, Spain, Sweden, Switzerland, Thailand, Turkey, UK, US, Vietnam
<b>Filing with company register</b>	6	Finland, Greece, Luxembourg, Italy, Poland, Spain
<b>Reports</b>		
<b>Management report</b>	13	Argentina, Austria, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Spain, Sweden, Poland, Portugal
<b>Sustainability report</b>	6	Greece, Mexico, Norway, Peru, Sweden, US
<b>Standalone ESG reports</b>	18	Austria, Brazil, Canada, China, Colombia, France, Germany, Hungary, Italy, Nigeria, Norway, Poland, Portugal, Singapore, Spain, Sweden, Switzerland, US
<b>Section in the annual report</b>	23	Australia, Belgium, Brazil, Canada, Colombia, Denmark, Greece, Hungary, India, Japan, Mexico, New Zealand, Nigeria, Norway, Pakistan, Peru, Singapore, Switzerland, Thailand, Turkey, UK, US, Vietnam
<b>Annual financial statements</b>	7	Argentina, Canada, Finland, Greece, Hungary, Luxembourg, Switzerland
<b>Proxy statements</b>	1	US

8. In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?

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Survey 2022

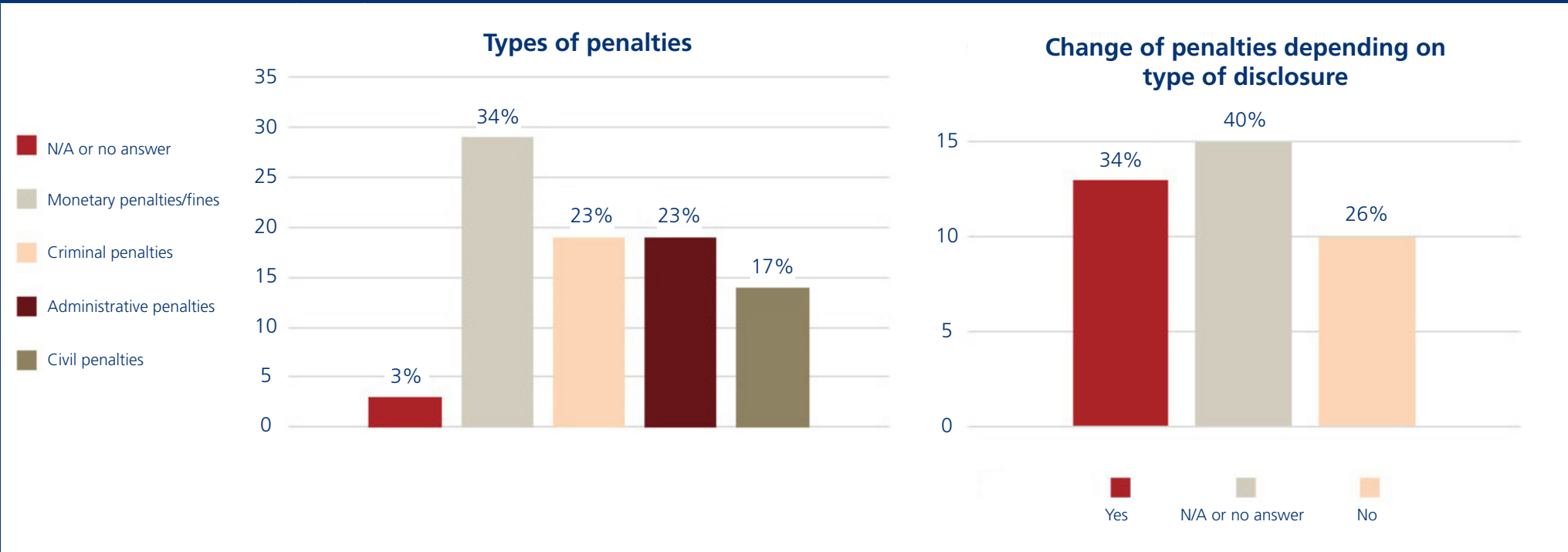


<b>N/A or no answer</b>	7	Belgium, Brazil, Denmark, Japan, Nigeria, Poland, Thailand
<b>Yes</b>	31	Argentina, Australia, Austria, Canada, China, Colombia, Finland, France, Germany, Greece, Hungary, India, Ireland, Italy, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Pakistan, Peru, Portugal, Singapore, South Korea, Spain, Sweden, Switzerland, Turkey, UK, US, Vietnam
<b>No</b>	0	

**9. What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?**

This question is omitted.

**10. What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?**



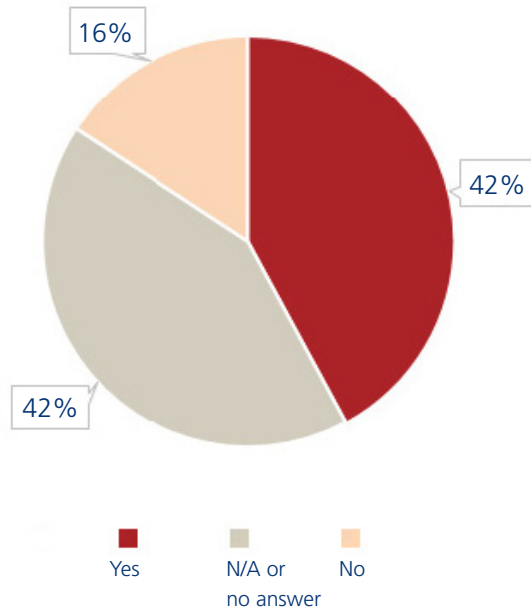
<b>N/A or no answer</b>	3	Argentina, Greece, Pakistan
<b>Penalties for false or misleading ESG disclosures</b>		
<b>Monetary sanctions/Fines</b>	29	Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Hungary, India, Ireland, Italy, Japan, Luxembourg, Mexico, New Zealand, Nigeria, Peru, Poland, Portugal, Singapore, South Korea, Spain, Switzerland, Thailand, Turkey, UK, Vietnam
<b>Criminal sanctions</b>	19	Belgium, Canada, Colombia, Finland, France, Germany, India, Ireland, Japan, Luxembourg, the Netherlands, Poland, Portugal, Singapore, Spain, Switzerland, Turkey, UK, US
<b>Civil sanctions</b>	14	Australia, Canada, Finland, France, Germany, Japan, Luxembourg, the Netherlands, New Zealand, Poland, Portugal, Singapore, UK, US
<b>Administrative sanctions</b>	19	Belgium, Brazil, China, Colombia, Denmark, Finland, France, Hungary, Japan, Luxembourg, the Netherlands, Nigeria, Peru, Poland, Portugal, South Korea, Sweden, UK, US



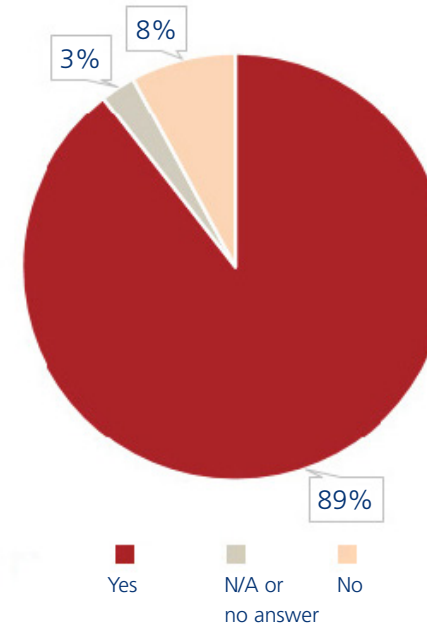
Change of penalties depending on whether the ESG disclosure was mandatory or voluntary		
Yes	13	China, Colombia, Denmark, Finland, France, Greece, Japan, Luxembourg, Nigeria, Norway, Poland, South Korea, US
No	10	Brazil, Germany, India, Netherlands, New Zealand, Peru, Portugal, Spain, UK, Vietnam
N/A or no answer	15	Argentina, Australia, Austria, Belgium, Canada, Hungary, Ireland, Italy, Mexico, Pakistan, Singapore, Sweden, Switzerland, Thailand, Turkey

**11. Is there a tiered disclosure system in your jurisdiction and are any further ESG disclosure requirements expected in your jurisdiction in the near future?**

**Existence of a tiered disclosure system**

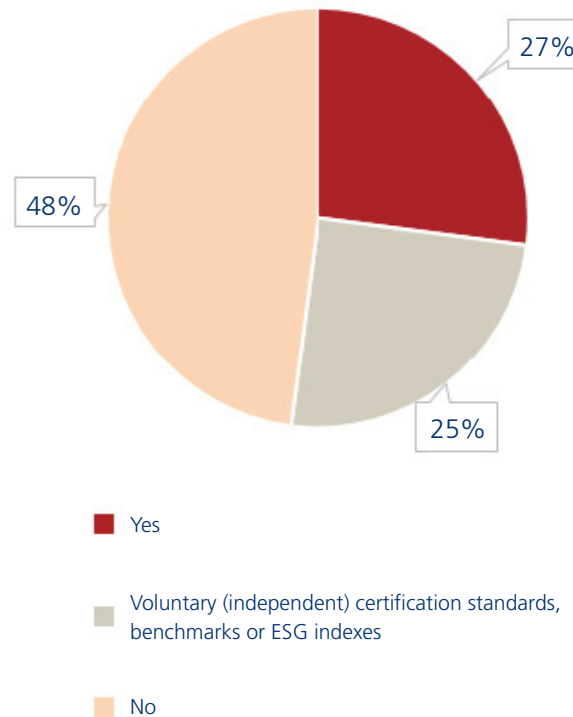


**Expectation of more ESG disclosures in the future**



Tiered disclosure system in place?		
Yes	16	Brazil, Colombia, Finland, France, Germany, Greece, India, Ireland, Luxembourg, the Netherlands, Norway, Poland, Portugal, South Korea, UK, US
No	16	Argentina, Australia, Belgium, Canada, Denmark, Hungary, Italy, New Zealand, Nigeria, Pakistan, Peru, Spain, Sweden, Thailand, Turkey, Vietnam
N/A or no answer	6	Austria, China, Japan, Mexico, Singapore, Switzerland
Are more ESG disclosure requirements expected in the future?		
Yes	34	Argentina, Australia, Austria, Belgium, Brazil, China, Colombia, Denmark, Finland, France, Germany, Greece, Hungary, India, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Poland, Portugal, Singapore, South Korea, Spain, Sweden, Switzerland, Turkey, UK, US
No	1	Thailand
N/A or no answer	3	Canada, Ireland, Vietnam

**12. Is there a system of ESG certification or benchmarks that needs to be met to have an 'ESG approved/compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?**



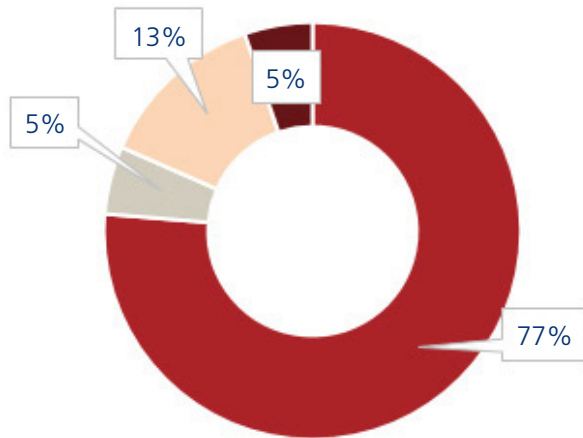
<b>Yes</b>	13	Argentina, Belgium, Colombia, France, Germany, Greece, Hungary, Luxembourg, Netherlands, Nigeria, Poland, Portugal, UK
<b>No</b>	23	Australia, Austria, Brazil, Canada, China, Denmark, Finland, Ireland, Italy, Japan, New Zealand, Norway, Pakistan, Peru, Singapore, South Korea, Spain, Sweden, Switzerland, Thailand, Turkey, US, Vietnam
<b>Voluntary (independent) certification standards, benchmarks or ESG indexes</b>	12	Brazil, Finland, India, Japan, Luxembourg, Mexico, New Zealand, Peru, Portugal, Sweden, Switzerland, US

**13. Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.**

This question is omitted.

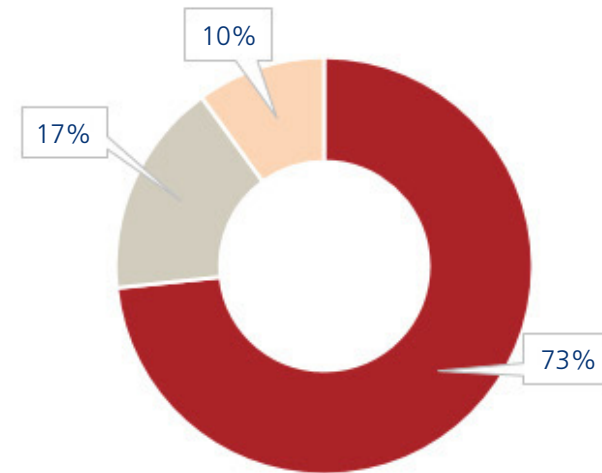
14. Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, and if so, how does your jurisdiction require entities to make specific climate change disclosures?

Survey 2024: Climate-change related disclosures as a part of the ESG disclosure regime



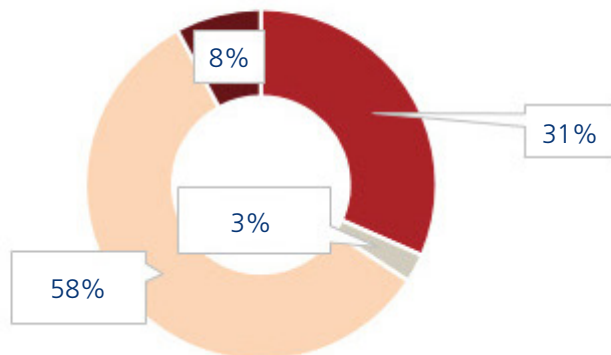
Yes No Comply or explain N/A or no answer

Survey 2022: Climate-change related disclosures as a part of the ESG disclosure regime



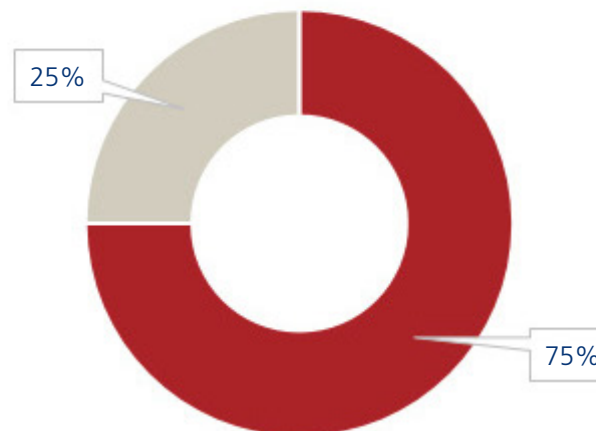
Yes No Comply or explain

**Survey 2024: If so, different types of climate change disclosures**



- Reports (annual, periodic, sustainability reports, etc.)
- Registration statement filed with regulatory filings
- N/A or no answer
- Others

**Survey 2022: If so, different types of climate change disclosures**



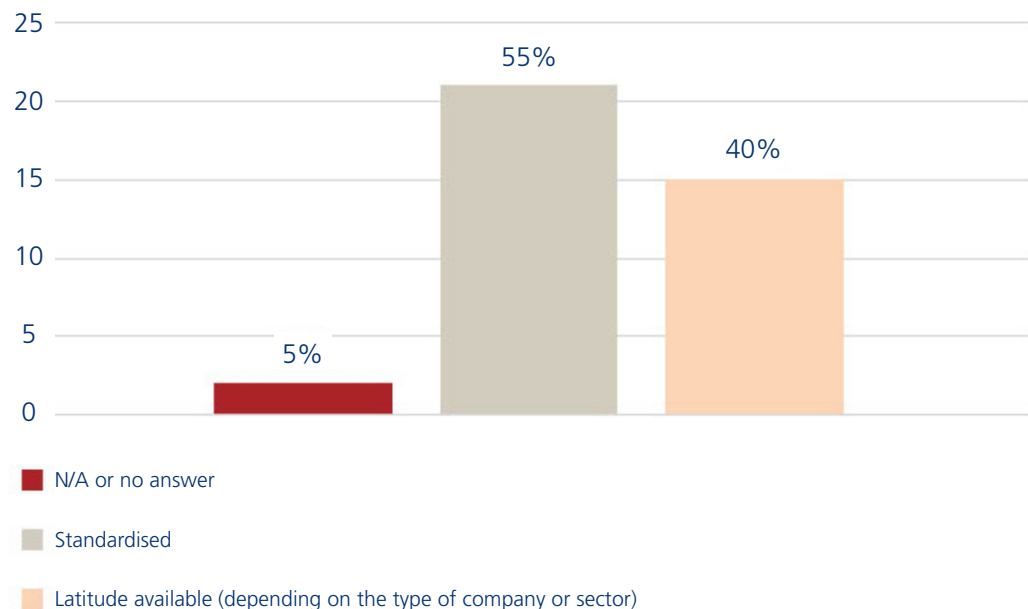
- Reports (annual, periodic, sustainability reports, etc.)
- Registration statement filed with regulatory filings

**Climate change-related disclosures as part of the ESG disclosure regime**

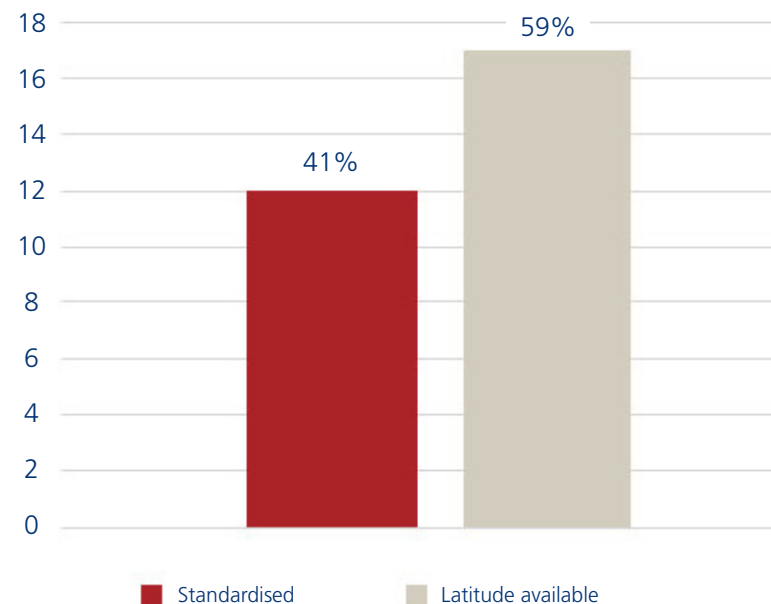
<b>N/A or no answer</b>	2	Austria, South Korea
<b>Yes</b>	29	Australia, Brazil, Belgium, Canada, China, Colombia, Denmark, Finland, France, Germany, Hungary, India, Ireland, Italy, Luxembourg, Mexico, New Zealand, Nigeria, Norway, Peru, Poland, Portugal, Spain, Sweden, Switzerland, Thailand, UK, US, Vietnam
<b>No</b>	2	Greece, Pakistan
<b>Comply or explain</b>	5	Argentina, Japan, Netherlands, Singapore, Turkey
<b>If so, different types of climate change disclosures</b>		
<b>Reports (annual, periodic, sustainability report, etc)</b>	12	Belgium, China, Colombia, France, Luxembourg, Nigeria, Norway, Poland, Thailand, UK, US, Vietnam
<b>Registration statements filed with the regulatory filings</b>	1	US
<b>Others</b>	3	Brazil, India, UK
<b>N/A or no answer</b>	22	Argentina, Australia, Canada, Denmark, Finland, Germany, Hungary, Ireland, Italy, Japan, Mexico, Netherlands, New Zealand, Pakistan, Peru, Portugal, Singapore, South Korea, Spain, Sweden, Switzerland, Turkey

15. Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?

Survey 2024

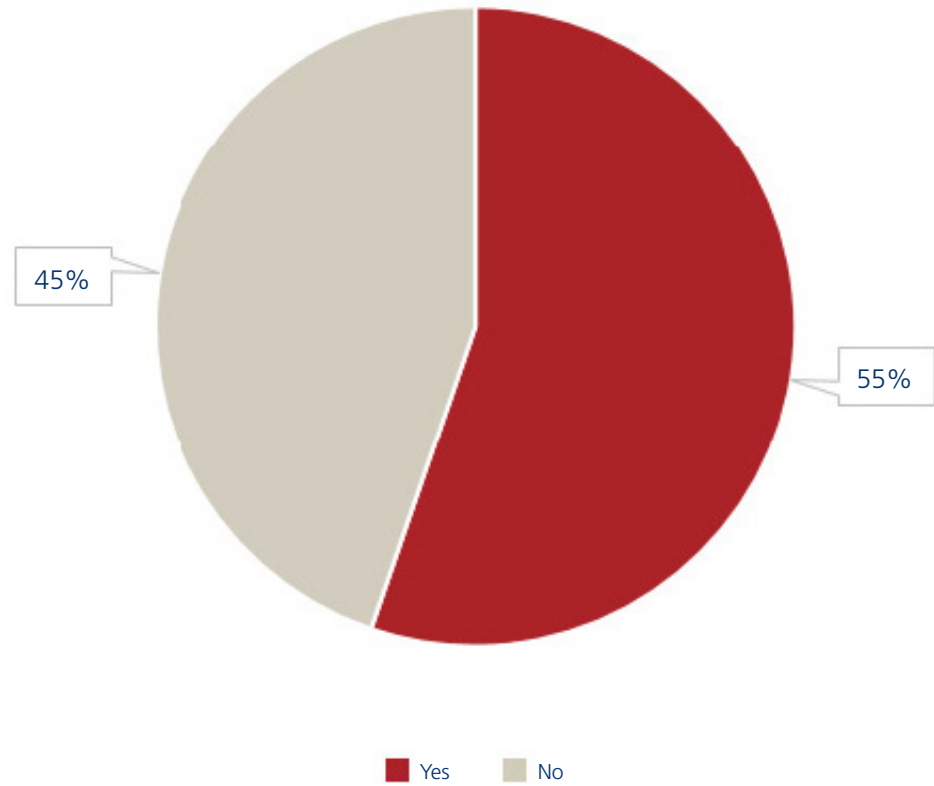


Survey 2022



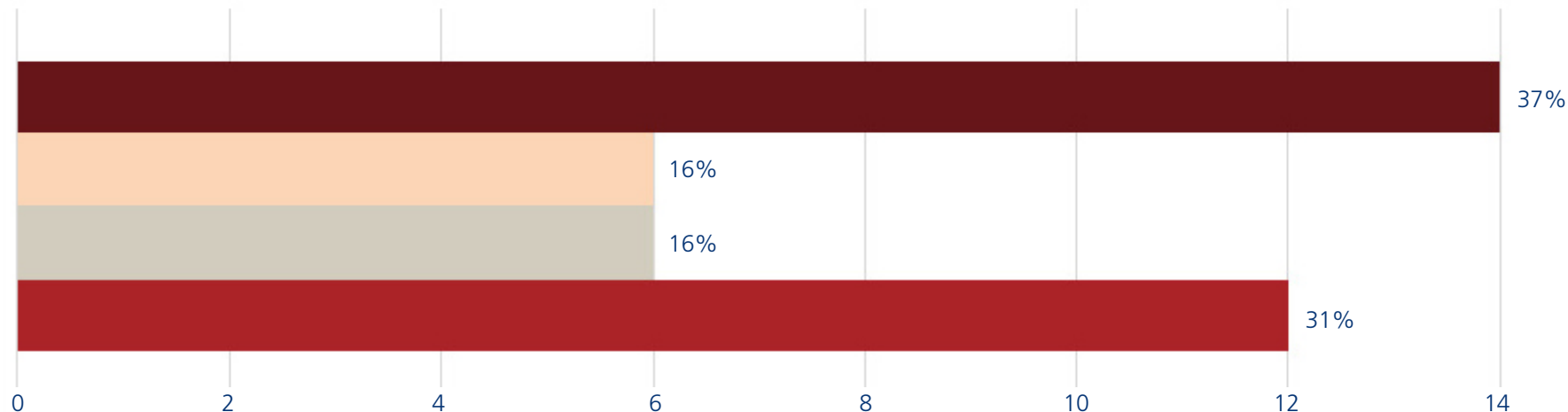
<b>N/A or no answer</b>	2	Mexico, Pakistan
<b>Standardised</b>	21	Australia, Austria, China, Colombia, Finland, France, Germany, Greece, Hungary, India, Ireland, Italy, Luxembourg, Nigeria, Peru, Singapore, South Korea, Thailand, Turkey, UK, Vietnam
<b>Latitude available (depending on the type of company or sector)</b>	15	Argentina, Belgium, Brazil, Canada, Denmark, Japan, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, US

16. Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures; that is, does applicable law clearly define the scope of what is included in ESG?



<b>Yes</b>	21	Argentina, Belgium, Canada, China, Denmark, Finland, France, Germany, Greece, Hungary, India, Ireland, Luxembourg, Nigeria, Peru, Poland, South Korea, Spain, Sweden, Switzerland, Vietnam
<b>No</b>	17	Austria, Australia, Brazil, Colombia, Italy, Japan, Mexico, Netherlands, New Zealand, Norway, Pakistan, Portugal, Singapore, Thailand, Turkey, UK, US

17. How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?

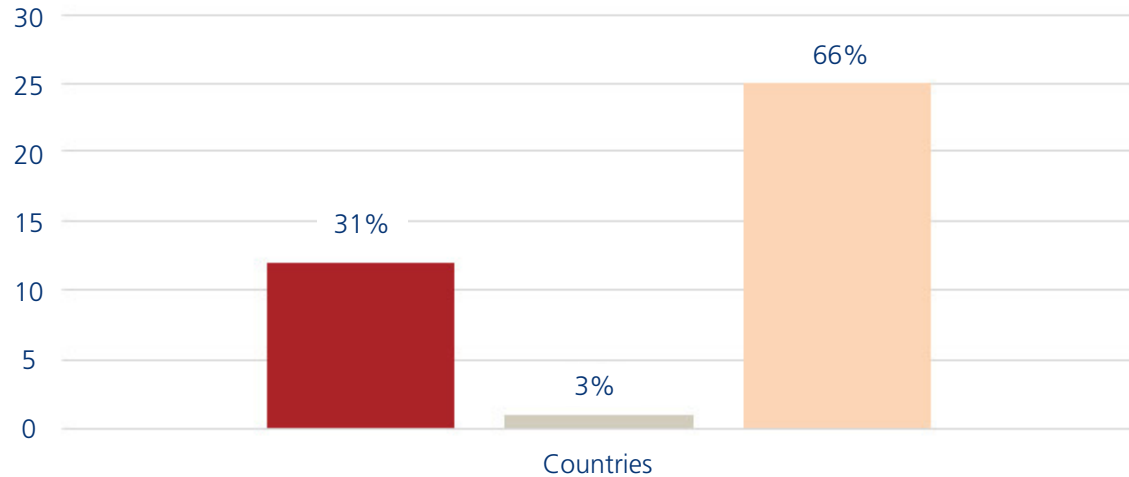


- No such specific rule or practice
- N/A or no answer
- Cross impacts are not taken into account
- Cross impacts are not taken into account (materiality analysis, 'do no significant harm', minimum standards or taken into account as a whole)

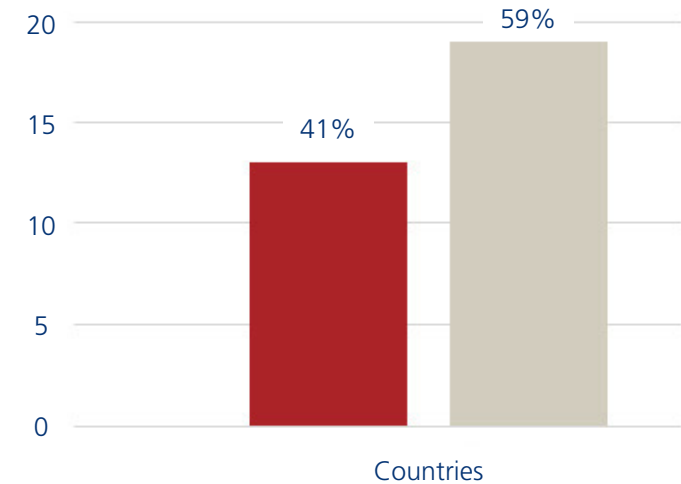
<b>N/A or no answer</b>	6	Austria, Mexico, Pakistan, Singapore, Thailand, Vietnam
<b>Cross impacts are taken into account (materiality analysis, 'do no significant harm', minimum safeguards or taken into account as a whole)</b>	12	Colombia, Finland, France, Greece, India, Luxembourg, the Netherlands, Nigeria, Norway, Poland, Sweden, UK
<b>Cross impacts are <i>not</i> taken into account</b>	6	Australia, Germany, South Korea, Spain, Turkey, US
<b>No such specific rule or practice</b>	14	Argentina, Belgium, Brazil, Canada, China, Denmark, Hungary, Ireland, Italy, Japan, New Zealand, Peru, Portugal, Switzerland

**18. In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?**

**Survey 2024**



**Survey 2022**



- Mainly an additional added value (positive impact on the market, high quality of ESG disclosure, increased focus on ESG issues, etc.)
- Mainly an additional expense/no value
- Answer lies somewhere in the middle (added value but burden especially for SMEs)

- Mainly an additional added value (positive impact on the market, high quality of ESG disclosure, increased focus on ESG issues, etc.)
- Unclear/answer lies somewhere in the middle

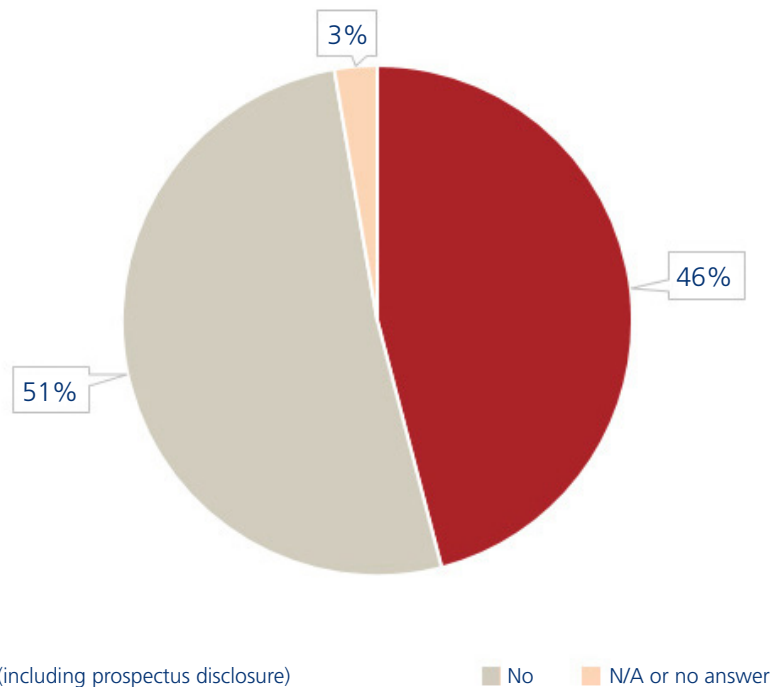
<b>Mainly added value (positive impact on the market, high quality of ESG disclosure, increased focus on ESG issues, etc)</b>	12	Brazil, Colombia, Germany, India, Italy, Nigeria, Norway, Singapore, South Korea, Thailand, Turkey, Vietnam
<b>Mainly an additional expense/no value</b>	1	Pakistan
<b>Answer lies somewhere in the middle (added value but burden especially for SME)</b>	25	Argentina, Australia, Austria, Belgium, Canada, China, Denmark, Finland, France, Greece, Hungary, Ireland, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Peru, Poland, Portugal, Spain, Sweden, Switzerland, UK, US



**19. Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?**

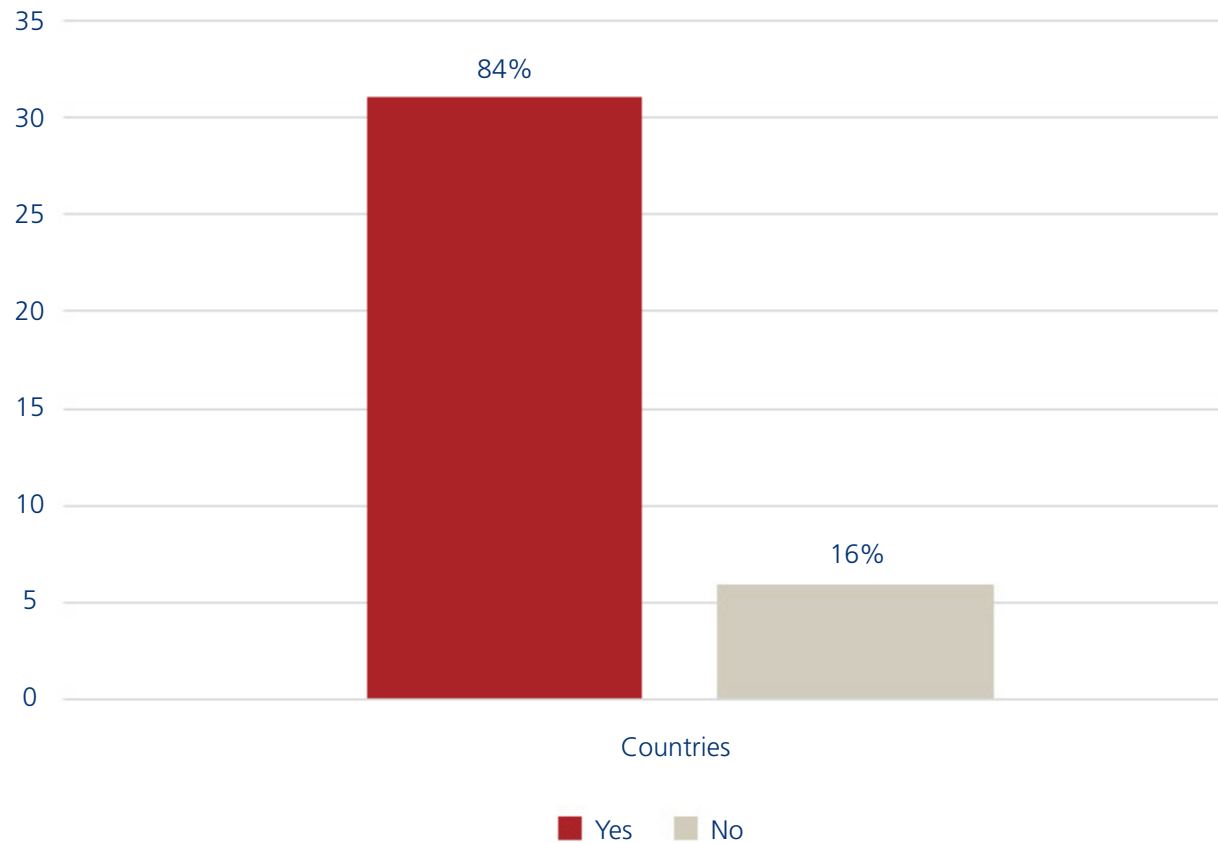
This question is omitted.

**20. Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?**



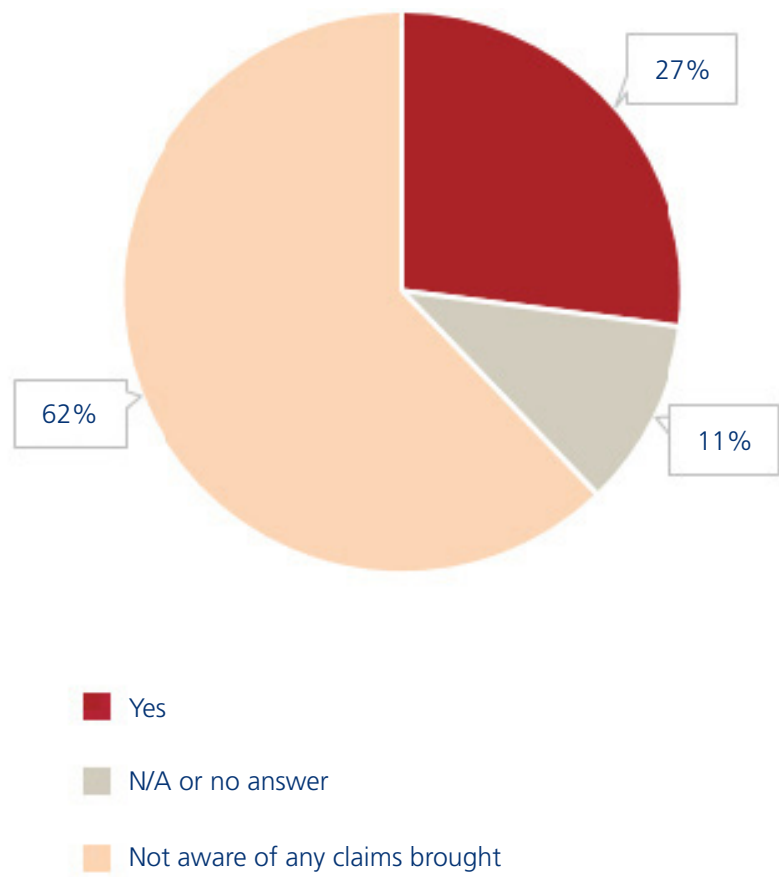
<b>Yes (including Prospectus disclosure)</b>	17	Argentina, Belgium, Denmark, Finland, France, Germany, Hungary, India, Italy, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, Turkey, UK, US
<b>No</b>	19	Australia, Austria, Brazil, Canada, China, Greece, Ireland, Japan, Mexico, New Zealand, Nigeria, Norway, Peru, Poland, Portugal, Singapore, South Korea, Thailand, Vietnam
<b>N/A or no answer</b>	1	Pakistan

21. Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?



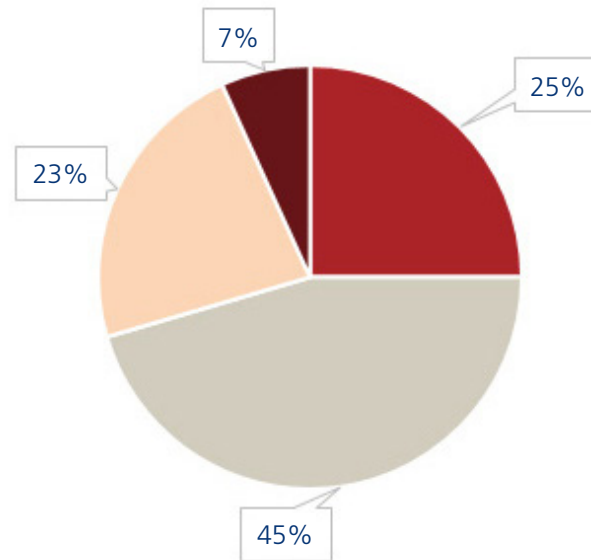
<b>Yes</b>	31	Australia, Austria, Belgium, Brazil, Canada, Denmark, France, Germany, Greece, Hungary, India, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Nigeria, Norway, Peru, Poland, Portugal, Singapore, South Korea, Spain, Sweden, Switzerland, Turkey, UK, US, Vietnam
<b>No</b>	6	Argentina, China, Finland, Mexico, Pakistan, Thailand

22. Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)



<b>Yes</b>	10	Australia, Canada, France, Germany, Luxembourg, Netherlands, New Zealand, Singapore, Spain, US
<b>Not aware of any claims brought</b>	23	Argentina, Austria, Brazil, China, Denmark, Finland, Greece, Hungary, India, Ireland, Italy, Japan, Mexico, Nigeria, Peru, Poland, Portugal, South Korea, Switzerland, Thailand, Turkey, UK, Vietnam
<b>N/A or no answer</b>	4	Belgium, Norway, Pakistan, Sweden

23. If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?



- N/A or no certification or no answer
- Sustainability information verified by (statutory, qualified) auditor – limited assurance
- By external third party/agent/assurance provider
- Regulator (financial market authority and/or stock exchange)

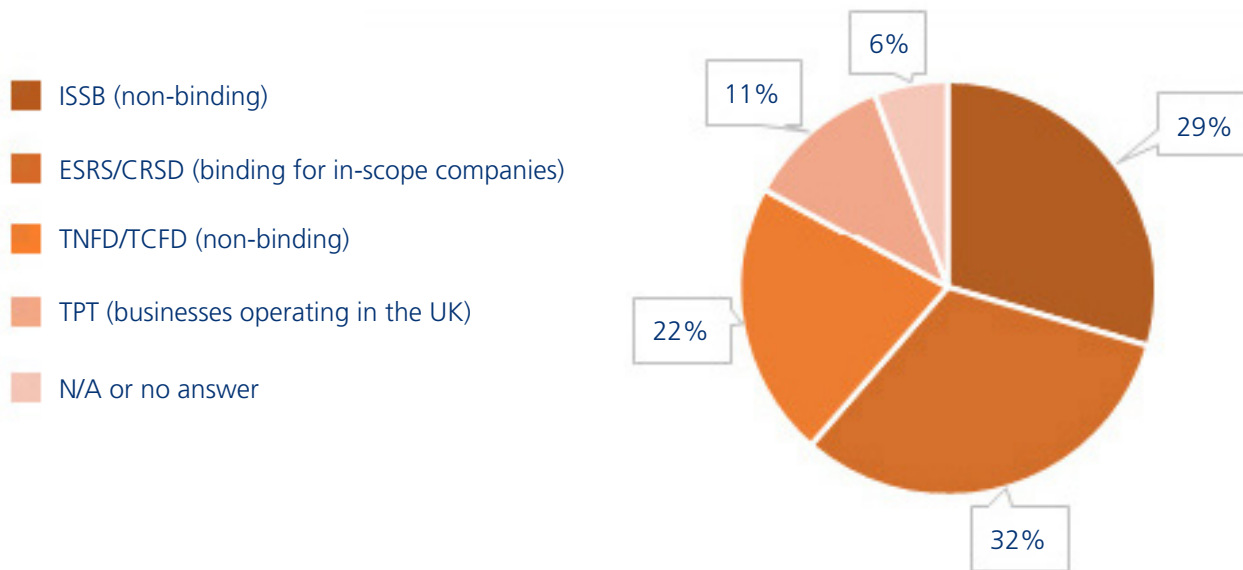
<b>N/A or no certification or no answer</b>	11	Argentina, Australia, Canada, Greece, Mexico, Pakistan, South Korea, Switzerland, Thailand, Turkey, Vietnam
<b>Regulator (financial market authority and/or stock exchange)</b>	3	France, Hungary, Peru
<b>Sustainability information verified by (statutory, qualified) auditor – limited assurance</b>	20	Austria, Brazil, Belgium, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Nigeria, Norway, Poland, Portugal, Singapore, Spain, Sweden, UK
<b>By external third party/agent/assurance provider</b>	10	China, Denmark, France, India, Ireland, Japan, New Zealand, Nigeria, Spain, US

**24. What kind of developments have you seen in relation to board oversight and governance of ESG matters?**

1. designated ESG/sustainability (board or audit) committees (20x, 54 per cent)
2. remuneration structures to encourage ESG behaviour (6x, 16 per cent)
3. CSR expertise required, board training and strategy on ESG matters (13x, 35 per cent)
4. increased board oversight and accountability, internal policies and governance re: ESG matters (21x, 57 per cent)
5. disclosure of female directors/diversity reports, transparency in voting (5x, 14 per cent)
6. focus on climate risks, green and social washing, emerging technologies (2x, 5 per cent)
7. proxy advisers to tie voting recommendations to how directors oversee ESG issues (1x, 3 per cent)
8. stakeholder engagement: environmental impact affecting success and viability of the company (2x, 5 per cent)
9. N/A or no answer (2x, 5 per cent)

<b>N/A or no answer</b>	2	Greece, Hungary (5 per cent)
<b>Developments</b>		<ul style="list-style-type: none"> <li>• Designated ESG/sustainability (board or audit) committees (Australia, Austria, Belgium, Brazil, Denmark, Finland, France, Germany, India, Italy, Japan, Luxembourg, Netherlands, Nigeria, Poland, Portugal, Spain, Thailand, Turkey, Vietnam, 20x, 54 per cent)</li> <li>• Remuneration structures to encourage ESG behaviour (Australia, Brazil, Finland, Italy, Japan, Portugal, 6x, 16 per cent)</li> <li>• CSR expertise required, board training and strategy on ESG matters (Australia, Belgium, Canada, France, Germany, Japan, Luxembourg, Netherlands, Poland, Portugal, Switzerland, UK, Vietnam, 13x, 35 per cent)</li> <li>• Increased board oversight and accountability, internal policies and governance re ESG matters (Argentina, Australia, Belgium, China, Finland, Ireland, Italy, the Netherlands, New Zealand, Peru, Poland, Portugal, Singapore, South Korea, Spain, Sweden, Switzerland, Thailand, Turkey, US, Vietnam, 21x, 57 per cent)</li> <li>• Disclosure of female directors/diversity reports, transparency in voting (Australia, Ireland, Mexico, Pakistan, Poland, 5x, 14 per cent)</li> <li>• Focus on climate risks, green and social washing, emerging technologies (Canada, Netherlands, 2x, 5 per cent)</li> <li>• Proxy advisers to tie voting recommendations to how directors oversee ESG issues (Canada, 1x, 3 per cent)</li> <li>• Stakeholder engagement: environmental impact affecting success and viability of the company (Australia, UK, 2x, 5 per cent)</li> </ul>

25. How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future?



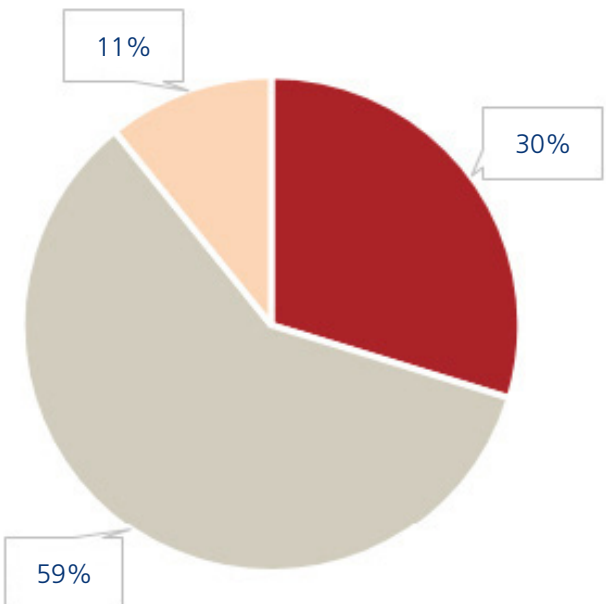
**How are the standards affecting the companies:**

1. operational changes, ESG committees or external consultants, training of qualified people, data collection;
2. encourage disclosure on climate information;
3. stricter introduction of mandatory requirements for companies operating in the respective countries;
4. implementation of standard(s) to be more comparable to peers, harmonisation;
5. double (impact and financial) materiality test;
6. stakeholder trust, manage investor expectations;
7. compliance costs and barriers to attract foreign capital.

<b>N/A or no answer</b>	5	Greece, New Zealand, Nigeria, Portugal, Vietnam
<b>TPT (business operating in the UK)</b>	10	Australia, Canada, Finland, India, Japan, Mexico, Netherlands, Norway, Switzerland, UK
<b>TNFD/TCFD (non-binding)</b>	19	Argentina, Australia, Belgium, Canada, Finland, France, Germany, India, Ireland, Italy, Japan, Mexico, Netherlands, Norway, Singapore, Spain, Switzerland, Thailand, UK

<b>ESRS/CSRD (binding for in-scope companies)</b>	28	Argentina, Australia, Austria, Belgium, Canada, China, Denmark, Finland, France, Germany, Hungary, India, Ireland, Italy, Japan, Luxembourg, Mexico, Netherlands, Norway, Poland, Singapore, South Korea, Spain, Sweden, Switzerland, Turkey, UK, US
<b>ISSB (non-binding)</b>	26	Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Finland, Germany, India, Ireland, Italy, Japan, Luxembourg, Mexico, Netherlands, Pakistan, Peru, Poland, Singapore, Spain, Switzerland, Thailand, Turkey, UK, US
<b>How are the standards affecting the companies?</b>		<ol style="list-style-type: none"> <li>1. operational changes, ESG committees or external consultants, training of qualified people, data collection;</li> <li>2. encourage disclosure on climate information;</li> <li>3. stricter/introduction of mandatory requirements for companies operating in the respective countries;</li> <li>4. implementation of standard(s) to be more comparable to peers, harmonisation;</li> <li>5. double (impact and financial) materiality test;</li> <li>6. stakeholder trust, manage investor expectations; and</li> <li>7. compliance costs and barriers to attract foreign capital.</li> </ol>

26. In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?

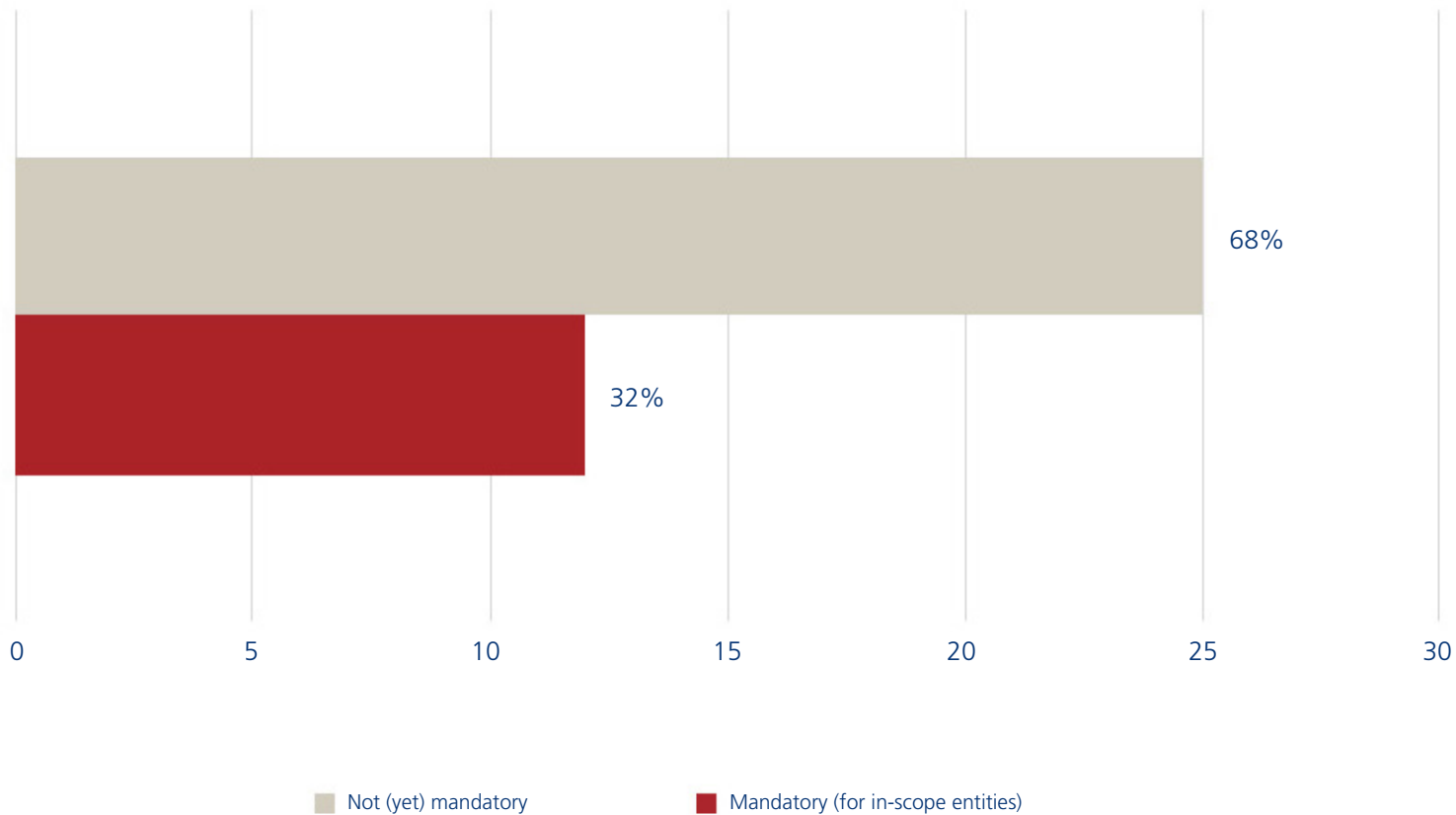


- Yes
- Depending on the size of the company (large/listed companies do, SMEs don't)
- No (not yet)

<b>Yes</b>	11	Argentina, Austria, Brazil, China, Hungary, Japan, Pakistan, Peru, South Korea, Thailand, Vietnam
<b>No (not yet)</b>	4	Denmark, Luxembourg, New Zealand, Portugal
<b>Depending on the size of the company (large/listed companies do, SMEs don't)</b>	22	Australia, Belgium, Canada, Finland, France, Germany, Greece, India, Ireland, Italy, Mexico, Netherlands, Nigeria, Norway, Poland, Singapore, Spain, Sweden, Switzerland, Turkey, UK, US

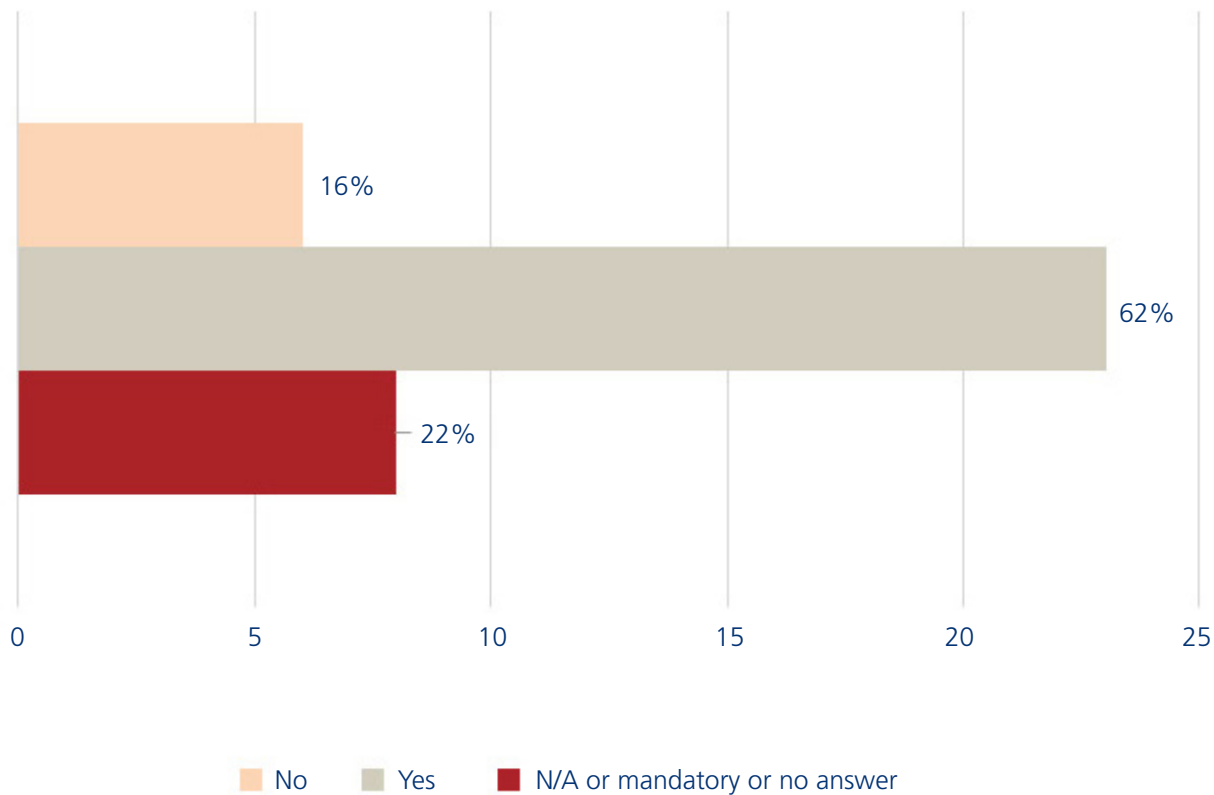


27. Is it mandatory for companies to set climate-related targets?



<b>Mandatory (for in-scope entities)</b>	12	Belgium, China, Denmark, Finland, France, Greece, Luxembourg, Mexico, Singapore, Sweden, Switzerland, Vietnam
<b>Not (yet) mandatory</b>	25	Argentina, Australia, Austria, Brazil, Canada, Germany, Hungary, India, Ireland, Italy, Japan, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Poland, Portugal, South Korea, Spain, Thailand, Turkey, UK, US

28. If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets, popular amongst the companies in your jurisdiction?



<b>N/A or mandatory or no answer</b>	8	Austria, Belgium, Denmark, Greece, Luxembourg, Hungary, Peru, Thailand
<b>No</b>	6	Germany, Pakistan, Portugal, South Korea, Sweden, Vietnam
<b>Yes</b>	23	Argentina, Australia, Brazil, Canada, China, Finland, France, India, Ireland, Italy, Japan, Mexico, the Netherlands, New Zealand, Nigeria, Norway, Poland, Singapore, Spain, Switzerland, Turkey, UK, US

## 29. What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?

1. development of (greater, stricter, mandatory, standardised, transparent and qualitative) ESG regulation and awareness (34 x, 92 per cent);
2. promoting sustainable development in the corporate world/impact investing (11 x, 30 per cent);
3. alignment with global/EU ESG standards and specifically climate-related disclosures (18 x, 49 per cent);
4. increase in voluntary disclosures (5 x, 14 per cent);
5. optimisation of regulation regarding greenwashing, sustainable funds/bonds, prospectus disclosure (12x, 32 per cent);
6. sustainable and social taxonomy (3x, 8 per cent);
7. investor pressure/expectations, issuer's ESG due diligence (say on pay, say on climate) (9x, 24 per cent);
8. increased scrutiny of technologies/digitalisation (2x, 5 per cent);
9. sector/industry-specific ESG disclosure (1x, 3 per cent); and
10. consumer boycotts where companies violate ESG regulation (1x, 3 per cent).

<b>Trends</b>	<p>1. development of (greater, stricter, mandatory, standardised, transparent and qualitative) ESG regulation and awareness (Argentina, Australia, Belgium, Canada, China, Colombia, Denmark, Finland, France, Germany, Greece, Hungary, India, Japan, Ireland, Italy, Luxembourg, Mexico, the Netherlands, Nigeria, Norway, Pakistan, Peru, Poland, Portugal, Singapore, South Korea, Spain, Sweden, Switzerland, Turkey, UK, US, Vietnam, 34x, 92 per cent)</p> <p>2. promoting sustainable development in the corporate world/impact investing (Australia, Denmark, France, Germany, India, Luxembourg, Nigeria, Poland, Spain, Thailand, Vietnam, 11x, 30 per cent)</p> <p>3. alignment with global/EU ESG standards and specifically climate-related disclosures (Argentina, Australia, Austria, Belgium, Canada, China, France, Germany, India, Japan, Nigeria, Pakistan, Portugal, South Korea, Spain, Sweden, UK, US, 18x, 49 per cent)</p> <p>4. increase in voluntary disclosures (Germany, India, Italy, Turkey, UK, 5x, 14 per cent)</p> <p>5. optimisation of regulation regarding greenwashing, sustainable funds/bonds, prospectus disclosure (Austria, Brazil, Canada, Finland, India, Mexico, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, 12x, 32 per cent)</p> <p>6. sustainable and social taxonomy (Brazil, Luxembourg, UK, 3x, 8 per cent)</p> <p>7. investor pressure/expectations, issuer's ESG due diligence (say on pay, say on climate) (Australia, Canada, France, Germany, Italy, Peru, Portugal, Thailand, Turkey, 9x, 24 per cent)</p> <p>8. increased scrutiny of technologies /digitalisation (Poland, Portugal, 2x, 5 per cent)</p> <p>9. sector/industry-specific ESG disclosure (Nigeria, 1x, 3 per cent)</p> <p>10. consumer boycotts where companies violate ESG regulation (Thailand, 1x, 3 per cent)</p>
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# **Survey completed by the participants: full text**

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Argentina

### Argentina

1.	Which jurisdiction are you covering?	Argentina
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>The entities that are under the public offering regime of their marketable securities, and those requesting authorisation to enter the public offering regime, shall submit documentation related to their ESG standards to the Argentine Securities Exchange Commission (Comisión Nacional de Valores or CNV). On an annual basis and for public disclosure, the management bodies shall include in their annual report, as a separate annex, a report on the degree of compliance with the CNV's Corporate Governance Code.</p> <p>Likewise, in the annual report, they shall report on their environmental or sustainability policy, including, if any, the main performance indicators of the issuer in this matter, or, if they do not have such policies or indicators, they shall provide an explanation as to why the issuer's administrators consider that they are not relevant to their business. Excluded from the obligation indicated in the preceding paragraph are companies, cooperatives, and associations that qualify as small and medium-sized enterprises (SMEs) under the terms of the CNV's regulations.</p> <p>In addition, the CNV recommends that the listed companies issue a Social and Environmental Responsibility Report on an annual basis, verified by an independent external auditor and, if available, indicate the legal or geographic scope or coverage. In addition, they shall specify which standards or initiatives have been adopted to implement the corporate social responsibility (CSR) policy (eg, Global Reporting Initiative (GRI) and/or the United Nations Global Compact, ISO 26,000, SA8000, Millennium Development Goals, SGE 21- Foretica, AA 1000 and Equator Principles).</p> <p>Particularly, ESG mutual funds, whose special investment purpose is constituted by marketable securities with ESG impact, and companies issuing ESG or companies issuing social, green and sustainable bonds ('ESG bonds') with a public offering have a special CNV regulation, with certain obligations they must comply with. In terms of ESG disclosures, their prospectus must incorporate certain information, such as a description of the project or projects, or categories of social, green and/or sustainable projects, that are intended to be financed with the proceeds from the placement of the marketable securities.</p> <p>On the other hand, in 2018, BYMA, a new stock exchange that integrates and represents the main players in Argentina's stock market, launched its Corporate Governance Panel, which is a listing panel that includes the shares of companies already listed that comply with good governance and transparency practices, in addition to those required by Argentine regulations.</p> <p>The adherence of companies is voluntary and implies the incorporation of a set of requirements aligned with the principles of Corporate Governance of the Organisation for Economic Co-operation and Development (OECD) and adopted by the G20.</p> <p>These include gender diversity in the board of directors, nomination and remuneration committee, remuneration policy, nomination policy, dividend policy, integrity programmes, shareholder dispersion, board evaluation and annual reports.</p>

3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	As mentioned above, all listed companies have the obligation to make ESG disclosures. In addition, mutual funds ( <i>fondos comunes de inversión</i> or FCIs), whose special investment purpose is constituted by marketable securities with ESG bonds, have a special regulation aside from the regulation for all listed companies.
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	N/A
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	<p>For stock corporations, ESG disclosures are required to be made on a continuous annual reporting basis, and, in their prospectus, they are required to explain whether they adopt environmental policies.</p> <p>ESG bond issuer companies must provide updated and accessible information on the use of the funds and the impact of the marketable security issued during its life, until all the funds have been allocated, through an annual report, unless there is a material event that must be reported before year-end.</p> <p>On the other hand, financial trusts with a public offering of their marketable securities, and ESG closed-end mutual funds, must submit an initial review report to the CNV to be filed in the respective market, as well as publish successive periodic reports through the Financial Information Highway (Autopista de la Información Financiera or AIF).</p>
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>As required by the CNV, stock corporations must include their environmental or sustainability policy in a separate appendix in their financial statements.</p> <p>The issuer of Social, Green, and Sustainable (Social, Verde y Sostenible or SVS) bonds must provide updated and accessible information on the use of the proceeds and the impact of the marketable security issued during its term, until all of the proceeds have been allocated, through an annual report, unless a relevant event occurs that must be reported before year-end.</p> <p>ESG mutual funds shall provide and maintain current and readily available information in their prospectus and in a management report.</p> <p>The company that issues an ESG bond that is publicly offered and requests its listing in BYMA will be subject to all the regular requirements that are applicable to traditional negotiable securities (negotiable obligations, mutual funds, and financial trusts) in the CNV Rules and BYMA Regulations. In addition, the issuer must submit a Report on the Use of Funds together with the annual financial statements or within 70 calendar days from the end of the fiscal year, whichever occurs first, until the allocation of resources to projects is complete.</p> <p>When it is feasible to have a report on the social and/or environmental benefits, provided the ESG bonds have not been fully redeemed, the issuer shall proceed with its remission.</p>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	Stock corporations must make their ESG disclosures on their financial statements; issuers of ESG bonds must comply with the ESG disclosures in the annual report; and issuers of ESG mutual funds must comply with the ESG disclosures in their prospectus and management report.
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>As previously stated, non-listed companies are not compelled to exhibit their ESG disclosures. However, they are increasingly publishing sustainability reports, even though they are not required to do so. Chief executive officers have acknowledged that communicating the application of ESG standards strengthens the company's relationship with stakeholders and generates a relationship of trust based on transparency.</p> <p>Pacto Global is a non-governmental organisation (NGO) whose objective is to mobilise the business sector, as well as other stakeholders, to commit to the ten Sustainable Development Goals (SDGs) of the UN. According to its Progress Report, in 2023, 102 companies submitted the Communication on Progress, which is the annual report that Pacto Global member companies must submit periodically to demonstrate how they are aligning their business strategies with universal principles on human rights, labour standards, the environment and anti-corruption.</p>

9.	<p><b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b></p>	<p>The CNV is in charge of monitoring listed companies and ESG mutual funds. In addition, the Secretariat of Human Rights is in charge of intervening in all human rights issues, in a broad sense, which refers to the promotion of the adoption of ethical and CSR measures, environmental and social issues, and others arising from the role of the CNV.</p> <p>With respect to ESG bonds, in the CNV's guidance for the issuance of SVS bonds, it established that markets may withdraw the thematic label if issuers do not comply with their current regulations and the requirements specified by the guidelines.</p> <p>In this sense, an SVS bond may lose its label if:</p> <ul style="list-style-type: none"> <li>• it does not comply with the use of funds criteria;</li> <li>• it does not comply with its reporting obligations; and</li> <li>• it does not comply with the issues stipulated in the market regulations created for this purpose.</li> </ul> <p>In the case of the BYMA Social, Green and Sustainable Bond Panel, the withdrawal of the label implies that the SVS bond will lose the special visualisation that this panel grants it and it will be listed by the traditional panel. BYMA reserves the right to exclude a marketable security from the SVS Bond Panel when: (1) there are evident signs that the funds raised have not been, nor will be, applied to the purposes contemplated in the issue conditions; (2) the issuer does not comply with the information regime imposed by these regulations and such non-compliance has not been remedied after repeated claims by BYMA; and/or (3) the seriousness of the irregularities evidenced or repeated non-compliance with the obligations set forth in these regulations make it advisable. The exclusion from the ESG Bond Panel means that such a marketable security will no longer be recognised by BYMA as an SVS bond, and consequently, corresponding modifications will be made in BYMA's computer systems in order to remove the display provided in due course.</p> <p>Likewise, in line with current regulations, the CNV reserves the right to apply corresponding disciplinary measures in the event of non-compliance detected under their control.</p>
10.	<p><b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b></p>	<p>The penalties are not specified.</p>
11.	<p><b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b></p>	<p>There is no tiered disclosure system in Argentina. However, we expect that more regulation will be sanctioned in this regard. This is because the pandemic caused increased concern about environmental and social issues among investors around the world. In addition, in Argentina, the enactment of Argentine ESG regulations has grown on a large scale in recent years and will continue to do so.</p>

12.	<p><b>Is there a system of ESG certification or benchmarks that need to be met to have an ‘ESG Approved/Compliant’ status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b></p>	<p>The CNV issued General Resolution 896, through which it published guidelines for the issuance of SVS bonds, where the importance of external reviewers in reinforcing the credibility of the tradable security label used as a vehicle to finance green and/or social projects was highlighted.</p> <p>In the same resolution, the CNV published the Guide for External Evaluators of SVS bonds, which is addressed to both those who perform external review functions and those who potentially wish to perform them, in the hope that it will also be useful for other players in the thematic bond market. Its purpose is to provide information on the role and activity of external reviewers in the SVS bond market, and the benefits of hiring them.</p> <p>However, external reviewers are not subject to public offering regulation per se and, therefore, are not under the supervision of the CNV, except in cases in which entities also act in other roles, which may be subject to regulation by the CNV, for example, external auditors and risk rating agencies.</p> <p>In particular, financial trusts with a public offering of their marketable securities and closed-end mutual funds whose special investment purpose is constituted by marketable securities with ESG impact must have an external review prepared by an independent third party with experience in environmental and/or social matters. Its report must comply with the requirements set forth in the listing regulations of the markets that have specific segments or panels for these marketable securities. Notwithstanding the foregoing, for the purpose of the adequate disclosure of information to the investing public, the prospectus or prospectus supplement must identify the independent third party in charge of the external review, indicating at least its name or corporate name, the address of its office and, likewise, indicate its experience in the matter, through credentials, certifications or any other element that provides evidence of its suitability to carry out the review.</p>
13.	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p>As explained above, the only companies required to make ESG disclosures are listed companies, ESG mutual funds and issuers of ESG bonds.</p> <p>Issuers of ESG bonds must provide a brief description of the projects and amounts disbursed, including, where possible, the percentage of proceeds that have been allocated to different eligible sectors, different types of projects, financing and refinancing. In cases in which there are confidentiality agreements that prevent the disclosure of certain information, such information may be disclosed in generic terms: the expected impact of projects and assets; qualitative performance indicators; and, where feasible, quantitative performance measures of the impact of the projects, and disclosure of the methodology and underlying assumptions used to prepare the performance indicators and metrics.</p> <p>Listed companies must explain whether they have environmental or sustainability policies; if there are no such policies, such companies must provide an explanation as to why the issuer’s management believes they are not relevant to its business.</p> <p>ESG mutual funds must provide information regarding ESG objectives; categories of eligible green, social or sustainable projects; eligibility criteria to be applied; asset evaluation and selection process; exclusion criteria; and monitoring and reporting criteria, if any.</p>
14.	<p><b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b></p>	<p>Listed companies must provide information regarding whether they adopt internal environmental policies, and, if not, they must explain why. For financial trusts, in the event that the fiduciary structure contemplates activities that are considered risky for the environment, information on the environmental aspects involved and the measures adopted for the prevention of environmental damage must be included.</p> <p>Regarding not-listed companies, they voluntarily use the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) as guidelines. This is an organisation that aims to develop a set of voluntary climate-related financial risk exposures that companies can adopt to inform investors and other members of the public about the risks associated with climate change.</p>
15.	<p><b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b></p>	<p>Companies are free as to the scope and form of the disclosures they make, within the provisions of question 12.</p>



16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	<p>Yes. The Guide for Socially Responsible Investment in the Argentine capital market of the CNV provides an exact definition of what socially responsible investment is, including and explaining ESG factors.</p> <p>To refer to these, the CNV mentions that the consideration of ESG factors in investment analysis can lead to an improvement in the profitability of investment portfolios, and also lower exposure to both current and future risk. In this sense, investment portfolios that apply sustainability criteria will be more resilient to ESG risks in the future, such as the increasing incidence of extreme weather events or regulatory changes related to environmental issues.</p> <p>In the case of ESG mutual funds and companies that issue ESG bonds, ESG disclosures are regulated in the Normas CNV and BYMA regulations, such as the ESG Bonus Guideline on the BYMA Panel or Regulations for the listing of negotiable obligations and/or government securities and for their inclusion in the BYMA's panel of ESG bonds.</p>
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	This is not regulated in Argentina.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	It is true that ESG disclosure regulation has created a burden for companies in the sense that it is information that they have to collect and publish, and policies that they have to implement that they did not have to previously. However, we believe that this is a fundamental advance that must happen within companies and in Argentine investment, for the benefit of both external stakeholders and management decision-making. Investors need to be able to know whether companies that claim to be sustainable are actually taking action to implement sustainability. Such disclosures are an important consideration in the evaluation of company performance and future growth.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	<p>Yes, because through this, companies achieve an increase in investment and contribute to the development of projects that reduce the impact on the environment. This is not only good for the company's finances but also for the environment and society. Consumers, investors and other stakeholders are interested in knowing the impact that the company has on the social environment in which it operates. In particular, consumers are increasingly aware of this when choosing the companies that they want to buy or where they want to work.</p> <p>In response to this, the Secretariat of Environment (former Ministry of Environment and Sustainable Development) presented the National Strategy for Sustainable Consumption and Production, which seeks to promote the decoupling of economic growth from environmental degradation and intensive resource use towards a just transition.</p> <p>The strategy is one of the products resulting from the activities of the project 'Strengthening Technical and Institutional Capacities for Sustainable Consumption and Production' and contributes to SDG 12, which establishes guaranteeing sustainable consumption and production patterns.</p>
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	<p>Asides from the disclosures set forth in our answers to questions 2 and 13, there are no other mandatory ESG disclosure requirements. However, the CNV has issued a non-mandatory guide for voluntary reporting and voluntary disclosure of ESG information, which aims to persuade listed entities to incorporate international principles for ESG disclosures, thus mitigating the risk of greenwashing.</p>

21.	<p>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</p>	<p>We are not aware of any developments in this regard.</p>
22.	<p>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</p>	<p>We are not aware of any claims initiated due to incorrect/incomplete/misleading ESG disclosures.</p>
23.	<p>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</p>	<p>There are no mandatory certification requirements for ESG reports. The CNV recommends that listed companies issue a Social and Environmental Responsibility Report on an annual basis, which should be verified by an independent external auditor. However, there are no legal requirements with regards to the content or procedure for the verification of such report by the external auditor.</p>
24.	<p>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</p>	<p>There is a growing trend in listed companies' boards, with regards to supervision of compliance with ESG standards. Chief executive officers have acknowledged that communicating the application of ESG standards strengthens the companies' relationship with stakeholders and generates a relationship of trust based on transparency.</p>
25.	<p>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<p>The CNV's guide for voluntary reporting and voluntary disclosure of ESG has incorporated the ISSB's, CSRD's and TNFD's standards and encourages all listed entities to comply with them. However, as previously mentioned, this guide is not mandatory.</p>

26.	<b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b>	Yes, as mentioned in question 2, current regulations expressly exclude small and medium-sized enterprises (SMEs) from disclosure requirements. Thus, the companies that are subject to disclosure requirements have the necessary capabilities and resources to comply with such requirements.
27.	<b>Is it mandatory for companies to set climate-related targets?</b>	There are no regulations providing for mandatory compliance with climate-related targets. However, CNV regulations provide that companies shall provide information in their annual report, regarding their environmental or sustainability policy, including, if any, the main performance indicators of the issuer in this matter, or, if they do not have such policies or indicators, they shall provide an explanation as to why the issuer's administrators consider that they are not relevant to their business.
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	Yes, climate-related targets are widespread among Argentinian listed entities.
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	We expect to have a clearer and more precise regulation regarding transparency that all listed companies must comply with, either in their financial statements or sustainability reports, regarding their application of ESG factors.  Specifically, and based on past practices, we expect that Argentine regulators will follow the trends of disclosure requirements enacted by the regulators of more developed markets, such as the US and Europe.
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	Luciano Ojea Quinta and Pablo Gayol, partners at Marval O'Farrell Mairal.

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Australia

### Australia

1.	Which jurisdiction are you covering?	Australia
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>Australia has four forms of mandatory ESG reporting for market participants (together the 'Mandatory Disclosures'):</p> <ol style="list-style-type: none"> <li>1. Modern Slavery Act 2018 (Cth) (the 'MS Act'): The MS Act requires certain large companies to publish annual Modern Slavery Statements on an online, central register. These statements must explain what the entity is doing to assess and address the risks that modern slavery practices may be occurring in its global and domestic operations and supply chains and the operations and supply chains of any entities it owns or controls.</li> <li>2. Mandatory climate-related financial disclosures: in March 2024, the Australian government introduced the Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 (Cth) (the 'Bill') to the House of Representatives. If enacted, the Bill will require certain entities to submit a sustainability report disclosing climate-related risks and opportunities in accordance with sustainability standards. The mandatory disclosure requirements are set to be phased in from 1 January 2025.</li> <li>3. National Greenhouse and Energy Reporting Act 2007 (Cth) (the 'NGER Act'): The NGER Act contains mandatory disclosures for certain companies in relation to greenhouse gas (GHG) emissions, and energy production and consumption.</li> <li>4. Workplace Gender Equality Act 2012 (Cth) (the 'WGEA Act'): The WGEA ACT requires non-public sector employers that employ 100 or more employees in total to register for the Gender Equality Reporting program and submit data (regarding workplace policies, gender equality, gender targets, etc) to the Workplace Gender Equality Agency (WGEA) annually.</li> </ol>
3.	If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?	Yes

<p>4.</p>	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b></p>	<p><b>1. Modern Slavery Act</b></p> <p>Under the MS Act, companies must submit a report if they are an Australian entity or carry on business in Australia with a minimum annual consolidated revenue of AUD\$100m. This threshold is currently under review.</p> <p><b>2. Climate-related financial disclosures</b></p> <p>Companies which are required to prepare annual financial reports under Chapter 2M of the Corporations Act, and meet certain thresholds, will be required to prepare sustainability reports. The largest entities (Group 1) will be required to submit sustainability reports for their financial years commencing from 1 January 2025, Group 2 entities will be required to report from 1 July 2026 and Group 3 entities will need to report from 1 July 2027. The thresholds for each group are detailed below:</p> <ul style="list-style-type: none"> <li>• Group 1 companies include: <ul style="list-style-type: none"> <li>– Large entities which meet at least two of the below criteria: <ul style="list-style-type: none"> <li>○ AU\$500m or more consolidated revenue for the financial year;</li> <li>○ AU\$1 billion or more consolidated gross assets at EOFY; or</li> <li>○ 500 FTE employees at EOFY, and</li> </ul> </li> <li>– NGER reporting entities who are above the following thresholds: <ul style="list-style-type: none"> <li>○ 50 kt of greenhouse gas emissions;</li> <li>○ 200 TJ of energy produced; or</li> <li>○ 200 TJ of energy consumed.</li> </ul> </li> </ul> </li> <li>• Group 2 companies include: <ul style="list-style-type: none"> <li>– Large entities which meet at least two of the below criteria: <ul style="list-style-type: none"> <li>○ AU\$200m or more consolidated revenue for the financial year;</li> <li>○ AU\$500m or more consolidated gross assets at EOFY; or</li> <li>○ 250 FTE employees at EOFY;</li> </ul> </li> <li>– NGER reporting entities which do not meet the thresholds of Group 1 companies; and</li> <li>– Asset owners with AUD\$5 billion or more consolidated gross assets at EOFY.</li> </ul> </li> <li>• Group 3 companies include entities which meet at least two of the below criteria: <ul style="list-style-type: none"> <li>– AU\$50m or more consolidated revenue for the financial year;</li> <li>– AU\$25m or more consolidated gross assets at EOFY; or</li> <li>– 100 FTE employees at EOFY.</li> </ul> </li> </ul>
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		<p><b>3. NGER Act</b></p> <p>Controlling corporations and group members which have operational control over a NGER facility in Australia (meaning an activity or series of activities which generate GHG emissions, produce energy or consume energy) must report under the NGER Act if they reach the ‘facility thresholds’ or ‘corporate group thresholds’. The facility thresholds are:</p> <ul style="list-style-type: none"> <li>• 25,000 tonnes or more of carbon dioxide equivalence (CO2-e) (Scope 1 and Scope 2 emissions)</li> <li>• production of 100 terajoules (TJ) or more of energy, or</li> <li>• consumption of 100 TJ or more of energy.</li> </ul> <p>The corporate group thresholds are</p> <ul style="list-style-type: none"> <li>• 50,000 tonnes or more of CO2-e (Scope 1 and Scope 2 emissions)</li> <li>• production of 200 TJ or more of energy, or</li> <li>• consumption of 200 TJ or more of energy.</li> </ul> <p>If a company/group only triggers facility level thresholds, it will only need to report on the individual facilities that reach the facility thresholds.</p> <p>Once a company/group reaches a corporate threshold, it must report on all group facilities, regardless of whether individual facilities reach facility thresholds.</p> <p><b>4. WGEA Act</b></p> <p>All non-public sector employers that employ 100 or more employees in total must complete and submit a Reporting Questionnaire to the WGEA.</p>
5.	<p><b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b></p>	<p>The Mandatory Disclosures are required on an annual basis.</p>
6.	<p><b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b></p>	<p>The Mandatory Disclosures are all governed by separate pieces of legislation and companies are required to prepare and submit separate reports/questionnaires.</p>

7.	<p><b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b></p>	<p><b>1. Modern Slavery Act</b></p> <p>Modern Slavery reports must be provided to the Australian Government (to the Attorney General's Department). They are then published on the public Modern Slavery Statements Register.</p> <p><b>2. Climate-related financial disclosures</b></p> <p>Climate-related financial disclosures will sit within a sustainability report, which will be contained in an entity's annual report which is lodged with the Australian Securities and Investment Commission (ASIC).</p> <p><b>3. NGER Act</b></p> <p>Reports required under the NGER Act must be submitted through the Emissions and Energy Reporting System, which is maintained by the Clean Energy Regulator.</p> <p><b>4. WGEA Act</b></p> <p>Reports/questionnaires required under the WGEA Act are submitted through the WGEA Portal.</p>
8.	<p><b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b></p>	<p>Yes – some corporates are making voluntary disclosures, particularly in alignment with the International Sustainability Standards Board (ISSB), Sustainability Accounting Standards Board (SASB), Taskforce on Nature-related Financial Disclosures (TNFD), Global Reporting Initiative (GRI) and Principles for Responsible Investment (PRI) guidelines.</p>
9.	<p><b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b></p>	<p>Regulators which monitor the Mandatory Disclosures are:</p> <ol style="list-style-type: none"> <li>1. Modern Slavery Statements: Attorney General's Department;</li> <li>2. Climate-related financial disclosures: ASIC, the Australian Accounting Standards Board (AASB) and the Australian Auditing and Assurance Standards Board (AUASB);</li> <li>3. NGER Act: Clean Energy Regulator; and</li> <li>4. WGEA Act: Workplace Gender Equality Agency.</li> </ol> <p>Other regulators involved in monitoring ESG compliance are the Australia Competition and Consumer Commission (ACCC) and The Department of Climate Change, Energy, the Environment and Water.</p>

10.	<p><b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b></p>	<p><b>1. Modern Slavery</b></p> <p>There are currently no penalties for failure to comply with the MS Act. In 2023, a review of the MS Act proposed that penalties be introduced if a company fails to submit a statement and if a statement is submitted with materially false information. It is currently proposed that these penalty provisions would not apply to entities within the \$50-\$100M reporting band until two years after they become subject to the reporting requirements in the MS Act.</p> <p><b>2. Climate-related financial disclosures</b></p> <p>If ASIC considers a statement in a sustainability report is incorrect or misleading, it may direct the relevant entity to explain the statement, correct the statement or confirm the statement is correct. It is an offence of strict liability not to comply with a direction from ASIC within the specified time or, if not specified, a reasonable time, attracting a maximum penalty of 60 penalty units (AU\$18,780). Directors of reporting entities will also be required to submit a directors' declaration that statements submitted in a sustainability report have been prepared in compliance with the forthcoming legislation. Directors may face personal liability risks where misleading statements or omissions in a sustainability report are deemed a result of a breach of a directors' duty of care, and liability risks, for example civil penalties under s 344 of the Corporations Act if they fail to take all reasonable steps to ensure their company's compliance with its sustainability reporting obligations.</p> <p><b>3. NGER ACTAU</b></p> <p>The maximum penalty for providing false or misleading information is 60 penalty units (\$18,780).</p> <p><b>WGEA Act:</b> there are currently no penalties for non-compliance/providing misleading information under the WGEA Act. If entities do not comply, the WGEA may report that entity to the Minister or name the employer publicly. The employer may also be restricted from being eligible to tender for government contracts.</p> <p>ASIC and the ACCC are also currently taking enforcement action against companies who make false or misleading statements about their sustainability practices (see question 22 for further details).</p>
11.	<p><b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b></p>	<p>As outlined above, the introduction of the mandatory climate-related financial disclosures is expected to be phased in from 1 January 2025.</p>
12.	<p><b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b></p>	<p>No.</p>
13.	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p>As detailed in previous answers, the ESG disclosures which are currently required in Australia relate to modern slavery, gender pay equity, GHGs and energy production/consumption. There is also currently a focus on climate control with proposed climate-related financial disclosures required from 1 January 2025.</p>
14.	<p><b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b></p>	<p>As highlighted in previous answers, there has recently been an emphasis on climate change-related disclosures with the proposed introduction of mandatory sustainability reports disclosing climate-related risks and opportunities in accordance with sustainability standards.</p>



15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	<p>The Mandatory Disclosures are standardised; if a company meets the relevant thresholds it must submit a report which is compliant with the relevant legislation.</p> <p>ESG disclosures which are voluntary are not standardised; however, there are the following frameworks and guidelines in place to guide and improve the quality and consistency of voluntary disclosures:</p> <ul style="list-style-type: none"> <li>• ASX Corporate Governance Principles and Recommendations: For companies listed on the Australian Securities Exchange (ASX), the ASX Corporate Governance Principles and Recommendations provide guidance on ESG disclosures. These principles encourage transparency in areas such as environmental impact, social responsibility and governance practices. The principles are framed in a 'comply or explain' manner, meaning companies are expected to either comply with/follow the recommendations or explain why they do not.</li> <li>• Corporations Act: The Corporations Act requires listed companies to disclose information that is material to their business and financial performance, which includes certain ESG factors. However, the Corporations Act does not prescribe specific ESG metrics or standards, leading to some variation in how companies report on these issues. The introduction of the mandatory climate-related financial disclosures will provide some level of standardisation for reporting required under the Corporations Act.</li> <li>• Guidance from ASIC: ASIC has issued guidance on ESG reporting, emphasising that disclosures should be clear, accurate, and not misleading. ASIC's guidelines aim to improve the quality of ESG disclosures but do not establish a standardised format for all companies.</li> </ul>
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	N/A – the current mandatory ESG disclosure laws in Australia do not include a definition of ESG.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	N/A – the current mandatory ESG disclosure laws in Australia do not account for cross impacts between ESG goals.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	<p>The Mandatory Disclosures have had both positive and challenging impacts. As each of the Mandatory Disclosures is regulated through separate pieces of legislation and different regulators, they have created additional and time-consuming compliance requirements for companies.</p> <p>However, they have also enhanced transparency and can contribute to long-term value creation by helping investors make more informed decisions and encouraging companies to focus on sustainability. The overall effect is a balance between the benefits of better-informed investment decisions and the high costs/time consuming requirements of compliance.</p>
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	<p>Generally, yes. The current ESG disclosure regime in Australia is somewhat fragmented with companies required to lodge multiple reports with multiple regulators. Companies and investors often face challenges due to varying standards and frameworks, which can create ambiguity in compliance. A more unified and transparent regime would help clarify expectations and reduce the complexity associated with ESG reporting.</p> <p>Australian clients are increasingly looking for alignment with global ESG standards and frameworks, such as those from the IFRS Foundation and GRI.</p>

20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	There are currently no specific, mandatory ESG disclosure requirements aimed at preventing greenwashing. However, ASIC and the ACCC have recently commenced proceedings in the Federal Court in an attempt to combat greenwashing (see question 22 for further details).
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	<p>Yes, there have been recent developments in Australia regarding greenwashing issues in particular:</p> <ul style="list-style-type: none"> <li>• Updated guidance and enforcement action: ASIC has issued guidance on ESG reporting, emphasising the need for companies to provide clear, consistent, and comprehensive information about their ESG practices and performance. This includes the expectation that companies disclose material ESG risks and how they are managed. ASIC's guidance aims to improve the quality and reliability of ESG disclosures and to address concerns about misleading or inadequate information. ASIC has launched civil proceedings in an attempt to combat greenwashing.</li> <li>• Sustainable Finance Roadmap: The Australian government has released the Sustainable Finance Roadmap, which outlines a strategy to improve the integration of ESG factors into the financial system. The Roadmap is part of a broader effort to support sustainable finance and ensure that ESG claims are credible and accurately reported.</li> </ul>
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	<p>ASIC has brought civil penalty cases against Vanguard Investments Australia Ltd (Vanguard), Mercer Superannuation (Australia) Limited (Mercer) and LGSS Pty Ltd (LGSS) in an effort to combat greenwashing. ASIC has been successful in all three cases:</p> <ul style="list-style-type: none"> <li>• ASIC was successful in its case against Mercer with the Federal Court ordering that Mercer pay pecuniary penalties totalling AU\$11.3m after admitting to making misleading statements about the sustainable nature and characteristics of some of its superannuation investment options (in contravention of ss12DB(a) and 12DF(1) of the ASIC Act 2001). The Court also ordered that Mercer publish a notice on its website notifying the public of the false and misleading statements. Mercer was also ordered to pay ASIC's costs of and incidental to the proceeding, and the expenses of the investigation under s91 ASIC Act 2001, in the agreed sum of AU\$200,000.</li> <li>• ASIC was successful in its case against Vanguard with the Federal Court finding Vanguard had made false or misleading representations and engaged in conduct that was liable to mislead the public in relation to an 'ethically conscious' fund offering (in breach of the ASIC Act). It remains to be seen what the Court will order in terms of pecuniary penalties and adverse publicity orders.</li> <li>• On 5 June 2024, the Federal Court found that LGSS, as the trustee of the superannuation fund now known as Active Super made false or misleading representations and engaged in conduct that was liable to mislead the public about its ESG credentials (in breach of the ASIC Act). It remains to be seen what the Court will order in terms of pecuniary penalties and adverse publicity orders.</li> </ul> <p>The ACCC has also commenced proceedings in the Federal Court of Australia against Clorox Australia Pty Ltd (Clorox) for allegedly making false or misleading representations that its GLAD-branded kitchen tidy and garbage bags were made of '50 per cent ocean plastic'. Clorox is contesting the allegations and there has not yet been any admission finding that the claims are misleading under the ACL.</p>

23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	<p>There is currently no uniform, external certification or assurance requirement for ESG disclosures in Australia, however, with the introduction of the mandatory climate-related financial disclosures, entities will have to obtain an assurance report from their financial auditors in relation to their climate disclosures. The AUASB are currently developing relevant assurance standards in line with IAASB's final standard.</p> <p>Some companies are also voluntarily obtaining assurance for their sustainability reports to enhance credibility and stakeholder trust.</p> <p>The following parties are generally authorised to perform external assurances:</p> <ul style="list-style-type: none"> <li>• accounting firms (including Deloitte, PwC, EY, and KPMG);</li> <li>• specialised ESG assurance providers; and</li> <li>• companies may have internal audit functions that review ESG disclosures. However, this internal review does not provide the same level of independent verification as external assurance.</li> </ul>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>Recent developments in relation to board oversight include:</p> <ul style="list-style-type: none"> <li>• An increased focus on integrating ESG issues and risks in governance frameworks and ensuring reports are accurate;</li> <li>• The adoption of more robust governance practices concerning ESG issues. The Australian Institute of Company Directors (AICD) and other professional bodies have been advocating for improved ESG literacy among directors and the incorporation of ESG factors into decision-making processes;</li> <li>• Investors are increasingly prioritising ESG factors which has led to greater board accountability;</li> <li>• There is a focus on diversity and inclusion with companies being encouraged or required to disclose diversity statistics and strategies to promote gender equality and broader representation;</li> <li>• Some Australian companies are linking executive remuneration to ESG performance. This development aligns executives' incentives with the company's ESG goals, promoting a stronger focus on long-term sustainability; and</li> <li>• There is an evolving understanding of directors' fiduciary duties in relation to ESG matters. Courts and legal interpretations are increasingly acknowledging that boards have a duty to consider ESG risks and opportunities as part of their overall duty of care and diligence.</li> </ul>

25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<p>Australian companies are increasingly adapting to these international standards and frameworks, reflecting a broader trend towards more rigorous and standardised ESG reporting. This involves aligning reporting practices with global benchmarks, investing in new systems and processes, and enhancing transparency to meet both regulatory and investor expectations.</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>Whether companies have the resources and capability required to comply with the requirements of the Mandatory Disclosures often depends on the size of the company:</p> <ul style="list-style-type: none"> <li>• Large/listed companies: Larger companies often have more resources and established frameworks which assist with reporting requirements. However, larger companies often have the strictest and most complex reporting/disclosure requirements which can make it more challenging to keep up with and comply with regulatory changes.</li> <li>• Medium-sized companies: Medium-sized companies may have varying levels of capability and resources. Some are well-equipped to handle ESG disclosures, particularly those that operate in industries with significant ESG impacts. However, some medium-sized companies often face resource constraints compared to larger companies. They may lack dedicated sustainability teams and sophisticated reporting systems, making it difficult to comply with reporting requirements.</li> <li>• Small companies: Small companies generally have fewer resources and less capability for comprehensive ESG reporting; however, they often have less reporting/disclosure requirements than larger companies.</li> </ul> <p>Compliance, in particular, with the forthcoming climate-related financial disclosure regime will require comprehensive data collection and assessment, including undertaking scenario analysis and preparation of climate transition plans. In-scope entities will require ample resources to comply with these requirements and would be well advised to commence preparations sufficiently in advance of their reporting obligations to ensure they have, or invest in building, the necessary capability and resources to make the required disclosures.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>No.</p>
28.	<p><b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b></p>	<p>Voluntary commitment to climate-related targets in Australia varies across different sectors and company sizes. The introduction of the mandatory climate-related financial disclosures will likely encourage more companies to adopt commitments to climate-related targets.</p> <p>Investors and financial institutions are also increasingly prioritising ESG factors. Many companies are voluntarily setting science-based targets to attract investment, enhance their market reputation, and remain competitive.</p>

29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>ESG disclosures in Australia will likely evolve significantly in the next few years to keep up with market expectations and international standards. The recent adoption of the Corporate Sustainability Due Diligence Directive (CS3D) in July 2024, introducing mandatory human rights and environmental due diligence requirements for large EU and non-EU companies, signals a shift towards global government policy on corporate sustainability reporting, which may catalyse efforts towards similar measures in Australia.</p> <p>It is likely further ESG regulations will be introduced such as broader ESG reporting requirements which will require companies to submit detailed reporting on social and governance aspects, such as diversity and inclusion, employee satisfaction human rights, and supply chain sustainability. ASIC is increasingly focusing on ESG disclosures, and future regulations may reflect its guidance on ensuring that ESG reporting is material, accurate, and aligned with investor expectations.</p> <p>Australian ESG disclosures will likely continue to align with international frameworks, such as the GRI and the SASB.</p>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Tim Gordon – Gilbert + Tobin</p> <p>Tim is the Executive Partner of Gilbert + Tobin and Head of Corporate Advisory.</p> <p>In his corporate advisory practice, Tim advises listed companies and Australian and offshore private equity fund managers in relation to M&amp;A, capital raisings, joint ventures, corporate restructurings and regulatory investigations.</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Austria

### Austria

1.	Which jurisdiction are you covering?	Austria
		<p>Austrian ESG-related disclosure provisions are, in particular, included in the Austrian Enterprise Act (Unternehmensgesetzbuch or UGB) and were implemented for the national implementation of Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (the NFRD).</p> <p>Directly applicable EU regulations, for example, 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 'EU Taxonomy Regulation') provide a framework on the basis of which common standards have been developed by market associations, for example, the International Capital Markets Association, which, though not mandatory law, are adhered to in the disclosure practices of market participants, in particular, in the bond market. In addition to disclosure provisions, numerous ESG-related regulations are in place and cover, for example, equal treatment, environmental impact, water rights, waste management and labour protection for the employment of disabled employees.</p> <p>Additional requirements are expected following initiatives at the EU level, such as the transposition of the Corporate Sustainability Reporting Directive (the CSRD). The CSRD, which came into force at the beginning of 2023 and was slated for implementation by 6 July 2024, significantly extends the existing reporting obligations and widens the circle of companies obliged to report.</p> <p>From 2025, all companies that are already obliged to report under the NFRD will be required to apply the new and stricter CSRD standards for reporting their business activities in 2024. As of 2026, the reporting obligations under the CSRD will expand to a wider group of companies fulfilling specific requirements. The obligations and their commencement date depend on whether the companies are large public-interest companies, large companies, listed small and medium-sized entities (SMEs) or other non-listed SMEs. Under the CSRD framework, companies are required to report on many ESG-related subjects and issues, including:</p>

		<ul style="list-style-type: none"> <li>• business model and strategy (including the implementation of time-bound targets);</li> <li>• organisation and governance (including board and executive composition as well as their skills and expertise, the company's business ethics, etc);</li> <li>• environmental factors (including climate change mitigation/adaption, greenhouse gas emissions, water resources, pollution, etc);</li> <li>• human rights factors (including equal treatment, working conditions);</li> <li>• social impact (including employee wellbeing, labour practices, community engagement); and</li> <li>• supply chain reporting (if applicable).</li> </ul> <p>The CSRD also introduces an external audit requirement for sustainability reporting and requires publication of the reports in a digital and machine-readable format. Non-compliance can lead to penalties and loss of investment. It also requires companies bound by it to apply a 'double materiality' disclosure principle, meaning they are obliged to report on how sustainability issues affect their businesses and how their business affects the environment and people.</p>
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>ESG-related disclosures about non-financial issues are, in particular, required for large corporations (s 221, para 5 of the UGB) with a public interest (s 189a No 1 of the UGB) that employ more than 500 employees on an annual average. In addition, the specific laws mentioned under question 1 provide for certain additional ESG disclosure requirements, depending on their subject matter. The non-financial statement shall include information that is necessary for an understanding of the development and performance of the business, the position of the company and the impact of its activities, and shall, at a minimum, address environmental, social and labour issues; respect for human rights; and the fight against corruption and bribery. The analysis shall explain the non-financial performance indicators by reference to the amounts and disclosures reported in the financial statements.</p> <p>Further, under the CSRD framework, additional obligations will follow (see question 1 above).</p>
3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	<p>Large corporations with a public interest are obliged to make certain ESG-related (non-financial information) disclosures either in the management report (<i>Lagebericht</i>) or a separate report. For other disclosure obligations based on other laws, the specific way of disclosing information is provided for in each individual regulation. There is no uniform disclosure obligation for the various types of laws. This will also not change after the CSRD framework applies.</p>
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	<p>See the answers to questions 2 and 3: only large corporations with a public interest that employ more than 500 employees on an annual average are required to make ESG-specific disclosures in their management report or a specific ESG report. This applies to all listed companies and to non-listed companies in the case that materiality thresholds are exceeded.</p>
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	<p>In addition to specific disclosure obligations that may arise in the individual acts mentioned as examples in the answer to question 1 above, the disclosure obligations for large corporations with a public interest that employ more than 500 employees on an annual average are not triggered in the case of certain transactions only but are to be fulfilled on a continuous annual reporting basis.</p> <p>For issuers of ESG-related financial instruments, their disclosure obligation is measured by the obligation pursuant to section 22 of the Austrian Capital Markets Act 2019, in which, pursuant to the knowledge of the persons responsible for the prospectus, the information in the prospectus is correct and no information is missing that may change the meaning of the prospectus and the supplements thereto. Issuers have therefore resorted to the market standard disclosure formulations developed by organisations such as the International Capital Markets Association.</p>
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>See the answer to question 3: The addressees of the obligation are entitled to make certain ESG-related (non-financial information) disclosures either in the management report (<i>Lagebericht</i>) or a separate report.</p>

7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>See the answer to question 3: The addressees of the obligation are entitled to make certain ESG-related (non-financial information) disclosures either in the management report (<i>Lagebericht</i>) or a separate report.</p> <p>In any case, a listed company needs to publish information on its website. In relation to issuers of ESG-related financial instruments, ESG disclosure must be undertaken within the offering document (prospectus).</p> <p>The European Securities Markets Authority (ESMA) recently issued a statement (ESMA32-1399193447-441) aiming to promote coordinated action by the EU national competent authorities (NCAs) with regard to sustainability disclosure in securities prospectuses which are subject to requirements of Regulation (EU) 2017/1129 ('Prospectus Regulation').</p> <p>These recommendations are considered by issuers and their advisers when drawing up prospectuses as the Austrian Financial Market Authority (FMA) requires compliance with the ESMA guidance when approving a prospectus.</p>
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>Several companies have developed ESG-related disclosure standards that go beyond the legal minimum requirements, in particular if required by customers, investors/market participants, or in view of employee satisfaction and brand awareness. Accordingly, we expect that this may also put pressure on other non-listed or smaller companies to go the extra mile for ESG disclosure in the future. Due to the positive reception of ESG-related financial instruments on the market, which has resulted in lower financing costs, corporates have voluntarily increased disclosures on their ESG-related financial instruments. In particular, regarding sustainability-linked bonds, disclosure obligations can be extensive. The Green Bond Principles developed by the International Capital Markets Association, for example, foresee a yearly evaluation by an independent entity on whether the relevant indicators in the terms and conditions of the financial instrument have been met or adhered to.</p> <p>It can be assumed that European standards, such as the EU Green Bond Standard (EU GBS), based on Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds, as well as the ICMA Green Bond Standards will further support the development of a standardised market approach for green financial instruments in the European Economic Area (EEA), including Austria.</p>
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>In Austria, several regulators and parties are included in the monitoring of ESG disclosure compliance. These include, inter alia:</p> <ul style="list-style-type: none"> <li>• the auditor of the financial statements (<i>Abschlussprüfer</i>) pursuant to section 269 paragraph 3 of the UGB;</li> <li>• the competent commercial court (<i>Firmenbuchgericht</i>) according to section 282 of the UGB;</li> <li>• the Austrian Ministry of the Interior (in particular, for the protection of human rights);</li> <li>• the Austrian Ministry of Economy, Family and Youth (in particular for family affairs and the general implementation of the Austrian Enterprise Act, as well as the issuance of gas trading permits);</li> <li>• the Austrian Ministry of Agriculture, Forestry, Environment and Water Management (for general environmental affairs);</li> <li>• the Austrian Ministry of Transport, Innovation and Technology (in particular for environmental impact assessment procedures);</li> <li>• several organisations and NGOs (responsible for the protection and the promotion of nature, animals and the environment, as well as employees' rights); and</li> <li>• the Austrian Financial Market Authority (FMA).</li> </ul> <p>Regarding disclosures on ESG-related financial instruments, the FMA analyses disclosures for 'completeness, comprehensibility and consistency' pursuant to Article 20 (4) of the Prospectus Regulation during the approval process for the relevant prospectus. Further, as outlined in question 7 above, the FMA requires compliance with the ESMA sustainability disclosure in securities prospectuses. Failing the fulfilment of such requirements, the approval of the prospectus may be denied by the FMA.</p>



10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>Mandatory penalties (<i>Zwangsstrafen</i>) pursuant to s 283 of the UGB could be imposed.</p> <p>Poor ESG standards may be detrimental to the reputation of a company, in particular for listed companies.</p> <p>Reputational risk and potential litigation (lawsuits), in particular regarding false or misleading disclosure in prospectuses, are two of the main risks.</p> <p>For further penalties under the CSRD framework, see our responses under question 1 above.</p>
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	N/A; as to the CSRD changes, see our responses under question 1 above.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	<p>There are no mandatory benchmarks pursuant to applicable law. However, there are some aims to comply with certain ESG criteria (eg, the promotion of gender diversity has been a prominent topic in recent years – at least 30 per cent of board members must be female) and for investors to conduct comprehensive due diligence with respect to ESG factors before entering into a transaction or a legal relationship with relevant third parties.</p> <p>In relation to ESG-related financial instruments, 'ESG compliance' is certified (or not) by the evaluation of the independent auditors to which the issuer of the ESG-related financial instruments voluntarily submits itself. The terms and conditions of the ESG-related financial instruments, in particular in sustainability-linked financial instruments, usually provide for a financial penalty for the issuer, that is, an automatic increase in the interest rate on the financial instrument (step-up) should the specific targets or indicators not be met.</p> <p>In relation to the envisaged EU GBS, the Commission's proposal provides for voluntary applicability. Issuers can decide whether to commit themselves to the EUGBS to use the 'EU green bond' designation. This designation is only available if issuers comply with the minimum standards. This includes aligning the allocation of the net proceeds of EU green bonds to EU taxonomy-compliant use cases and providing a high level of transparency on the use of funds.</p>
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	<p>Under the reporting obligation pursuant to s 243b of the UGB, large corporations of public interest that employ an annual average of more than 500 employees must disclose information on:</p> <ul style="list-style-type: none"> <li>• environmental issues;</li> <li>• social and employee issues;</li> <li>• respect for human rights; and</li> <li>• the fight against corruption and bribery.</li> </ul> <p>In addition, a brief description of the business model and the due diligence processes applied are required. Further, under the CSRD framework, additional obligations will follow (see question one above).</p>
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	N/A
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	See the answers above.

16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	Yes, in ss 243 and 243b of the UGB. No, there is no clearly defined scope for disclosure. Further, under the CSRD framework, specific guidance will follow.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	N/A
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	The answer lies somewhere in the middle. ESG has become a major issue for several investors and credit institutions, and is playing an increasingly important role, compared to 2015/2016. To a certain extent, ESG disclosure and ESG-linked financial instruments have created value for both investors and the market in Austria. Green issues have increasingly attracted investors from abroad and are playing an increasingly important role in financing assets needed for the low-carbon transition. This development may further support energy transition to low or zero-carbon sources. As a result of general trends, issuers and borrowers not complying with ESG standards or issuers/borrowers from harmful industries (eg, oil and gas) face increasing hurdles and challenges when borrowing funds.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	The current disclosure regime is market-driven, for example, by lower prices for financial instruments, increased consumer attention and reputational benefits. Therefore, clients undergo a cost-benefit analysis as to whether they will take on the additional disclosure burden. Compulsory disclosure requirements entail higher costs, but a transparent and effective ESG disclosure regime would lead to a reduction in 'greenwashing'. Corresponding regulation would, in our opinion, aid clients that are already on the forefront of voluntary ESG disclosure at a competitive level.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	No. The Prospectus Regulation framework for the required disclosure in prospectus encompasses a complete, accurate and non-misleading disclosure of information. Further, as outlined above, ESG-related disclosures (based on ESAM guidance) have to be implemented in prospectuses. Otherwise, the Austrian regulator FMA would not approve a prospectus.
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	See our answers above.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	There is no relevant Austrian case law available at this stage. However, investors are closely monitoring the ESG disclosures of companies. Further, ESG-related omissions are sometimes used as by activist shareholders or short analysts to support their positions.

23.	<p>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</p>	<p>ESG disclosure is constantly supported by special advisory and audit firms. There is no formal approval or certification aside from the auditors' audit opinion for the financial statements required.</p>
24.	<p>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</p>	<p>See our answers at question 22 above. ESG matters have seen a significantly higher board attention and have become a crucial element for company communications and disclosures. Hence, compliance with ESG obligations has been implemented in entities' compliance frameworks. Often, reporting lines or senior staff dealing with ESG matters are directly vis-à-vis the management board.</p>
25.	<p>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<p>ISSB: The standards have become effective under IFRS for periods beginning on or after 1 January 2024.</p> <p>CSRD: See answers above.</p> <p>TNFD: N/A</p> <p>TPT: N/A</p>
26.	<p>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</p>	<p>In our experience, companies have built up quite substantial internal resources for complying with ESG-related disclosure requirements. Specialised advisers have also helped companies to prepare for upcoming increased disclosure obligations. Nevertheless, the disclosure encompasses a constant process of learning and reassessing own disclosures according to best practice.</p>
27.	<p>Is it mandatory for companies to set climate-related targets?</p>	<p>N/A</p>
28.	<p>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</p>	<p>N/A</p>

29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	Future trends are most likely to be guided by harmonisation by EU-wide applicable regulations, such as the CSRD and, in terms of capital markets, the experiences with the EU standard for green bonds.
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Florian Khol is a partner at Binder Grösswang Attorneys at Law's Corporate/M&amp;A and Capital Markets Team, and advises national and international issuers, banks, listed companies and investment funds on domestic and cross-border transactions. He focuses on M&amp;A transactions, capital markets, capital market compliance, market abuse subjects and takeover law. He is listed in Chambers Global as one of the leading lawyers in Corporate/M&amp;A and Capital Markets and as a 'highly regarded lawyer' in IFLR1000.</p> <p>Christoph Moser is a partner at Schönherr Attorneys at Law and co-heads the firm's capital market practice. He specialises in equity, equity-linked and debt capital market transactions, corporate finance and securities law, and has worked on several prominent equity capital market (ECM) transactions, including initial public offerings (IPOs) and capital increases, debt capital market transactions and public takeover matters. He is recognised as one of Austria's leading capital markets experts by all relevant legal directories (Chambers, the Legal 500, IFLR1000 and Juve).</p> <p>Philipp Tagwerker is a counsel in Binder Grösswang Attorneys at Law's Corporate/M&amp;A and Capital Markets Team, and has extensive experience in finance transactions, regulatory and capital markets. He has a diploma in law from the University of Innsbruck and obtained a postgraduate degree (MA) from the Johns Hopkins School of Advanced International Studies in 2013. He has been with Binder Grösswang since 2019 as an attorney at law.</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Belgium

### Belgium

1.	<b>Which jurisdiction are you covering?</b>	Belgium
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>The Non-Financial Reporting Directive 2014/95/EU (NFRD) and the Accounting Directive (2013/34/EU) (the 'Accounting Directive') have been transposed into Belgian law and require entities in scope (large public-interest entities employing more than 500 employees, including companies listed on a regulated market) to include certain ESG information in their annual report, corporate governance statement or a separate report. Note that in respect of ESG disclosures following from NFRD, a 'comply or explain' approach applied.</p> <p>The NFRD will gradually be replaced by its successor, the Corporate Sustainability Reporting Directive 2022/2464 (CSRD), with the first disclosures having to be made in 2025 in relation to the accounting year that started on or after 1 January 2024.</p> <p>The CSRD expands the scope (more companies are subject to the CSRD, reporting requirements are more substantial and no comply or explain approach, except for certain companies during a two-year transition period). The CSRD has not yet been transposed into Belgian law, but such transposal is expected to occur in the course of 2024, so that reporting obligations will be effective in 2025.</p> <p>The Sustainable Finance Disclosure Regulation 2019/2088 (SFDR) and Delegated Regulation 2023/363 require financial market participants (eg, an insurance undertaking that makes available an insurance-based investment product, an investment firm that provides portfolio management, an institution for occupational retirement provision) and financial advisers (eg, an insurance intermediary that provides insurance advice with regard to IBIPs, an investment firm that provides investment advice) to inform investors about the sustainability risks that could have an impact on the value and return on their investments and about the impact such investments could have on the environment and society.</p> <p>Market participants should make this information available with regard to specific products via their websites and in product pre-contractual documents, such as in prospectuses (the SFDR makes reference to three categories of funds: 'grey', 'light green' and 'dark green' funds), but also with respect to their respective firm as a whole (via annual reports). Each market participant must have a sustainability policy (and report on how they incorporate sustainability risks into their investment decisions).</p> <p>Further on, we will mainly focus on the CSRD, since this mechanism is more relevant in practice than the SFDR.</p>

		<p>The Taxonomy Regulation 2020/852 requires undertakings that are subject to an obligation to publish non-financial information pursuant to the Accounting Directive (as amended by the NFRD and the CSRD) to include in their non-financial statement or consolidated non-financial statement information on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable under the Taxonomy Regulation (and Delegated Acts establishing the specific criteria).</p> <p>In particular, non-financial undertakings should disclose:</p> <ol style="list-style-type: none"> <li>1. the proportion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable under the Taxonomy Regulation; and</li> <li>2. the proportion of their capital expenditure and the proportion of their operating expenditure related to assets or processes associated with economic activities that qualify as environmentally sustainable under the Taxonomy Regulation.</li> </ol> <p>The recent International Financial Reporting Standards – Sustainability (IFRS S1/S2), adopted by the International Sustainability Standards Board (the ISSB) are also worth mentioning. The purpose of IFRS S1/S2 (effective for annual reporting periods beginning on or after 1 January 2024) is to oblige an entity to disclose information about its sustainability-related risks and opportunities that are expected to affect the entity's cash flow, its access to finance or cost of capital over the short, medium or long term. This information is aimed at users of general purpose financial reports allowing them to make decisions whether or not to provide resources to the respective entity.</p> <p>As for other IFRS Accounting Standards, the jurisdictions that apply these standards need to determine whether or not to make the IFRS S1/S2 mandatory. Since the European Commission has issued its own reporting standards (the European Sustainability Reporting Standards (ESRS) that will be applicable to CSRD reporting), the European Commission has confirmed that it will continue to work together with the ISSB to optimise the interoperability of their respective standards. The IFRS S1/S2 have thus not been adopted by the EU but have influenced and will continue to influence the ESRS.</p> <p>The Belgian Financial Services and Markets Authority ('FSMA') has issued non-binding recommendations for companies listed on a regulated market to improve non-financial regulatory reporting. In addition, Euronext Brussels has also issued non-binding recommendations for issuers.</p> <p>Certain regulations only apply to specific sectors (such as mandatory disclosures pursuant to the Conflict Mineral Regulations Deforestation Regulation, Batteries Regulation, Forced Labour Regulation). For example, under the Deforestation Regulation, operators who do not fall within the categories of small and medium-sized undertakings, including microenterprises, or natural persons shall, on an annual basis, publicly report as widely as possible, including via the internet, on their due diligence system (to make sure that their products are deforestation-free), including on the steps taken by them to fulfil their obligations. Furthermore, the National Bank of Belgium (NBB) requires credit and (re)insurance institutions to collect and report information on the energy efficiency of their real estate exposures.</p>
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<p>3.</p>	<p><b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b></p>	<p>NFRD-related ESG disclosures are mandatory for ‘public-interest entities’, which covers:</p> <ul style="list-style-type: none"> <li>• listed companies;</li> <li>• credit institutions;</li> <li>• (re-)insurance companies; and</li> <li>• central securities depositories.</li> </ul> <p>Only public interest entities that are large undertakings exceeding an average number of 500 employees during the accounting year to which the reporting obligation applies, have to report under the NFRD.</p> <p>Under the NFRD, large undertakings include companies that exceeded one of the following thresholds in the last accounting year: (1) balance sheet total of €20m and (2) annual revenue of €40m (excl. VAT). In Belgium, lower thresholds apply (respectively €17m and €34m).</p> <p>As an exception, (1) all large companies listed on a regulated market (in respect of which the 500-employee requirement is not taken into account) must report on their diversity policy (including the goals, the measures taken and their results) and (2) all companies listed on a regulated market (whether large or not) must report on the efforts taken to ensure that at least one-third of the members of the board of directors, the supervisory board and the management board are of a different gender.</p> <p>Additional ESG disclosures are mandatory for ‘public-interest entities’ and ‘large undertakings’ which are active in the extractive industry or logging of primary forests.</p> <p>The CSRD will apply to:</p> <ul style="list-style-type: none"> <li>• all large European undertakings, regardless of their activities, and</li> <li>• all companies listed on a regulated market in the EU, including those governed by the law of a third country, with the exception of micro-companies. Listed small and medium-sized companies (which are not micro enterprises) are thus in scope of the CSRD.</li> </ul> <p>Subsidiaries are exempted from sustainability reporting under the CSRD, if the information is included in the consolidated management report of their parent company. This exemption also applies if the parent company is a company located in a third country, provided that it reports sustainability information in accordance with equivalent sustainability reporting standards. However, this exemption does not apply if the subsidiary is a large company listed on a regulated market. In other words, all large companies listed on a regulated market will have to report at their level, even if their parent company provides consolidated reporting at group level.</p> <p>For its first year of application, specifically for accounting year 2024 reporting, the scope of the CSRD is limited to that of the NFRD, the only difference being that third-country companies listed on a regulated market and exceeding the threshold of 500 employees are also included in the scope.</p> <p>The CSRD will enter into force in phases:</p> <ul style="list-style-type: none"> <li>• all large public interest entities employing more than 500 employees, including more specifically companies (European or from third countries) listed on a regulated market, must prepare initial sustainability reporting in 2025 for accounting year 2024;</li> <li>• all other large European companies, as well as all other large companies from third countries listed on a regulated market in the EU must prepare a first sustainability report in 2026 for accounting year 2025;</li> <li>• all small and medium-sized companies (European or from third countries) listed on a regulated market in the Union, with the exception of micro-enterprises, must prepare a first sustainability report in 2027 for accounting year 2026. For those companies, however, there is a two-year transition period during which they can decide not to provide the required information, provided that they briefly explain the reasons in their management report; and</li> <li>• European companies with an ultimate parent company from a third country must publish a first group-level sustainability report in 2029 for accounting year 2028, when the group generates net sales of more than €150m in the EU.</li> </ul>
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		For the purpose of the CSRD and following a recent amendment to the Accounting Directive, 'large' companies will include companies that exceed at least two of the following three criteria on their balance sheet date: (1) a balance sheet total of €25m, (2) a net turnover of €50m and (3) 250 employees on average over the accounting year. The new size criteria will apply for accounting years beginning on or after 1 January 2024.
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	<p><b>NFRD:</b> The same disclosure requirements apply to all entities in scope.</p> <p><b>CSRD:</b> Large undertakings must report on more items, in comparison to small and medium-sized undertakings (which can limit their information to certain topics, see answer to question 13). For example, small and medium-sized undertakings must not report on their plans to ensure that their business model and strategy are compatible with the transition to a sustainable economy and with the limitation of global warming to 1.5 °C, neither must they report on time-bound targets, including absolute GHG emission reduction targets.</p>
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	ESG disclosures are required to be made on a continuous annual reporting basis under both the NFRD and the CSRD.
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	ESG disclosures are included in (CSRD/NFRD), or filed together with (NFRD), the annual report. Under the CSRD, there is no longer an option to publish a separate report, as was provided by the NFRD. Undertakings must include the information in the annual report.
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	Companies are required to file their annual reports (as part of their annual accounts) with the NBB, which publishes the accounts on its website. Companies listed on a regulated market are required to publish their annual report including specific ESG disclosures on their website.
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	N/A
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>ESG disclosure requirements are included in the Belgian Code on Companies and Associations. In case of non-compliance with the NFRD, the directors of the company can be sanctioned with a criminal fine between €800 and €80,000 if they have knowingly breached the law, and in case the non-compliance is fraudulent, they can be sanctioned with imprisonment of one month to one year (as the case may be in addition to the criminal fine).</p> <p>As mentioned, the CSRD has yet to be transposed into Belgian law, but we expect that sanctions could be tightened to cover situations of mere negligence in applying the CSRD incorrectly.</p> <p>The FSMA monitors compliance with the ESG disclosures by listed companies and the NBB monitors compliance by credit institutions and (re-)insurance companies (as part of prudential oversight). Among other things, the FSMA is authorised to issue a warning (and publish it) if the company fails to meet its obligations.</p>



10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>See answer to question 9.</p> <p>In addition, if ESG disclosures are ‘too positive’ and not in line with reality, this could constitute greenwashing (an unfair market practice) and/or forgery and use of forged documents (if a fraudulent intent is established).</p> <p>The scope of greenwashing as an unfair market practice is limited to voluntary ESG disclosures that would go beyond what is required under the CSRD (or any other applicable mandatory disclosure rules).</p> <p>Greenwashing is criminally sanctioned with a fine of up to €80,000 (or up to 4 per cent of annual (worldwide) turnover, whichever is higher).</p> <p>The economic inspection may also impose an administrative fine (the amount being equal to a criminal fine).</p> <p>Furthermore, consumers or (competitive) companies can also seek an injunction to ensure that the unfair market practice ceases.</p> <p>The crimes of forgery and use of forged documents is sanctioned with imprisonment of five years up to ten years, and a fine between €208 and €16,000.</p>
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	<p>There is no tiered disclosure system, except as described in question 4.</p> <p>As already mentioned as an answer to question 1, additional requirements are expected following the transposition of the CSRD (expected to apply to Belgian listed companies in respect of accounting years starting as of 1 January 2024), and further Delegated Regulations of the Taxonomy Regulation (most recently: Delegated Regulation 2023/2486 of 27 June 2023, Environmental Delegated Act and Delegated Regulation 2023/2485 of 27 June 2023, amendment to the Climate Delegated Act).</p>
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an ‘ESG Approved/ Compliant’ status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	<p>Listed companies that follow the Euronext Brussels recommendations may include a statement, ‘We follow the Euronext guidance on ESG reporting’ in their annual report.</p> <p>The Taxonomy Regulation is a common classification system, and serves as an encyclopaedia for determining when an economic activity qualifies as ‘ecologically sustainable’. An economic activity qualifies as environmentally sustainable where that economic activity:</p> <ul style="list-style-type: none"> <li>• contributes substantially to one or more of the environmental objectives;</li> <li>• does not significantly harm any of the environmental objectives;</li> <li>• is carried out in compliance with the minimum safeguards; and</li> <li>• complies with technical screening criteria that have been established by the Commission.</li> </ul> <p>The following objectives constitute environmental objectives:</p> <ul style="list-style-type: none"> <li>• climate change mitigation;</li> <li>• climate change adaptation;</li> <li>• the sustainable use and protection of water and marine resources;</li> <li>• pollution prevention and control; and</li> <li>• the protection and restoration of biodiversity and ecosystems.</li> </ul>

<p>13.</p>	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p>Pursuant to the NFRD, the following information must be disclosed, to the extent necessary for a proper understanding of the development, the results and the position of the company as well as of the effects of its activities that relate at least to social, personnel and environmental matters, the respect of the human rights and the fight against corruption and bribery, the annual report contains a statement with the following information:</p> <ul style="list-style-type: none"> <li>• a brief description of the company's activities;</li> <li>• a description of the policy pursued by the company with regard to these matters, including the due diligence procedures applied;</li> <li>• the results of this policy;</li> <li>• the main risks associated with these matters in relation to the company's business activities, including, where relevant and proportionate, its business relationships, products or services that could potentially adversely affect these areas, and the way in which the company manages those risks; and</li> <li>• non-financial key performance indicators relevant to the specific business activities.</li> <li>• Where deemed appropriate, the non-financial statement also contains the relevant references to additional explanations regarding the financial amounts in the financial statements.</li> </ul> <p>If the company does not pursue a policy with regard to one or more of these matters, the non-financial statement contains a clear and reasoned explanation of why it does not do so.</p> <p>In exceptional cases, the board of directors of the company may decide not to include information regarding imminent developments or matters under negotiation in the statement, if the reporting of such information, in the duly justified opinion of the board of directors and with the collective responsibility of its members for this view, could cause serious damage to the commercial position of the company, provided that the omission of this information provides a true and balanced understanding of the development, results and position of the company, and that the effects of its activities are not hindered.</p> <p>In addition to the reporting requirements of the NFRD, undertakings will have to report on a number of new domains under the CSRD. For example, an undertaking will now also have to report on its business strategy and resilience in relation to sustainability risks, any opportunities related to sustainability risks, its climate transition plan, how the undertaking's business model and strategy take into account the interests of the undertaking's stakeholders and the undertaking's impacts on sustainability risks, its sustainability targets and the steps taken to achieve them.</p> <p>In addition, the undertaking should provide a description of the role of the governing, management and supervisory bodies with respect to sustainability risks and their expertise and skills.</p> <p>The CSRD further clarifies that an undertaking must describe the due diligence process implemented by the undertaking with regard to sustainability matters and the principal actual or potential adverse impacts connected with the undertaking's own operations and with its value chain, including its products and services, its business relationships and its supply chain, and any action taken by the undertaking to prevent, mitigate, remediate or bring to an end actual or potential adverse impacts, and the results of such actions.</p> <p>As described in the answer to question 4, small and medium-sized undertakings are not required to report on all these matters, they must only provide a brief description of the undertaking's business model and strategy, its policies in relation to sustainability matters, the principal actual or potential adverse impacts and actions taken to remediate them and the principal risks to the undertaking related to sustainability matters.</p> <p>It should be mentioned that the CSRD no longer allows a comply or explain regime, which means that the undertaking will no longer be able to provide a statement why it has not implemented a due diligence policy.</p> <p>Large companies listed on a regulated market must describe in their corporate governance statement the diversity policy they pursue with regard to the members of the board of directors, the members of the executive committee, the other leaders and the persons charged with the day-to-day management of the company. The information concerns diversity criteria such as age, gender or professional qualifications, and the objectives of this diversity policy, its implementation modalities and the results obtained.</p>
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14.	<p><b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b></p>	<p>Once the CSRD is transposed into Belgian law, companies will need to report on their plans to ensure that their business models and strategies are compatible with the transition to a sustainable economy and with the limitation of global warming to 1.5°C in line with the Paris Agreement and the objective of achieving climate neutrality by 2050 as established in the European Climate Law Regulation, and where relevant, the exposure of the undertaking to coal, oil and gas-related activities.</p> <p>The CSRD reporting must further contain a description of (1) the time-bound targets related to sustainability matters set by the undertaking and the progress made in achieving these targets, including where appropriate absolute greenhouse gas emission reduction targets at least for 2030 and 2050, (2) the progress the undertaking has made towards achieving those targets, and (3) whether the undertaking's targets related to environmental matters are based on conclusive scientific evidence.</p> <p>Further, as described above, the Taxonomy Regulation can be considered an encyclopaedia for determining when an economic activity qualifies as 'ecologically sustainable' (Article 3). The Taxonomy is thus primarily focused on climate change (see objectives in Article 9). It is intended that companies, financial market participants and governments should use this standardised classification system in their disclosures and initiatives.</p>
15.	<p><b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b></p>	<p>CSRD sustainability reporting will have to use a certain format. Undertakings must report using the ESRS. The European Commission has already issued, through Delegated Regulations, a set of twelve cross-sector reporting standards, applicable to all companies subject to the CSRD, regardless of sector.</p> <p>The European Commission has yet to adopt a second set of sector-specific standards, which implies that the related reporting requirements will be delayed.</p>
16.	<p><b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b></p>	<p>The base concepts and definitions enshrined in the Taxonomy Regulation will apply to CSRD reporting. The Delegated Acts to the Taxonomy Regulation initially focused on climate, but this has already been expanded in the most recent Delegated Act to include broader environmental sustainability objectives, such as sustainable use and protection of water and marine resources. However, the Taxonomy Regulation only applies to environmental objectives. In the future, the Taxonomy Regulation should be expanded to include social objectives. As to governance-related disclosures, there is currently no further guidance.</p>
17.	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	<p>Currently, the Belgian approach is predominantly based on an 'inform only' approach. ESG compliance is therefore a matter to be assessed by investors.</p> <p>It should be pointed out that the future Corporate Sustainability Due Diligence Directive (CS3D) will require companies in scope to take substantive action.</p> <p>Pursuant to the CS3D, companies will be obliged to conduct human rights and environmental due diligence and to identify, prevent, bring to an end and account for negative human rights and environmental impacts (adverse impacts) in the company's own operations, those of its subsidiaries, and operations carried out by its business partners and to combat climate change by preparing plans with time-bound targets. As described above in the answer to question 14, undertakings will be required to disclose such substantive action through their CSRD reporting.</p> <p>These substantive obligations do not prevent companies from having a certain margin of discretion in setting out corporate strategy (discussion and explanation needs to be possible, eg, still investing for a certain period of time in very polluting industries, could allow the company to prepare itself (in ways of profit generation) for transformation to climate neutrality).</p> <p>Furthermore, it should be pointed out that it is very difficult for boards/companies to reconcile (often) very conflicting interests: measures that contribute to environmental objectives might for instance negatively impact social objectives. This could be a defensive mechanism for companies when they would be sued and potentially be held liable for a breach of their obligations under the CS3D.</p>

18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	While ESG disclosure regulation has certainly imposed a greater compliance burden, it has also compelled issuers to carefully rethink ESG aspects of their business. In certain sectors (eg, real estate), issuers increasingly attach importance to being 'best in class', a trend which is predominantly driven by sophisticated investors (which themselves may be subject to ESG disclosures and/or ESG-related investment principles). Reference should be made to the recent initiatives at the European level, such as the SFDR (which introduces a classification into 'grey', 'green' and 'dark green' funds) and the EU Green Bond Standard. The latter mechanism sets out standards so that bonds can be labelled by an issuer as 'green'. As far as retail investors are concerned, we believe interest in ESG disclosures is growing, but many retail investors at the end of the day still mainly seek for the greatest return on their investment, whether the investment is green or not.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	See our answer to question 18.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	<p>The European Securities and Markets Authority (ESMA) and, following ESMA's suit, the Belgian FSMA have interpreted the existing disclosure rules in prospectuses (pursuant to the Prospectus Regulation) to require mandatory ESG disclosures. ESMA clarified in a public statement that a prospectus must contain the necessary information that is material to an investor in making an informed assessment. Issuers and advisers must, following ESMA's approach, consider ESG-related matters when drafting prospectuses, to the extent that the effects of those matters are considered material. This includes any non-financial information that the company is already required to report in accordance with the NFRD and the CSRD.</p> <p>Furthermore, the issuer must ensure that it does not violate the unfair market practice of greenwashing in the information contained in prospectuses or other materials. New unfair practices related to greenwashing were recently adopted at the European level (through the 'Greenwashing Directive'). For example, besides the general prohibition of greenwashing (which consists of, in general, providing false or misleading information that gives the impression that a company's products or initiatives are more environmentally friendly than they actually are), new specific prohibitions were adopted, such as the prohibition that no environmental claim can be made for which the issuer is not able to demonstrate recognised excellent environmental performance relevant to the claim.</p> <p>There is also a proposal for a directive on substantiation and communication of explicit environmental claims ('Green Claims Directive'), which (once adopted) will aim at ensuring the credibility of environmental labels and claims, when voluntary explicit environmental claims are made by traders/issuers.</p>
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	See answer to question 20.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	N/A

23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	<p>Under the NFRD, there was no real audit requirement for ESG disclosures. The statutory auditor was only required to confirm that the non-financial statement contained the required information and was consistent with the annual accounts for the same accounting year. This changes with the CSRD, which imposes a mandatory external audit. The statutory auditor or a qualified independent expert must review the reporting and assess whether the reporting meets the requirements of the CSRD. Initially, this will be done on a limited assurance basis. At a later stage, this should be done on a reasonable assurance basis.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>The CSRD requires undertakings to report on the role of the administrative, management and supervisory bodies with regard to sustainability matters, and of their expertise and skills in relation to fulfilling that role or the access such bodies have to such expertise and skills; this should in turn have an effect on the composition of boards of companies (eg, one or more directors with ESG experience in the board).</p>
25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p><b>The sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June</b></p> <p>See answer to question 1. These obligations do not go beyond what is required by the CSRD (and the ESRS, which are applicable at the European level):</p> <p>Companies must inform concerning:</p> <ul style="list-style-type: none"> <li>• the governance processes, controls and procedures the entity uses to monitor, manage and oversee sustainability-related risks and opportunities;</li> <li>• the entity's strategy for managing sustainability-related risks and opportunities;</li> <li>• the processes the entity uses to identify, assess, prioritise and monitor sustainability-related risks and opportunities; and</li> <li>• 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.</li> </ul> <p><b>The first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD))</b></p> <p>See the answers to question 1 and question 15.</p> <p><b>The final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September</b></p> <p>Only two Belgian companies have committed to making TNFD-aligned disclosures.</p> <p><b>The final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November</b></p> <p>N/A</p>

26.	<b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b>	The requirements imposed are very strict and there may be doubts about the ability of all companies in scope to collect all the information. The CSRD takes this concern into account and expects smaller companies to report on fewer matters, although it must be mentioned that the CSRD applies to a lot of companies.
27.	<b>Is it mandatory for companies to set climate-related targets?</b>	See answer to question 14: it is mandatory for companies to set climate-related targets under the CSRD.
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	N/A
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	CSRD and its implementation will certainly be one of the major challenges for Belgian companies in the near future. Long-term developments will be driven by increasing focus at EU level.
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Jan Peeters specialises in mergers and acquisitions (of both public and private companies), capital market operations (IPOs, public takeover bids, and public-to-private transactions) and corporate finance relating thereto. Jan is also active in the regulation of activities of domestic and foreign credit institutions, investment firms, and insurance companies active in Belgium.</p> <p>Jan is Corporate Counsel Forum Liaison Officer of the Securities Law Committee of the International Bar Association (IBA), and Programme Coordinator (Officer) of the Inter-Pacific Bar Association (IPBA). He is also the author of various publications on his areas of expertise and a regular guest speaker at seminars and conferences.</p> <p>Jan graduated in Law from the University of Antwerp in 1986. He also holds a Master of Laws (LL.M.) degree from UC Berkeley School of Law (1987).</p> <p>Jan joined the Brussels office of Stibbe in 1987. He was the Managing Partner of Stibbe Brussels from 2011 to 2018.</p> <p>Willem Witters is a senior associate in Stibbe's Brussels Corporate and M&amp;A practice and specialises in public and private mergers and acquisitions (M&amp;A), private equity, and equity capital markets (ECM) transactions (including initial public offerings, direct listings, SPACs, secondary public offerings, and private placements).</p> <p>Willem holds a master's degree in Law from Ghent University (2013) and a master's degree in Corporate Law from the University of Cambridge (2014). He also completed the International Exchange Programme in International and Comparative Business Law at Bucerius Law School (2012) and the Stibbe MBA Highlights Programme at INSEAD (2020).</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Brazil

### Brazil

1.	<b>Which jurisdiction are you covering?</b>	Brazil
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>Since 2009, the Brazilian SEC (Comissão de Valores Mobiliários or CVM) has had rules requiring the disclosure of certain ESG information for publicly traded companies, especially through the Formulário de Referência (Reference Form, similar to the 1-K or 20-F Forms of the SEC), which contains a summary of relevant information for each public traded company registered with the CVM. The Reference Form was recently amended by CVM Resolution No 59, which came into effect in January 2023, and by CVM Resolution No 198, which came into effect on 2 January 2025, both of which expanded the ESG information that must be disclosed.</p> <p>In addition, public companies that have their shares traded publicly have an obligation to disclose information annually in a report about the Código Brasileiro de Governança Corporativa – Companhias Abertas (Brazilian Corporate Governance Code), developed in 2016, which requires companies to provide information in a ‘comply or explain’ model regarding whether certain governance standard practices are fulfilled. Furthermore, the Brazilian Corporation Law requires the disclosure of certain information to shareholders that may fall under the ESG category.</p> <p>Recently, on 1 November 2023, CVM Resolution No 193 came into force, which regulates the preparation and disclosure of the sustainability-related financial information report, by publicly traded companies, investment funds and securitisation companies, based on IFRS S1 and S2, issued by the International Sustainability Standards Board (ISSB). The issue of this sustainability-related financial information report will be optional as of fiscal years beginning on or after 1 January 2024, for publicly traded companies, investment funds and securitisation companies. However, disclosure will be mandatory for publicly traded companies from fiscal years beginning on or after 1 January 2026. The sustainability-related financial information report must be confirmed by an independent auditor registered before the CVM, in accordance with the standards issued by the Federal Accounting Council (Conselho Federal de Contabilidade – CFC), provided that until the end of the 2025 fiscal year with limited confirmation; and from the fiscal years beginning on or after 1 January 2026 with comprehensive and reasonable confirmation.</p> <p>Furthermore, in 2023, the Brazilian Stock Exchange (B3 SA – Brasil, Bolsa, Balcão or B3) disclosed a new version of its Regulation of Issuers (<i>Regulamento de Emissores</i>), which came into effect in August 2023, containing, in its Appendix B, three new measures related to ESG aspects that must be complied with by publicly traded companies in the ‘comply or explain’ model.</p> <p>Another important measure was Federal Law No 13,303, enacted in 2016, which established guidelines and requirements related to risk management, corporate governance and compliance that must be followed by public companies, mixed-economy companies and, in some cases, their subsidiaries, for all levels of government.</p>

		<p>Also, it is worth mentioning that, in January 2022, the Brazilian Financial and Capital Markets Association (Associação Brasileira das Entidades dos Mercados Financeiros e de Capitais or ANBIMA) published its self-regulatory rules and procedures for identifying sustainable investment funds. Criteria were defined to identify funds that aim at sustainable investment, called sustainable investment funds, that is, those that consider environmental, social and/or governance factors in their investment analyses. The criteria must be observed by both the asset manager and the fund so that investment funds can receive the IS identification.</p> <p>The self-regulatory rules apply to all fund managers who choose to: (1) identify their investment funds as ‘sustainable investment funds’ in ANBIMA’s database; and (2) disclose in public materials that ESG issues are considered in their investment policies to achieve their investment objectives. Such rules seek to reduce the risk of ‘greenwashing’ in the investment field.</p>
3.	<p><b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b></p>	<p>ESG disclosure requirements are directed to publicly traded companies, which, in Brazil, take the form of stock corporations.</p> <p>With respect to the new Regulation of Issuers of B3, the measures introduced by it must be complied with by publicly traded companies, except (1) those registered in category B before the CVM; (2) smaller companies, under the terms of article 294-B of Law No 6,404/1976; (3) beneficiaries of funds from tax benefits; and (4) issuers of sponsored Brazilian depository receipts (BDR).</p> <p>Private companies are not required to disclose periodic information determined in CVM Resolution No 80, including the Reference Form, and will not be required to disclose the sustainability-related financial information report, under the terms of CVM Resolution 193.</p> <p>Nonetheless, the Brazilian Institute of Corporate Governance (Instituto Brasileiro de Governança Corporativa or IBGC) publishes a code with good practices to be followed by private companies. Among these practices, there are guidelines in the sense that the proper disclosure of information results in a climate of confidence, both internally and in the company’s relations with third parties. The code was recently updated: on 1 August 2023, IBGC published the sixth edition of the code with good practices to be followed by private companies. Among others, the current version of the code highlights ethics and purpose as the basis of corporate governance, presents a new definition of governance and improves its principles, which are now: integrity (new principle); transparency, fairness, accountability (previously accountability) and sustainability (previously corporate responsibility).</p> <p>In addition, Federal Law No 13,303 (mentioned above) establishes guidelines and requirements that must be followed by mixed-economy companies and, in some cases, by their subsidiaries, at all levels of government, in addition to those applicable to publicly traded companies.</p>
4.	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b></p>	<p>The requirements for ESG disclosure may vary according to the registry type of the company registered with the CVM. Companies that are not registered to have their shares traded publicly (but only other securities) are subject to a less extensive regime of disclosure of ESG information.</p>
5.	<p><b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b></p>	<p>ESG disclosures must be made on the basis of continuous annual reports, as applicable.</p>



6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>The main ESG information is available in the Reference Form; however, certain companies are required to make a separate disclosure about governance practices, as explained above.</p> <p>As from 1 January 2026, publicly traded companies will be required to disclose, on a mandatory basis, and investment funds and securitisation companies will continue to be allowed to disclose, on a voluntary basis, separately, the sustainability-related financial information report, under the terms of CVM Resolution No 193, as mentioned above.</p>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	Information is made available through filings with the CVM and information must also be made available on the respective investor relations website.
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	N/A as mandatory disclosure is required. In any case, certain companies choose to adopt more extensive disclosure practices for ESG information than those required by market regulation.
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	The regulatory body that oversees publicly traded companies is the CVM. The CVM may impose fines and other penalties for the non-disclosure of mandatory periodic information and request clarification, and the submission of additional information and documents in relation to the information effectively disclosed. If necessary, the CVM may also request modifications or corrections to the documentation and information submitted by market participants. Privately held companies are not yet subject to mandatory ESG disclosures.
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	Any disclosure to the market, whether voluntary or mandatory, or the delivery of false, incomplete, inaccurate or misleading information to the CVM or investor constitutes a serious infringement for the purposes of Article 11 of Law No 6,385/76. The following penalties may be imposed on violators, separately or cumulatively: a warning, fine, temporary disqualification, suspension of authorisation or registration, or temporary prohibition for the performance of certain market-related activities.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	Yes. The disclosure requirements are set out in the Reference Form and Report about the Código Brasileiro de Governança Corporativa – Companhias Abertas, as mentioned above.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/ Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	<p>There is not a system of ESG certification or benchmarks yet. However, considering that the CVM has undertaken an intense regulatory agenda aimed at reviewing, updating and consolidating its regulatory framework, and adapting it to new market dynamics and international parameters, we understand that it will exist soon.</p> <p>Although there is not a system of ESG certification or benchmarks yet, it is worth mentioning that, in 2021, CVM proposed, through a public audience, the creation of the <i>socio-environmental fundo de investimento em direitos creditórios</i> (FIDC), which is a type of investment fund that should invest predominantly in credit rights that generate social and environmental benefits.</p> <p>According to the proposal, only the class of FIDC quotas that invests predominantly in credit rights that generate social and environmental benefits can use the term 'socio-environmental' in its denomination, which must be verified through a second opinion report or certification of standards with internationally recognised methodologies. This verification process prevents the occurrence of 'greenwashing', which is defined as activities that make people believe that a company or an investment fund, for example, is doing more to protect the environment than it is doing.</p>

		<p>Furthermore, it is expected that, in the near future, the CVM will regulate: (1) the creation of other types of ESG funds, such as private equity funds; and (2) ESG disclosures to be applicable to fund managers.</p> <p>Although it does not qualify as a certification, B3 currently has ten indexes in which it highlights publicly traded companies that comply with ESG practices. These indexes act as indicators for investors who seek sustainable assets, while, at the same time, giving visibility to companies with the best ESG practices. The main index of this type is the Corporate Sustainability Index (<i>Índice de Sustentabilidade Empresarial or ISE</i>). To join this index, companies go through a selection process and are evaluated on 28 themes. At the end of the process, their overall score is published, with details by theme.</p>
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	<p>As of January 2023, the Reference Form will need to include information on the following subjects, among others: any party-political financing; a description of elements of management compensation, including performance indicators related to ESG issues; detailed ESG information in a ‘comply or explain’ format; a description of the workforce in light of diversity indicators – gender, race and age group; and comments from directors on business opportunities related to ESG issues. As from 2 January 2025, in the terms of CVM Resolution No 198, publicly traded companies will be required to disclose in their Reference Form information regarding the number of employees with disabilities (<i>peessoas com deficiência</i> or PCD), and the total number of members grouped by other diversity attributes that the issuer deems relevant.</p> <p>In addition, as mentioned above, certain companies are required to present a specific disclosure on governance-related issues.</p> <p>Moreover, as from 2026, the sustainability-related financial information report, to be disclosed by publicly traded companies, on a mandatory basis, and investment funds and securitisation companies, on a voluntary basis, must include information on risks and opportunities related to sustainability and climate that may affect the entity’s cash flows, its access to financing or the cost of capital in the short, medium or long term, in accordance with IFRS S1 (General Requirements for Disclosure of Sustainability-related Financial Information) and IFRS S2 (Climate-related Disclosures).</p>
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	<p>Yes, climate issues have received special treatment and, in many cases, have been singled out from other ESG aspects. The CVM chose this treatment in view of the perceived relevance of the subject, and due to the fact that some reporting standards and metrics are more consolidated for environmental issues. The CVM decided to focus on two main points, specifically asking: (1) whether companies follow the self-regulatory standard of the TCFD, which is increasingly establishing itself as the primary reference for companies reporting on climate risks and opportunities; and (2) whether companies control their greenhouse gas emissions and the respective scope of such control.</p>
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	<p>For publicly traded companies, disclosure is standardised, as mentioned above. Privately held companies have latitude in the manner in which they provide ESG disclosures.</p>
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	<p>No. Although certain information is required specifically by CVM rules, there is no clear definition of what is ESG information and the minimum content of the information to be disclosed on this subject. The CVM has issued guidelines on how to fill in the new information that was required by the Reference Form through the SEP Circular Letter (<i>Ofício Circular da SEP</i>), published on 15 February 2024, and updated annually.</p> <p>Although there is no specific definition of ESG in the legislation and regulation of corporate law, and in capital market regulation, the CVM and ANBIMA have defined ESG in some public materials.</p> <p>Specifically in the investment field, according to the CVM, ESG investments are considered to be those that finance a sector, company or project that focuses on ESG issues, such as the sustainable use of natural resources, carbon emissions, energy efficiency, clean technology, inclusion and racial and gender diversity policy, human rights, transparency, ethics, policies, labour relations, data protection, independence from the board of companies, diversity in the composition of the board of directors and observance of the SDGs.</p> <p>To the same end, ANBIMA underlines that the concept of ESG investment incorporates environmental, social or governance matters into the investment assessment and takes long-term sustainability into consideration. According to ANBIMA, this is a broad definition, and managers must define for themselves what constitutes an ESG investment in the context of their operations by establishing criteria that best fit their organisation and decision-making processes.</p>

17.	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	<p>We do not have any normative/regulatory information in this regard yet.</p>
18.	<p><b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b></p>	<p>Investors are increasingly giving special value to ESG issues, which is why companies have adopted practices that embrace these criteria. Thus, we believe that investors themselves helped to create value for companies that acted more closely to ESG practices, and, for this reason, regulators and self-regulators have issued regulations that facilitate disclosure and allow investors to assess potential investments and reduce information asymmetry.</p>
19.	<p><b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b></p>	<p>Yes. The Covid-19 pandemic has accelerated investor demand for sustainable investments. There has been an increase in global awareness of the economic and financial impacts of ESG risks.</p> <p>As such, it is noticeable that the integration of ESG factors into the investment world is growing rapidly in the global marketplace, with sustainable investments exceeding many trillions of dollars and non-financial risks increasingly being considered by investors in their decision-making processes.</p> <p>As the need for the disclosure of more consistent, comparable and decision-useful information and the risk of greenwashing have also increased substantially, market participants have been examining issues related to sustainable finance in their regulatory and supervisory roles in order to address these challenges in line with domestic regulatory competence.</p> <p>However, greater care is needed to ensure that excessive information is not disclosed that could harm companies in their course of business.</p>
20.	<p><b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b></p>	<p>N/A, there are no specific reports regarding greenwashing. As mentioned, as from 1 January 2026, under the terms of CVM Resolution No 193, publicly traded companies will be required to disclose, on a mandatory basis, and investment funds and securitisation companies will continue to be allowed to disclose, on a voluntary basis, separately, the sustainability-related financial information report.</p> <p>One of the purposes of this report is to establish the integrity of the information disclosed by the entities and also to prevent greenwashing. With the report, the information related to sustainability will not be overshadowed by other financial information and will help investors to making it easier for the investors to analyse risks and opportunities related to the sustainability and climate performance of the entity, and to compare to other organisations.</p>
21.	<p><b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b></p>	<p>Yes, as mentioned in the topic above, we believe that the sustainability-related financial information report required by the CVM Resolution No 193 is a great advance regarding the sustainability information reported and represents an initial step in this regard. The sustainability information will be clearly and easily identified in the report and presented separately from the entities' other information and financial statements. Thus, it will be easier to identify if the entity complies or not with the requirements and will help investors to analyse the entity sustainability performance and to compare to other organisations, including making informed decisions in line with their values and goals.</p>

22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	N/A, there have been no public cases in Brazil of investor or regulatory authority complaints regarding incorrect/incomplete/misleading ESG disclosures related to securities issues. As mentioned, the CVM Resolutions and other Brazilian regulations on ESG disclosure are recent and many have not yet come into effect. As a result, Brazilian investors and regulatory authorities are just beginning to have access to information related to ESG practices and are starting to have standards to verify the authenticity and completeness of the information provided.
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	<p>Yes, as mentioned, as from 1 January 2026, under the terms of CVM Resolution No 193, publicly traded companies will be required to disclose, on a mandatory basis, and investment funds and securitisation companies will continue to be allowed to disclose, on a voluntary basis, separately, the sustainability-related financial information report.</p> <p>As indicated above, according to the CVM Resolution No 193, the assurance of financial information related to sustainability must be carried out by an independent auditor registered with the CVM, in accordance with the standards issued by the Federal Accounting Council (Conselho Federal de Contabilidade – CFC), provided that until the end of the 2025 fiscal year with limited confirmation; and from the fiscal years beginning on or after 1 January 2026 with comprehensive and reasonable confirmation.</p>
24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	<p>Brazilian companies have been significantly developing oversight and governance processes related to ESG issues.</p> <p>Currently, there is a strong focus on sustainability, with boards increasingly recognising its strategic importance and prioritising the integration of ESG considerations into their decisions and operations.</p> <p>In this regard, the creation of sustainability committees is rapidly increasing, which ensure that environmental, social and governance issues are properly considered and integrated into the company's overall strategy.</p> <p>Boards are also reviewing and adjusting executive remuneration structures to include sustainability-related metrics, encouraging behaviours in line with ESG objectives and sharing responsibility for achieving these objectives at all levels of the organisation.</p> <p>A growing emphasis on transparency and accountability can be observed, with boards becoming more transparent about their governance practices and performance on ESG issues. This includes disclosing relevant information about policies, targets and progress towards sustainability, demonstrating a clear commitment to corporate responsibility.</p>

25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<p>The sustainability-related financial information report required by CVM Resolution No 193 is based on the international standards issued by the International Sustainability Standards Board (ISSB). In particular, IFRS S1 regarding financial disclosures related to sustainability and IFRS S2, which addresses climate information. As mentioned above, the disclosure of the sustainability-related financial information report will be optional for investment funds and securitisation companies and, as of 2026, mandatory for publicly traded companies.</p> <p>So far, there is no Brazilian regulation that addresses the set of European Sustainability Reporting Standards (ESRS), the final supporting additional guidance, published by the Taskforce on Nature-related Financial Disclosures (TNFD), or the final disclosure framework, published by the UK Transition Plan Taskforce (TPT).</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>Yes, most entities, especially publicly traded companies, have an investor relations department prepared to make the required disclosures. However, although the ESG topic in Brazil is becoming important and is increasingly being debated, including by the regulators, it still is a new subject, as new rules are coming into force and entities are becoming more familiar with the requirements imposed by the law and regulations.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>N/A, there is no Brazilian regulation determining that it is mandatory for companies to adopt climate-related targets.</p>
28.	<p><b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b></p>	<p>Yes. Brazilian companies often voluntarily commit to the methodology created by the Science-Based Targets initiative (SBTi), which monitors approved emission reduction targets or commitments. According to a study carried out by the Brazilian Business Council for Sustainable Development (Cebds) and the Boston Consulting Group (BCG) with 53 large companies from sectors such as agribusiness, transportation, sanitation, mining and energy, between 2019 and 2022, the number of Brazilian companies committed to the methodology created by SBTi grew by 16 times, placing Brazil among the five countries with the highest number of private sector reports in the world.</p>

29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>The CVM aims to stimulate the regular and efficient development of capital markets, which is an environment in which information assumes a distinct relevance. In this way, the CVM seems to be getting closer to the ESG disclosure policies already provided for in the EU, US and other countries with more established ESG disclosure policies.</p> <p>Furthermore, it is expected that, in the near future, the CVM will: (1) regulate the creation of other types of ESG funds, such as private equity funds; (2) regulate the ESG disclosures applicable to fund managers; and (3) contribute to the creation of the Brazilian Sustainable Taxonomy (Taxonomia Sustentável Brasileira) pursuant to the Federal Decree No 11,961/2024, since the CVM is one of the members of the Brazilian Sustainable Taxonomy Interinstitutional Committee (Comitê Interinstitucional da Taxonomia Sustentável Brasileira).</p>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Francisco (Chico) Antunes Maciel Müssnich is a founding partner of BMA Advogados – Barbosa Müssnich Aragão. He has unmatched experience in providing strategic advice in a wide range of corporate matters, and in highly complex national and international M&amp;A transactions. Müssnich also provides strategic advice in hostile takeovers and corporate disputes and has been named one of the 15 most powerful lawyers in Brazil. He is frequently recognised as a leading lawyer in the legal sector's top rankings and publications and is constantly consulted by lawyers and law firms for his recognised expertise in highly intricate corporate transactions and disputes. Müssnich has been teaching Corporate and Securities Law for over 43 years at the Pontifícia Universidade Católica do Rio de Janeiro (PUCRIO) and has been a visiting professor at Vanderbilt Law School since 2010. He is a board member of the Brazilian Symphony Orchestra (<i>Orquestra Sinfônica Brasileira</i> or <i>OSB</i>) and the Inhotim Institute, the biggest open-air museum in the world. He is also an officer of the SLC of the IBA.</p> <p>Alexei Bonamin is a lawyer and professor in the Capital Markets, Private Equity &amp; Venture Capital and Investment Fund areas. He is partner of TozziniFreire Advogados in the Capital Markets, Banking &amp; Finance, Private Equity &amp; Venture Capital, ESG, Sustainable and Impact Investing groups. He holds an LL.M degree in Banking and Finance from the London School of Economics and Political Science (LSE) and is a graduate of the Law School of Pontifícia Universidade Católica de São Paulo (PUC-SP). He holds a Certified Compliance and Ethics Professional (CCEP) certification from the Society of Corporate Compliance and Ethics (SCCE). In addition, Bonamin is the Chair of the CMF of the IBA, one of the coordinators of the IBA Presidential Task Force on Impact Investing and a member of the Financial Innovation Laboratory created by the Brazilian Securities Commission and the Inter-American Development Bank (IDB). With extensive experience in capital markets, banking and finance, private equity and venture capital, ESG, and sustainable and impact investing since 1996, Bonamin has been recognised in relevant legal guides, such as <i>Chambers Latin America</i>, <i>Chambers Global</i>, <i>The Legal 500</i>, <i>Latin Lawyer 250</i>, <i>Who's Who Legal</i>, <i>Expert Guides</i>, <i>IFLR</i>, <i>Leaders League</i> and <i>Análise Advocacia 500</i>. He has recently assisted innovative transactions, such as, Brazil's first impact investment fund; the first public offering of a social bond in Brazil; the first Brazilian online platform for investments in social and environmental projects; the first public offering of a sustainable bond in Brazil; during the Covid-19 pandemic, the first lending programme in Brazil that offers lower interest rates and more flexible payment terms to small companies engaged with impact businesses and committed to maintaining jobs and income; and several public offerings of green bonds, ESG investment funds and impact investment funds.</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Canada

### Canada

1.	<b>Which jurisdiction are you covering?</b>	Canada
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>Mandatory ESG disclosures apply to many market participants in Canada. The following sets out the principal mandatory ESG disclosures as they apply to reporting issuers (including issuers with securities listed on a Canadian stock exchange and other issuers that have previously filed a prospectus with a Canadian securities regulatory authority), federally incorporated business corporations whose securities are publicly traded<sup>1</sup> and investment funds.</p> <p><b>Reporting issuers (excluding investment funds)</b></p> <p>All reporting issuers are required to disclose material information in their continuous disclosure documents (National Instrument 51-102, Continuous Disclosure Obligations). This includes ESG factors that are material to the issuer. To clarify the threshold of materiality in the environmental context, the Canadian Securities Administrators (CSA) released guidance on how issuers may determine which environmental and climate change matters are material.<sup>2</sup></p> <p>Additionally, reporting issuers, excluding venture issuers,<sup>3</sup> are required to make the following governance disclosures:</p> <ol style="list-style-type: none"> <li>1. director term limits or other mechanisms of board renewal;</li> <li>2. policies relating to the identification and nomination of women directors;</li> <li>3. consideration of the representation of women in the director identification and nomination process, and in executive officer appointments;</li> <li>4. targets for women on boards and in executive officer positions; and</li> <li>5. the number of women on the issuer's board of directors and in executive officer positions.<sup>4</sup></li> </ol> <p>Of note, this is not an exhaustive list of governance disclosure requirements for non-venture issuers. For other more general corporate governance requirements, please refer to National Instrument 58-101.</p>

<sup>1</sup> Otherwise known as 'distributing corporations' under the *Canada Business Corporations Act* (RSC, 1985, c C-44) (the CBCA).

<sup>2</sup> CSA Staff Notice 51-333, *Environmental Reporting Guidance*, CSA Staff Notice 51-358, *Reporting of Climate Change-Related Risks*.

<sup>3</sup> A venture issuer is defined as a reporting issuer that, as at the applicable time, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a US marketplace, or a marketplace outside Canada and the US other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

<sup>4</sup> National Instrument 58-101, *Disclosure of Corporate Governance Practices*.

		<p>Furthermore, the <i>Fighting Against Forced Labour and Child Labour in Supply Chains Act</i> (the 'Modern Slavery Act'), which came into force on 1 January 2024, imposes a new annual reporting obligation for all companies listed on a Canadian stock exchange to publicly report to the Minister of Public Safety and Emergency Preparedness on their supply chain practices and efforts in combatting forced and child labour. The Modern Slavery Act, like the Modern Slavery Acts in the UK and Australia, opts for a 'reporting model' of compliance in which entities are simply required to report on their corporate practices in prescribed areas. France's Duty of Vigilance Act, in contrast, is an example of a 'due diligence model' which requires companies to identify risks of human rights violations in their supply chains and makes them liable for such violations. Crucially, the Modern Slavery Act imposes reporting obligations only on entities producing, purchasing or distributing goods in Canada or elsewhere (whereas services are not covered under the legislation).</p> <p>Finally, the Canadian Securities Administrators (CSA) have proposed amendments to Form 58-101F1, <i>Corporate Governance Disclosure</i>, that would impact the annual governance disclosure required of non-venture issuers. Similar to the approach adopted under the CBCA (see 'Distributing corporations' below), certain of the proposed amendments contemplate mandatory standardised reporting on the representation of five designated groups, being women, Indigenous peoples, racialised persons, persons with disabilities and LGBTQ2SI+ persons, on boards and in executive officer positions. All such data would be based on voluntary self-disclosure by directors and executive officers. An issuer may also choose to voluntarily provide disclosure in respect of other groups beyond the designated groups. In addition, certain proposed amendments would require disclosure regarding any written strategy, written policies and measurable objectives relating to diversity on an issuer's board.</p> <p><b>Reporting issuers (excluding investment funds) – Distributing corporations</b></p> <p>In the social and governance spheres, distributing corporations must disclose information to shareholders relating to diversity among the directors and members of senior management.<sup>5</sup> This goes beyond the diversity disclosure requirements concerning women on boards under securities laws.<sup>6</sup></p> <p>Additionally, proposed amendments to the CBCA will, if adopted in their current form, require disclosure regarding senior management compensation and the wellbeing of employees, retirees and pensioners.<sup>7</sup></p> <p><b>Investment funds</b></p> <p>In Canada, the CSA recommended best practices to enhance ESG-related fund disclosure.<sup>8</sup> These best practices relate to matters such as the fund's investment objectives and strategies; fund types; proxy voting, and shareholder engagement policies and procedures; suitability; continuous disclosure; sales communications; ESG-related changes to existing funds; ESG-related terminology; and fund manager-level commitments to ESG-related initiatives:</p> <ol style="list-style-type: none"> <li>1. National Instrument 51-102, <i>Continuous Disclosure Obligations</i>;</li> <li>2. CSA Staff Notice 51-333, <i>Environmental Reporting Guidance</i>;</li> <li>3. CSA Staff Notice 51-358, <i>Reporting of Climate Change-Related Risks</i>;</li> <li>4. a formal definition of 'venture issuers';<sup>9</sup></li> <li>5. National Instrument 58-101, <i>Disclosure of Corporate Governance Practices</i>;</li> <li>6. CBCA, s 172.1;</li> <li>7. National Instrument 58-101, <i>Disclosure of Corporate Governance Practices</i>; and</li> <li>8. Staff Notice 81-334.</li> </ol>
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5 CBCA, s 172.1.

6 National Instrument 58-101, *Disclosure of Corporate Governance Practices*.

7 Bill C-97, *Budget Implementation Act*, 1st Sess, 42nd Parl, 2019, cl 143(3) (assented to 21 June 2019).

8 Staff Notice 81-334 (Revised) *ESG-Related Investment Fund Disclosure (Staff Notice 81-334)*.

9 See n 3 above.



		<p><b>Privately held entities</b></p> <p>In addition to reporting issuers as described above, privately held corporations, trusts, partnerships and other unincorporated organisations are subject to the reporting obligations under the Modern Slavery Act if they have a place of business in Canada, do business in Canada or have assets in Canada and that, based on their consolidated financial statements, meet at least two of the following conditions for at least one of their two most recent financial years:</p> <ol style="list-style-type: none"> <li>1. have at least \$20m in assets,</li> <li>2. have generated at least \$40m in revenue, and</li> <li>3. employ an average of at least 250 employees.</li> </ol> <p><b>Government institutions</b></p> <p>Government institutions are also subject to the reporting obligations under the Modern Slavery Act.</p>
3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	Yes, there is a distinction between the type and nature of entity that is required to make ESG disclosures. Please refer to the categories referenced in question 2.
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	<p>While ESG disclosure is becoming normal practice for many Canadian public companies, currently, privately held companies are not required to make mandatory ESG disclosures in Canada. Publicly listed companies that are 'reporting issuers' are subject to the requirements described under question 2. Additionally, both companies and government institutions are subject to reporting requirements under the Modern Slavery Act as described in question 2.</p> <p>Moreover, investment funds that do not have any link to ESG factors are not required to make ESG-related disclosures. Notably, however, a fund is not required to reference ESG in its name to trigger the requirements of Staff Notice 81-334. Rather, referencing ESG concepts in the fund's objectives, strategies or marketing materials may be sufficient to trigger the requirements.</p> <p>For information on thresholds that need to be met prior to mandatory disclosure requirements being triggered, please refer to question 5.</p>
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	<p>Many of the aforementioned mandatory ESG disclosures are required to be made on a continuous reporting basis. Additionally, mandatory ESG disclosures are triggered by a materiality threshold requirement. For instance, public disclosure obligations under National Instrument 51-102 are triggered where a 'material change' occurs. 'Material change' means (1) a change or decision made by the board of directors or senior management to implement 'a change in the business, operations or capital of the reporting issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the reporting issuer'; or (2) a decision to implement a change referred to in paragraph (1) made by the board of directors or other persons acting in a similar capacity or by senior management of the reporting issuer who believe that confirmation of the decision by the board of directors or any other persons acting in a similar capacity is probable.<sup>10</sup></p> <p>The guiding principles for environmental materiality determinations are as follows:</p> <ul style="list-style-type: none"> <li>• No bright-line test: There is no quantitative benchmark used to ascertain which information is material. Rather, materiality varies by industry, issuer and surrounding context. Both quantitative and qualitative factors should be assessed in determining materiality.</li> <li>• Context: The materiality of specific information should be considered in light of all the circumstances.</li> <li>• Timing: Issuers should evaluate whether the impact of an environmental matter might reasonably be expected to grow as time passes.</li> </ul>

<sup>10</sup> National Instrument 51-102 *Continuous Disclosure Obligations*, s 1.1.

		<ul style="list-style-type: none"> <li>• Trends, demands, commitments, events and uncertainties: Issuers should consider the probability that a trend, demand, commitment, event or uncertainty will occur and the anticipated magnitude of its impacts.</li> <li>• Err on the side of materiality: If there is any uncertainty as to whether certain information is material, issuers are encouraged to disclose such information.<sup>11</sup></li> </ul> <p>With respect to investment funds, ESG disclosures are triggered where a fund's investment objectives or strategies reference ESG factors. Accordingly, an investment fund need not reference ESG in its name in order to trigger certain disclosure guidance provided in Staff Notice 81-334.</p> <p>The required disclosures under the Modern Slavery Act are made on a continuous annual reporting basis and are due on 31 May of each year.</p>
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>Most disclosures are not required to be provided in the form of separate ESG reports. Rather, such disclosures are included in the company's continuous disclosure documents prescribed under securities laws. These documents include annual and interim financial statements, annual information forms, management's discussions and analyses, proxy information circulars and mandatory news releases announcing material changes and accompanying material change reports.</p> <p>The Modern Slavery Act requires both government and private-sector entities to submit an annual report to the Ministry of Public Safety Canada addressing, among other things, the steps taken during the previous financial year to prevent and reduce the risk that forced labour or child labour is used at any step of the production of goods in Canada or elsewhere by the entity or of goods imported into Canada by the entity.</p>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>Most disclosures are not required to be provided in the form of separate ESG reports. Rather, such disclosures are included in the company's continuous disclosure documents prescribed under securities laws. Refer to question 7 for a breakdown of the documents in which ESG disclosures are required to be included.</p>
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>Certain public and privately held companies opt to publicly disclose ESG-related information in annual sustainability reports or on their respective websites to satisfy stakeholder expectations. Nonetheless, reporting issuers must be cognisant that such disclosure does not replace the continuous mandatory disclosure requirements set out in securities legislation.</p>
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>Members of the Canadian Securities Administrators (CSA) monitor ESG disclosure compliance in Canada. The CSA consists of the securities regulatory authorities in each of Canada's ten provinces and three territories.</p> <p><b>Reporting issuers</b></p> <p>National Instruments, which are securities rules adopted and enforced by each Canadian jurisdiction's securities regulatory authority, set forth a robust body of disclosure requirements for every reporting issuer in Canada. The penalties for violating securities instruments vary, including cease trade and other orders, monetary sanctions and other 'disciplinary actions'.</p> <p><b>Reporting issuers (excluding investment funds) – Distributing corporations</b></p> <p>If a corporation does not comply with the CBCA, a complainant or a creditor may apply to a court for an order directing the corporation to comply with the CBCA.<sup>12</sup></p> <p><b>Investment funds</b></p> <p>The securities regulator in each Canadian jurisdiction monitors ESG disclosure pursuant to the CSA's Staff Notice 81-334. While the CSA's best practices are not mandatory, non-compliance with these best practices could result in a firm being selected for a compliance review by the regulator and being asked to take corrective action. Further non-compliance may result in a Canadian securities regulatory authority taking a number of actions, including tracking and monitoring the firm or individual; conducting a follow-up review; imposing terms and conditions on registration; referring the matter to the authority's Enforcement Branch; or suspending or revoking the registration of the firm, or certain individuals at the firm.<sup>13</sup></p>

11 CSA Staff Notice 51-333 *Environmental Reporting Guidance*.

12 CBCA, s 243.

13 CBCA, s 243; and Securities Act, RSO 1990, c S.5 (the OSA), s 11.

		<p><b>Modern Slavery Act</b></p> <p>Regarding the reporting obligations under the Modern Slavery Act, the Minister of Public Safety and Emergency Preparedness is responsible for reviewing annual reports and designating relevant parties to administer and enforce the Modern Slavery Act. An affected entity that fails to comply with their disclosure obligations could face penalties of up to \$250,000. In addition, individuals such as directors and officers of affected entities, may also be subject to fines and criminal prosecution. Notably, sanctions for non-compliance do not apply to government institutions.</p>
10.	<p><b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b></p>	<p>Securities and corporate legislation in Canada provide for quasi-criminal (fines and penalties) and civil remedies (claims in damages) in the event of misrepresentations in documents or reports filed or made available publicly.<sup>14</sup></p> <p>Accordingly, when making ESG disclosures in Canada, companies must ensure that there are no misrepresentations or inconsistencies with other forms of disclosure. Where feasible, ESG disclosures should be specific and measurable. To reduce the risk of misstatements or inconsistencies, boards and management should implement a detailed review and approval process for ESG disclosure prior to public release.</p> <p>Where a corporation commits such an offence, any director or officer who knowingly authorised, permitted or acquiesced is also liable to the above penalties, whether or not the corporation has been prosecuted or convicted.<sup>15</sup></p> <p>Additionally, under the Canadian Competition Act, as well as provincial consumer protection law, businesses making false or misleading ESG claims may be subject to regulatory action and civil liability.<sup>16</sup></p>
11.	<p><b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b></p>	<p>Although a ‘layered’ (or ‘tiered’) approach to disclosure is generally not mandatory in Canada, it may be considered to address the disclosure obligations described above.</p> <p><b>Investment funds</b></p> <p>In Staff Notice 81-334, investment funds are classified into one of four different tiers based on how significant a role ESG factors play in their investment process. The tiers are listed in descending order as:</p> <ul style="list-style-type: none"> <li>• ESG objective funds;</li> <li>• ESG strategy funds;</li> <li>• ESG limited consideration funds; and</li> <li>• non-ESG funds.</li> </ul> <p>The guidance sets out different disclosure expectations for investment funds depending on their tier of ESG significance.</p>
12.	<p><b>Is there a system of ESG certification or benchmarks that need to be met to have an ‘ESG Approved/ Compliant’ status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b></p>	<p>There is currently no mandatory system of certification or required benchmarks for ESG in Canada.</p>

14 OSA, Parts XXII, XXIII and XXIII.1; and CBCA, Parts XIX, XIX.1 and XX.

15 OSA, s 138.3; and CBCA, s 250(2).

16 *Competition Act*, RSC 1985, c C-34.

13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	Please refer to question 2 for an overview of the nature and extent of ESG disclosures required to be made in Canada.
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	<p><b>Reporting issuers</b></p> <p>CSA Staff Notice 51-333 clarifies existing disclosure requirements relating to environmental matters under National Instrument 51-102. For example, the notice details the process for assessing whether a particular environmental matter is material and requires disclosure.</p> <p>CSA Staff Notice 51-358 provides issuers with guidance as to how they might approach preparing disclosures of material climate change-related risks. For example, the notice categorises various types of climate-related risks that may affect an issuer's business.</p> <p>The proposed National Instrument 51-107 is specific to certain climate-related information in compliance with the Task Force on Climate-related Financial Disclosure (TCFD) recommendations. For example, the instrument would require issuer disclosure of greenhouse gas emissions.</p> <p><b>Federally regulated banks, insurers and pensions</b></p> <p>In March 2023, the Office of the Superintendent of Financial Institutions (OSFI), a federal government body that regulates federal banks and financial institutions, published Guideline B-15: Climate Risk Management, which formalises earlier signals from the federal government to gradually phase in reporting requirements for financial institutions. OSFI also expects financial institutions to collect and assess information on climate risks and emissions from their clients. The first disclosures under OSFI's Guideline B15: Climate Risk Management are required to be published 180 days post-fiscal year 2024. These disclosures include the collection and analysis of client emissions, which will require non-financial sectors to collect and disclose emissions.</p> <p>Furthermore, in its budget in 2022 the federal Canadian government announced plans to require federally regulated pensions to disclose the ESG considerations they use in their portfolio construction, including climate-related risks. The government is still in the process of exploring amendments that would prescribe these requirements.<sup>17</sup></p>
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	<p>ESG disclosures are not currently fully standardised in Canada. However, in March 2024, the Canadian Sustainability Standards Board (CSSB) released proposed sustainability standards to align with the global standards from the International Sustainability Standards Board (ISSB). If enacted, Canadian entities would disclose sustainability risks and opportunities under the first Canadian Sustainability Disclosure Standards (CSDS). Reporting would be on a voluntary basis; however, legislators and regulators may determine mandatory reporting requirements in the future.</p> <p><b>Reporting issuers</b></p> <p>Reporting issuers must make standardised governance disclosures that are prescribed by Form 58-101F1 (Form 58-101F1, <i>Corporate Governance Disclosure</i>). Furthermore, reporting issuers are required to disclose material information in their continuous disclosure documents. Disclosure obligations, including the issuance of a news release and the filing of a material change report, are triggered where a 'material change' occurs, and the CSA has published guidance on how to determine whether a matter is material.<sup>18</sup> Where an ESG-related matter or incident occurs and the matter or incident constitutes a material change, the reporting issuer must comply with these disclosure and filing obligations.</p> <p><b>Reporting issuers (excluding investment funds) – Distributing corporations</b></p> <p>The requirements for disclosing diversity in senior management is prescribed by the <i>Canada Business Corporations Regulations</i>.<sup>19</sup> On one hand, distributing corporations have standardised requirements for disclosing the number and proportion of members of designated groups who are members of senior management and/or hold positions on the board of directors (see Canada Business Corporations Regulations s 72.2: 'designated groups' has the same meaning as in section 3 of the Employment Equity Act). On the other hand, distributing corporations have more leniency with respect to whether they have target numbers of representation for designated groups and whether there are any written policies regarding the nomination of members of designated groups.</p>

17 [www.canada.ca/en/department-finance/corporate/laws-regulations/forward-regulatory-plan/regulations-amending-pensions-benefits-standards-regulations-1985-governance-transparency.html](http://www.canada.ca/en/department-finance/corporate/laws-regulations/forward-regulatory-plan/regulations-amending-pensions-benefits-standards-regulations-1985-governance-transparency.html)

18 National Policy 51-201 *Disclosure Standards*.

19 Canada Business Corporations Regulations, SOR/2001-513, s 72.2.

		<p><b>Investment funds</b></p> <p>The extent of ESG disclosure for investment funds is standardised as ESG disclosure is required in certain parts of a fund’s annual information form and/or management report of fund performance (MRFP). However, investment funds have more leniency in the manner and language of how they may disclose ESG information, with notable exceptions. For example:</p> <ul style="list-style-type: none"> <li>• where a fund’s name references ESG, the fundamental investment objectives of the fund are required to reference the ESG-related aspect included in the name; and</li> <li>• funds that use proxy voting or shareholder engagement as a strategy to select investments are required to disclose how they are used by the fund.</li> </ul>
16.	<p><b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b></p>	<p>Staff Notice 81-334 references the following as a non-exhaustive list of ESG factors that may be considered by investment funds in their investment decision-making process:</p> <ul style="list-style-type: none"> <li>• Environmental: air and water pollution, biodiversity, climate change and carbon emissions, deforestation, energy efficiency, waste management and water scarcity;</li> <li>• Social: community relations, data protection and privacy, diversity, employee engagement, human rights, indigenous inclusion and reconciliation, and labour standards; and</li> <li>• Governance: audit committee structure, board diversity, bribery and corruption, executive compensation, lobbying, political contributions and whistleblower schemes.</li> </ul>
17.	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	<p>There is no system of certification/benchmarks to assess whether a company is ‘ESG-compliant’ (see question 12). ESG disclosure requirements include both positive characteristics, such as investment objectives/strategies, and (potentially) negative characteristics, such as ESG risks and ESG performance. ESG compliance is not the subject of only one rule or one body of rules. All rules and regulations must be complied with and, for example, compliance with diversity disclosure requirements under corporate and securities laws would not excuse any issuer from complying with climate change disclosure rules.</p>
18.	<p><b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b></p>	<p>While the disclosure regime is expected to result in increased compliance requirements, the resulting transparency can be considered to have contributed to enhanced corporate accountability with regard to ESG factors. It remains to be seen as to the extent of the burden that would be created by proposed climate change disclosure rules.</p>
19.	<p><b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b></p>	<p>Canadian regulatory agencies are engaged in a number of initiatives aimed at promoting enhanced ESG disclosure. These initiatives have received support from certain constituencies, although the support is not universal – critics have questioned the utility and cited the increased costs and burdens for public companies in opposition.</p>

20.	<p><b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b></p>	<p>On 1 January 2024, Canada's new modern slavery legislation, otherwise known as the Fighting Against Forced Labour and Child Labour in Supply Chains Act (the 'Act') came into force. This Act imposes a new annual reporting obligation for Canadian businesses, beyond their other statutory disclosure requirements under corporate and securities laws. The report is intended to detail, among other things, the steps the entity had taken during its previous financial year to prevent and reduce the risk that forced labour or child labour was used at any point in its production of goods. It applies to entities that:</p> <ol style="list-style-type: none"> <li>1. produce, sell or distribute goods in Canada or elsewhere;</li> <li>2. import into Canada goods produced outside of Canada; or</li> <li>3. control an entity engaged in any activity described in (1) or (2).</li> </ol> <p>Businesses must submit annual reports by 31 May each year to the Minister of Public Safety and Emergency Preparedness. The reports will also be expected to be published on the business's website and shared with their shareholders by the same date if the entity is incorporated under the Canada Business Corporations Act.</p>
21.	<p><b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b></p>	<p>The practice of greenwashing among public companies listed on Canadian stock exchanges has become increasingly prevalent. This concern was highlighted in the CSA's Staff Notice 51-364, <i>Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2022 and March 31, 2021</i>, in which the CSA stated that it had 'observed an increase in issuers making potentially misleading, unsubstantiated or otherwise incomplete claims about business operations or the sustainability of a product or service being offered, conveying a false impression commonly referred to as "greenwashing"'. In order to mitigate these concerns, CSA Staff Notice 51-364 provides guidance for issuers who engage in voluntary or mandatory ESG-related disclosures.</p> <p>Additionally, the CSA published Staff Notice 81-334, which provides guidance to investment funds concerning ESG disclosure practices. Staff Notice 81-334 provides industry participants with a rubric for assessing their ESG-related disclosure to ensure that inadvertent greenwashing does not occur. Notably, a fund does not need to explicitly reference an ESG concept in its name in order to trigger many of the expectations in the guidance. Rather, simply having ESG concepts in a fund's strategies or marketing materials may be sufficient. Conversely, in order to combat greenwashing, Staff Notice 81-334 discourages funds from including various ESG disclosures if ESG factors are not considered to play a significant role in their investment process.</p>
22.	<p><b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b></p>	<p>Canada's Competition Bureau (the 'Bureau') is an independent law enforcement agency that protects competition for the benefit of Canadian consumers and businesses. It investigates, among other things, deceptive marketing practices, which include greenwashing techniques. In recent years, the Bureau has seen an increase in the number of greenwashing claims.</p> <p>There are a number of other organisations currently under scrutiny for alleged greenwashing including:</p> <ul style="list-style-type: none"> <li>• <b>A clothing company:</b> In relation to its marketing campaign where the company makes claims about its environmentally positive practices;</li> <li>• <b>An association of hydrocarbon companies:</b> In relation to its advertising campaign, in which it uses favourable terms to describe methane-heavy natural gas; and</li> <li>• <b>An energy company:</b> In relation to its marketing campaign targeting new gas customers, which claims that gas is 'clean energy' and 'low carbon'.</li> </ul>

23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	<p>There are no mandatory external certification/assurance requirements in connection with ESG disclosures in Canada.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>We have seen the following developments in relation to board oversight and governance of ESG matters:</p> <p><b>Greenwashing and social washing</b></p> <p>In Canada, there has been growing concern, particularly within the securities regulatory space, over greenwashing and social washing. Whereas greenwashing refers to the deceptive practice of portraying products/services as environmentally friendly when they are not, social washing refers to the act of misrepresenting a company's social responsibility efforts. Given boards are the key actors who actively manage these corporations, they are expected to oversee, prevent, and mitigate the risks of greenwashing and social washing.</p> <p><b>Board training and composition</b></p> <p>As ESG expertise on boards becomes increasingly imperative, there is a shift in training practices requiring boards to include ESG-specific topics and credentials. Additionally, there is a new tendency to create a standalone specialised committee (ie, an ESG committee, or an environmental, health, safety and sustainable development committee) in order to oversee ESG initiatives and to ensure that the company is meeting the required standards.</p> <p><b>Proxy advisers</b></p> <p>Proxy advisers in Canada, such as Institutional Shareholder Services (ISS) and Glass Lewis, have emphasised the importance of the board's role in ESG oversight. More specifically, these proxy advisers have confirmed that they will tie, voting recommendations to how directors oversee climate change and other environmental and social issues. For example, where Glass Lewis believes that a company has failed to properly manage or mitigate environmental or social risks, and considers this failure to have compromised shareholder value, Glass Lewis may recommend that shareholders vote against the members of the board who are responsible for the oversight of environmental and social risks. Proxy advisers have further provided that they will also tie their voting recommendations to their policies on diversity expectations.</p>

<p>25.</p>	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p><b>ISSB Standards</b></p> <p>Currently, there is no mandatory requirement to comply with the ISSB Standards in Canada. However, the Government of Canada and various Canadian regulatory agencies have indicated their support for the ISSB and the movement to standardise and mandate climate-related financial disclosures.</p> <p><b>ESRS Standards</b></p> <p>The new ESRS Standards will be felt by those Canadian companies who access EU capital markets or those who have significant operations in EU countries. Given Canada's lack of a robust sustainable finance framework, Canadian companies could face significant obstacles in meeting these disclosure requirements. This will result in additional compliance costs being imposed on Canadian firms and will create further barriers for Canadian firms to attract foreign capital from the EU and other markets that are similarly sustainability conscious.</p> <p><b>Taskforce on Nature-related Financial Disclosures (TNFD) Guidance</b></p> <p>While many believe it is unlikely that the TNFD will be put into wide use in Canada in the near future, there are some Canadian organisations who have piloted the system. Chartered Professional Accountants of Canada and the Institute of Sustainable Finance at Queen's University's Smith School of Business are co-conveners in charge of rolling out the TNFD for Canadian companies, governments, and regulators.</p> <p><b>UK Transition Plan Taskforce (TPT) Framework</b></p> <p>The TPT Framework has not attracted as much discussion within Canada. However, this does not mean that it will not influence future Canadian climate-related disclosure.</p>
<p>26.</p>	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>In our view, other than the S&amp;P/TSX 60 companies, it remains to be seen as to whether a majority of Canadian publicly traded companies have the necessary capabilities and resources needed in order to comply with the disclosure requirements, particularly those proposed in relation to climate-related disclosures. This is likely due to the more modest scale of the Canadian market when compared to other countries, such as the US. Particularly, cost proportionality to market capitalisation and capital tends to be greater for Canadian companies as compared to US and other global companies. These resource constraints result in a lack of understanding of the complex ESG concepts, making it difficult for Canadian companies to make the required disclosures. Small and mid-sized businesses (SMBs) have the most challenging obstacles to overcome. Given SMBs make up approximately 97 per cent of Canadian businesses, Canadian businesses will naturally require additional support in order to navigate the complex and resource-intensive ESG space.<sup>20</sup></p>

<sup>20</sup> <https://ised-isde.canada.ca/site/sme-research-statistics/en/key-small-business-statistics/key-small-business-statistics-2022>.



27.	<b>Is it mandatory for companies to set climate-related targets?</b>	<p>Since the release of the 2022 federal budget, in which the Canadian government committed to requiring businesses to report climate-related financial risks, we have seen many regulatory developments in Canada that draw on the framework developed by the TCFD. Among these initiatives include:</p> <p><b>Proposed National Instrument 51-107 Disclosure of Climate-related Matters</b></p> <p>The CSA's proposed National Instrument 51-107 will require public companies to disclose climate risks and opportunities based on the TCFD recommendation. More specifically, Form 51-107B requires entities to: (1) explain the targets used by the issuer to manage climate-related risks and opportunities and (2) the issuer's performance against these targets.</p> <p><b>OFSI's Draft Climate Risk Management Guideline</b></p> <p>The OFSI's <i>Draft Climate Risk Management Guideline</i> sets out the OFSI's expectations related to federally regulated financial institutions' (FRFI) management of climate-related risks. Annex 2-2 provides the minimum mandatory climate-related financial disclosure expectations, which includes: (1) describing the targets used by the FRFI to manage climate-related risks and opportunities and (2) the FRFI's performance against these targets.</p>
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	<p>Yes, many Canadian companies voluntarily commit to climate-related targets. This tends to be more common among large and established issuers within Canada. Failing to disclose criteria could result in opportunity costs or reputational damage and possible stakeholder disenchantment.</p>
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p><b>Continued push to standardise reporting</b></p> <p>It is likely that the push to standardise Canada's ESG reporting standards will continue. It is anticipated that increased standardisation will make ESG more accessible for smaller entities who have less resources and will also make it easier for stakeholders to: (1) track a company's progress with respect to ESG matters and (2) compare its accomplishments (or lack thereof) to its peers. Standardised ESG reporting may also improve trust and credibility by decreasing risks such as, for example, greenwashing.</p> <p><b>A move toward prescriptive guidance</b></p> <p>In order to maintain its competitive position within the global marketplace, Canada is also likely to issue legislation and guidance that is more prescriptive. In other words, Canada will likely adjust its approach to ESG by moving beyond disclosure requirements and instead, transitioning toward mandating certain actions.</p> <p><b>ESG due diligence</b></p> <p>For many buyers, ESG is now a key part of the due diligence process and has the ability to influence a company's value. While much of this due diligence has previously focused on the 'E' in ESG, buyers are now paying more attention to the 'S' and 'G' factors. We anticipate that the questions asked throughout the due diligence process will become more detailed and cover other topics such as labour laws, human rights claims, and workforce diversity.</p>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Manoj Pundit, Partner, Corporate and Capital Markets</p> <p>Griffin Murphy, Articling Student</p> <p>Samantha Krol, Articling Student</p> <p>Borden Ladner Gervais</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for the People's Republic of China

### The People's Republic of China

1.	<b>Which jurisdiction are you covering?</b>	The People's Republic of China (for the purpose of this survey excluding Hong Kong, Macao and Taiwan).
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	Two types of companies are subject to mandatory disclosures: certain state-owned companies and certain public companies listed on the Shanghai Stock Exchange, Shenzhen Stock Exchange and Beijing Stock Exchange whose stock price constitute certain indexes. Companies listed on the Hong Kong Stock Exchange are also subject to ESG disclosure rules but we are not providing answers in relation to Hong Kong laws.
3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	State-owned enterprises (SOEs) in China are supervised by different levels of government. The disclosure rules vary somewhat between different governmental authorities. The disclosure rules of the three stock exchanges are similar.
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	Public companies listed on the Shanghai Stock Exchange, Shenzhen Stock Exchange and Beijing Stock Exchange whose stock price constitute SSE 180 index, STAR 50 index (Science and Technology Innovation Board 50 Index), SZSE 100 Index (Shenzhen Component Index), ChiNext Index Component Companies and companies listed both on A share market and overseas. The requirements take effect in 2026, when these companies will be required to make ESG disclosures for the year 2025. Other listed companies are encouraged to make ESG disclosures.  SOEs supervised by central government made social responsibility disclosures since 2016. Local SOE supervisors have followed suit in the past years.
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	The disclosures are made on a continuous annual basis.
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	Yes.
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	Public companies should disclose ESG reports on the disclosure system managed by the stock exchange and the company website. Non-listed SOEs may disclose on their website or other public channels.

8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	The three stock exchanges issued mandatory disclosure rules in April 2024, although certain companies made voluntary disclosures long before that.
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	For public companies, it is the stock exchange that such company is listed upon, ie, the Shanghai Stock Exchange, Beijing Stock Exchange and/or Shenzhen Stock Exchange. Failure to make proper disclosure may result in disciplinary orders by the stock exchange. No specific grace period is mentioned in the rules.  For SOEs, they may be subject to rectification orders by the State-Owned Asset Supervision and Administration Committee of the relevant government and the relevant personnel's KPIs may be affected.
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	Failure to make proper disclosure by listed companies may result in disciplinary orders by the stock exchange. The rules apply to public companies which make voluntary disclosures. For SOEs, it may be subject to rectification orders by the State-Owned Asset Supervision and Administration Committee of the relevant government and the relevant personnel's KPIs may be affected.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	It is expected that legislation will continue to focus on listed companies and SOEs.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	No.
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	The disclosures to be made by public companies are comprehensive and largely follow international standards, while also incorporating China's interpretation of the ESG concept. The scope of E and G are similar to those in western markets while the scope of S has Chinese characteristics, such as contribution to rural area development, overdue payment owed to small-to-medium enterprises and so on.
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	Yes. Public companies subject to mandatory disclosure requirements should disclose Scope 1 and Scope 2 GHG emissions and are encouraged to make Scope 3. Companies should also disclose the measures they take to tackle the climate change and so on.
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	Yes. The format of disclosures made by public companies is standardised.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	Yes.

17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	There is no ESG compliance rule.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	It is yet to be seen whether the mandatory disclosure rules for public companies will help investors to make an assessment. It may help green debt investors select suitable targets.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	ESG performance has not yet become a mainstream consideration for domestic equity investors. Debt investors would welcome more disclosures as they have a green debt quota granted by central bank. Foreign investors welcome more ESG disclosures to meet foreign LPs' requirements.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	There are no specific rules on greenwashing.
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	There are no specific rules on greenwashing.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	No.
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	No mandatory external certification requirement. There have been quite a few ESG certification agencies in China.

24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	ESG has become a popular topic among public companies and SOEs, and boards have started to attach more and more importance to ESG matters.
25.	<b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	There have been quite a few discussions around ISSB rules, although it is yet to be seen how such rules would affect Chinese companies. Listed companies, especially those also listed outside of PRC, such as in Hong Kong, may be required to follow ISSB disclosure rules. The other rules mentioned above may affect China in an indirect way: ie, through European companies who have built their supply chains in China.
26.	<b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b>	There are many agencies who provide this service and the penalties for greenwashing are not commonly seen, if any.
27.	<b>Is it mandatory for companies to set climate-related targets?</b>	The central government has set a 'dual carbon goal', ie, reaching peak carbon emissions before 2030 and achieving carbon neutrality before 2060. Many SOEs have set KPIs around this national goal. Companies who are on the supply chain of customers who made carbon emission commitments are also required to set climate-related targets, such as science-based targets (SBT).
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	They are becoming more popular. Companies with international business tend to choose internationally recognised targets such as SBTi, while others tend to choose local certification agencies.
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	China is part of the supply chain of many western companies and is naturally subject to the ESG regulations in the EU. In order to have more say in ESG regulations, China is likely to formulate more ESG disclosures/compliance rules.
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	Name: Miles Ma Firm Name: Fangda Partners Brief Biography: Miles Ma is a corporate partner of the Shanghai office of Fangda. He specialises in corporate matters, capital market and M&A transactions. He heads the firm's General Industries practice group.

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Colombia

### Colombia

1.	Which jurisdiction are you covering?	Colombia
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Yes. The Colombian Financial Superintendency (CFS) issued External Circular 031 of 2021 to provide instructions on the disclosure of information regarding social and environmental issues, including climate issues, based on the principle of 'financial materiality'.
3.	If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?	Yes. There is a distinction between the type and nature of entity required to disclose ESG information. Annex 2 of External Circular 031 of 2021 differentiates issuers and their obligations to disclose information on social and environmental issues, including climate issues, in the periodic end-of-year report and quarterly periodic report, as follows:  1. Group A: refers to issuers that are part of MSCI Colcap and those that meet two of the following criteria as of 31 December of the immediately preceding year: a. have assets in excess of COP 3.8m legal monthly minimum wages in force (salario mínimo mensual legal vigente or SMMLV); b. have annual revenue equal to or greater than COP 1.9m SMMLV; or c. have a payroll equal to or greater than 1,000 employees.  2. Group B: refers to trust, collective investment funds, private equity funds and securitisation schemes.  3. Group C: includes issuers that do not comply with the characteristics of Group A, Group B and Group D.  4. Group D, refers to the following: (a) issuers under temporary registration; and (b) issuers of pension bonds.  In addition, the survey 'Código País' conducted by the CFS implements a reporting scheme for issuers, on recommendations and best practices for corporate governance, based on the 'comply or explain' principle.

4.	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b></p>	<p>In all cases, issuers must disclose information, yet the amount and detail of the required submissions differ as follows.</p> <p>Companies in Group A are required to disclose comprehensive information related to climate matters as guided by the TCFD (Task force on Climate-related Financial Disclosures) framework, and other social and environmental matters as per the SASB (Sustainability Accounting Standard Board) guidelines. They must also report on any subsidiaries, if applicable.</p> <p>Companies in Group B should detail how they integrate environmental and social considerations into their investment policies. They need to explain how these strategies contribute to environmental and social objectives, specify if they employ the Colombian Green Taxonomy for classifying permissible activities, and identify assets in their investment portfolios or projects.</p> <p>Companies in Groups C and D are only required to provide a brief description of the procedures they have implemented to identify material information.</p> <p>Thresholds for mandatory disclosures in Group A are determined based on the level of assets, revenue, and payroll as of December 31 of the previous year.</p>
5.	<p><b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b></p>	<p>ESG disclosures are required as part of the regular reporting cycle, which includes the annual report and quarterly reports, which purpose is to report any material changes that could impact stakeholders or investment decisions. (External Circular 031 of 2021.)</p> <p>Also, ESG disclosures are necessary when issuers engage in specific transactions, such as issuing thematic bonds (green, social, sustainable, and orange bonds) or Sustainability-Linked Bonds (or loans). These requirements are outlined in External Circular 020 of 2022 and External Circular 008 of 2022, respectively. They mandate detailed reporting on ESG matters, such as reports on fund investments and compliance with ESG KPIs.</p> <p>In addition, under Law No 1328 of 2009, regulated by Decree 3341 of 2009 and included in Decree 2555 of 2010 Article 2.36.8.1.1, financial institutions are required to disclose information related to their social programs aimed at supporting vulnerable sectors.</p>
6.	<p><b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b></p>	<p>Yes.</p> <p>In accordance with the regulations, while ESG disclosures are a part of the periodic information entities are required to disclose, they must be presented as separate reports. Specific guidance on the format and content of these separate reports is detailed in the regulation (eg, External Circular 031 of 2021).</p>
7.	<p><b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b></p>	<p>As most ESG information requirements are mandatory for issuers registered in the Registro Nacional de Valores y Emisores (RNVE), reports including ESG disclosures are typically found on the CFS website. Additionally, these disclosures are available on the respective companies' websites, often under sections dedicated to investor relations or sustainability.</p>
8.	<p><b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b></p>	<p>Yes.</p> <p>Certain Colombian issuers have pioneered ESG disclosure and actively disseminate sustainability information to the market on a voluntary basis, driven by investor expectations and a commitment to transparency.</p> <p>For example, since 2011, Grupo Nutresa, an issuer listed on the RNVE, has been conducting its materiality analysis. This process involves identifying and evaluating the ESG factors that could significantly impact the company's ability to generate value in the short, medium, and long term, helping it prioritise its sustainability efforts.</p> <p>Additionally, various non-public Colombian companies have adopted voluntary sustainability programs and produced reports based on international reporting standards like the Global Reporting Initiative (GRI).</p>

9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>The regulator that oversees compliance with ESG disclosure requirements in Colombia is the CFS. Non-compliance with mandatory ESG disclosures can be classified as an offence against the securities market, primarily because it undermines the transparency of information that must be provided to the market.</p> <p>The penalties for non-compliance can include warnings, monetary fines, or even suspension of activities, depending on the severity and frequency of the violations. Bearing in mind that the regulation is recent, we are not aware of sanctions imposed by the CFS regarding this matter.</p> <p>Issuers which for the first time become part of the Group A category will have a maximum period of two years from the date of category change to transmit the report, through the RNVE. However, there are no established grace periods for non-compliance with mandatory ESG disclosures.</p>
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>Colombian regulators have a latent concern regarding false or misleading ESG information.</p> <p>This matter is addressed in External Circular 005 of 2022 concerning the green taxonomy in Colombia, which defines what constitutes a green investment, thereby increasing transparency and helping to prevent greenwashing.</p> <p>In cases where ESG disclosure is mandatory, such as during securities issuance, presenting false information through the RNVE could trigger an administrative investigation. Such violations may result in penalties ranging from fines to suspensions or other legal actions, depending on the severity and impact of the false information. Consumer claims and potential criminal charges, such as fraud, could also arise.</p> <p>Additionally, for voluntary disclosures, while the immediate legal consequences may not be as severe as in mandatory cases, the reputational damage and potential consumer lawsuits and backlash can still lead to significant consequences for the issuer.</p> <p>Currently, Bill 101/23 is under discussion in the Colombian Congress, aiming to specifically penalise greenwashing practices. This legislation, if passed, would further define and potentially enhance penalties for misleading or false claims, strengthening the regulatory framework against greenwashing.</p>
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	<p>Yes.</p> <p>As mentioned, there is a tiered disclosure system in Colombia under External Circular 031 of 2021, where issuers are classified into Groups A, B, C, and D, each with differing ESG disclosure obligations. Group A typically includes larger companies, requiring the most comprehensive ESG disclosures, while Groups B through D have lighter requirements.</p> <p>In 2023, the Superintendency of Companies issued External Circular 100-000010. This circular sets forth recommendations for companies under its surveillance, specifically those with revenues or assets above COP 40,000 SMLMV or in specific sectors with revenues or assets above COP 30,000 SMLMV, to voluntarily conduct due diligence on sustainability impacts and present an annual sustainability report. These reports are to be compiled in accordance with recognised international reporting standards such as TCFD, SASB, and GRI, and shared with stakeholders. This regulation is expected to transition from voluntary to mandatory in the near future.</p>
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	<p>Yes.</p> <p>Colombia has implemented a system of ESG certification or benchmarks through regulatory measures. The most notable is External Circular 005 of 2022, which establishes the Colombian Green Taxonomy.</p> <p>External Circular 031 of 2021 mandates that Companies in Group A disclose information related to climate issues according to the TCFD, and social and environmental matters in the terms of the SASB guidelines.</p> <p>For Companies in Group B and issuers of green bonds, there is an expectation to utilise an internationally recognised taxonomy such as the Colombian Green Taxonomy, to define permissible activities and assets in their investment portfolios, projects, or issuances.</p> <p>Additionally, External Circular 020 of 2022 dictates that the information for the authorisation of bond issues should reference the international standards set by the International Capital Market Association (ICMA) for thematic bonds.</p>



13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	<p>In the financial sector, the CFS has enacted various regulations, including External Circular 031 of 2021. This circular differentiates the disclosure obligations of issuers based on their size and type. It aims to tailor ESG risk management to the specific needs and capacities of different entities.</p> <p>Additionally, for the real sector, the Superintendency of Companies introduced External Circular 100-000010 in 2023. This regulation advises companies to voluntarily conduct sustainability due diligence and to issue annual sustainability reports, facilitating transparency and stakeholder engagement.</p> <p>These measures are part of Colombia's broader strategy to adopt international best practices for sustainability, enhance corporate transparency, achieve national sustainability objectives, and mitigate ESG risks.</p>
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	<p>Companies listed in Group A under External Circular 031 of 2021 are required to disclose climate-related matters in accordance with the guidelines set by the TCFD. The TCFD framework helps organisations more effectively disclose climate-related financial risks and opportunities, focusing on areas such as the actual and potential impacts of climate change on the organisation, governance, strategy, risk management, and metrics and targets.</p>
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	<p>ESG disclosures in Colombia are partially standardised under External Circular 031 of 2021. This circular mandates disclosures in accordance with frameworks like the TCFD, SASB, and the Colombian Green Taxonomy.</p> <p>However, beyond these specified mandates, companies in Colombia are not bound to follow a uniform set of standards or benchmarks. They have the option to adopt an international standard that best fits their operational context and stakeholder expectations. Among these, the Global Reporting Initiative (GRI) is notably popular.</p>
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	<p>In Colombia, while significant advances have been made in developing ESG criteria, the legal definition of ESG remains somewhat fragmented across various regulations and guidelines. There is no single law that comprehensively defines the full scope of ESG disclosures.</p> <p>External Circular 031 of 2021 primarily focuses on environmental and social disclosures, including climate matters.</p> <p>The Green Taxonomy of Colombia defines what constitutes a green investment within the Colombian context, and classifies economic activities and assets that significantly contribute to environmental objectives. It is aligned with national commitments and policies on environmental sustainability, providing clear criteria for investments to be considered 'green.'</p> <p>External Circular 020 of 2022 issued by the CFS characterises the thematic bonds that may be issued in Colombia according to their specific purpose, as follows:</p> <ol style="list-style-type: none"> <li>1. Green bonds: Refers to securities in which the funds are used exclusively to finance or refinance, either in part or in full, assets or projects that contribute to the achievement of environmental objectives, including climate, biodiversity conservation and ecosystem services;</li> <li>2. Social bonds: Refers to securities in which the resources are used exclusively to finance or refinance, either in part or in full, assets or projects that contribute to the achievement of social objectives, including those of gender equality;</li> <li>3. Sustainable bonds: Refers to securities in which the funds are used exclusively to finance or refinance, either in part or in full, assets or projects that simultaneously contribute to the achievement of social and environmental objectives; and</li> <li>4. Orange bonds: Refers to securities in which the resources are destined exclusively to finance or refinance, either in part or in full, assets or projects to promote the integral development of the creative and cultural industries that comprise those sectors that encompass the creation, production and commercialisation of goods and services based on intangible content of a cultural nature or that generate protection within the framework of copyright.</li> </ol> <p>The CSF 'Código País' survey defines the corporate governance disclosures that issuers are expected to make annually, guiding companies on best practices in corporate governance.</p> <p>Law 1328 of 2009 addresses the social component by mandating financial institutions to disclose their social responsibility programmes.</p> <p>This fragmented approach indicates that while there are specific guidelines and standards for various aspects of ESG, a consolidated and unified ESG disclosure law is not yet in place.</p>

17.	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	<p>The measurement of cross-impacts among ESG goals in Colombia relies on a materiality analysis that determines which aspects of ESG are most pertinent for a given investment or company activity. For instance, an investment in a coal mining company is not deemed ESG compliant based solely on effective gender diversity policies. Although such policies contribute to social and governance goals, they must be balanced against the environmental impact of coal mining operations.</p> <p>Both the materiality analysis and the specific investment approach guide how the different ESG objectives are weighted and integrated to determine if an investment is truly ESG-compliant.</p> <p>To facilitate comprehensive assessments, the guidelines set forth in Colombia's Green Taxonomy are utilised. This taxonomy aids in classifying economic activities that significantly contribute to environmental objectives.</p> <p>Under External Circular 008 of 2022, which addresses the requirements for Sustainability-Linked Bonds, issuers should, among other things: (1) define KPIs, justify their relevance, and outline measurement methods based on recognised standards or frameworks such as ISO14064, SASB, TCFD, or the Colombian Green Taxonomy; and (2) provide regular reports to the market on the performance of KPIs.</p>
18.	<p><b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b></p>	<p>In the 1970s, the focus of Colombian companies was primarily on the production and creation of economic resources. By the 1990s, with the advent of environmental institutionalisation and laws, there was a shift towards enforcing these norms. Over the last 20 years, following the ratification of several international agreements including the Paris Agreement, there has been a significant evolution in business practices.</p> <p>Colombia is actively evolving its regulatory framework to align with international environmental standards and commitments, including compliance with its nationally determined contribution (NDC). This involves extending ESG disclosure requirements beyond the financial sector to include a broad range of industries, thus integrating ESG considerations into corporate decision-making.</p> <p>It is evident that consumers, investors, and government policies have increasingly integrated ESG criteria into market decisions. The strategic benefits perceived by companies are substantial, compelling them to comply with ESG practices, whether voluntarily or mandated.</p> <p>Compliance with ESG criteria has proven to offer not only reputational benefits but also helps companies identify risks and opportunities more effectively. This is advantageous not only for the firms themselves but also enables regulatory authorities to foresee potential crisis events or financial stress scenarios better.</p> <p>Moreover, banks and government initiatives are promoting the creation of businesses that integrate ESG standards into their operations. This support is often materialised through incentives such as lower interest rates or tax exemptions.</p> <p>Additionally, ESG disclosures have enhanced transparency for investors, allowing them clearer insights into the operations and values of firms. This transparency aids in making more informed investment decisions.</p> <p>Furthermore, the implementation of ESG frameworks has strengthened companies' internal control, significantly improving the management of associated ESG risks. These developments enhance overall corporate governance and contribute to long-term sustainability and investor confidence.</p>
19.	<p><b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b></p>	<p>Colombia has been developing a comprehensive ESG framework aimed at supporting sustainable growth. Despite these policies, a gap persists between the regulatory framework and its practical implementation. This gap is partly due to the lack of adequate training within companies and, in some cases, misalignment with public sector objectives.</p> <p>Additionally, the absence of significant ESG crises may reduce the urgency for adopting more rigorous sustainability measures. This situation highlights the need for a proactive rather than reactive approach to enforcing ESG compliance, ensuring that the sector advances toward a sustainable and more inclusive economy.</p> <p>Implementing penalties for non-compliance could enhance enforcement and transparency in line with existing standards, which will need to be continuously updated and adjusted as implementation progresses.</p>

20.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	We anticipate a shift toward more stringent and comprehensive regulatory requirements across various industries. Specifically, we expect to see an expansion of mandatory ESG disclosure regulations and a deeper integration of ESG risks into corporate risk management strategies. This evolution will likely involve more detailed and standardised regulations for assessing and reporting on ESG factors.
21.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Mariana Posse Velásquez is the founding partner of Posse Herrera Ruiz and directs the department of financial law and capital markets.</p> <p>In matters of financial law, she has advised multilateral credit organisations and commercial markets in Europe and the US for financing companies and groups of companies in Colombia from various economic sectors, such as mass consumption, telecoms, mining and oil companies, manufacturing, energy and infrastructure.</p> <p>She has also participated in the design and structuring of transactions, bond issuance, issuance and offer of shares, ownership list of shares and public acquisition offers, among others, both in local and international markets subject to Rule 144A/Reg, S.</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Denmark

### Denmark

1.	<b>Which jurisdiction are you covering?</b>	Denmark
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	According to the Danish Financial Statements Act, certain enterprises must report on non-financial social responsibility, including environmental matters, social and staff matters, and matters relating to human rights, anti-corruption and bribery.
3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	Yes, only large enterprises (enterprises with a balance sheet total of DKK 156m, revenue of DKK 313m and an average of 250 full-time employees during the financial year (following the implementation of CSRD, expected later in 2024, the thresholds for the balance sheet total and revenue will be increased to DKK 195m and DKK 391m, respectively) and listed companies are required to report on non-financial social responsibility according to the Danish Financial Statements Act.
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	Only large enterprises and listed companies are required to report on non-financial social responsibility. Please refer to the answer to question 3. A subsidiary forming part of a group is not required to disclose such information if the parent has submitted such a report.
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	ESG disclosures are required to be made on a continuous annual reporting basis.
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	ESG disclosures must be a supplement to the management commentary of the annual report. If the enterprise discloses non-financial social responsibility information according to international guidelines or standards, such as the UN Global Compact, the enterprise can use the report prepared according to international guidelines or standards as ESG disclosures in accordance with the Danish Financial Statements Act.
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	The annual report must be uploaded to the website of the enterprise.

8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	N/A
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	The Danish Business Authority is the relevant Danish regulator.
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>Enterprises can be penalised with fines for not fulfilling the requirements in the Danish Financial Statements Act in relation to non-financial social responsibility reporting. In very extreme cases, it may potentially result in the compulsory dissolution of the company. If ESG disclosures are not mandatory, enterprises would not be penalised by fines for not fulfilling the reporting requirements.</p> <p>The legislative proposal for the implementation of the CSRD also provides for penalties for members of the governing body of the company in case of non-compliance with the reporting obligations. Such persons may receive a fine if they fail to provide a sustainability report with a sustainability reporting statement, or if they provide a sustainability report with a sustainability reporting statement from an unqualified person.</p>
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	No. However, the future European Corporate Sustainability Due Diligence Directive and the CSRD will also be implemented in Danish law and then be applicable to Danish enterprises. The legislative process is expected to be concluded over the course of the next one or two months and the amendments to the relevant Danish legislation are expected to enter into force on 1 June 2024.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	<p>Currently no system of ESG certification or benchmarks needs to be met but the assurance requirements of sustainability reporting included in the legislative proposal for the implementation of the CSRD are aligned with the requirements set out in the CSRD. The Danish transposition includes the option for independent assurance services providers to become accredited to undertake the assurance of sustainability information. The Danish government is currently preparing additional legislation in this respect, which is currently expected to be presented in autumn 2024.</p> <p>Companies that are subject to the new sustainability reporting requirements from the financial year 2024 must appoint a sustainability auditor as the assurance provider at a general meeting. According to the legislative proposal it is possible to appoint a sustainability auditor already at the upcoming annual general meetings in spring 2024. This applies even though the act has not yet been adopted and has not entered into force at the time of the general meeting.</p> <p>According to the legislative proposal the sustainability auditor must be registered with the Danish Business Authority no later than 1 October 2024.</p> <p>It is not a requirement that the same auditor who reports on the financial statements also provides an assurance on the sustainability reporting.</p>
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	Enterprises must supplement the management commentary of the annual report with a non-financial social responsibility report (CSR report). The report must include information on environmental matters, including the enterprise's activities to reduce the climate impact of its activities, social and staff matters, and matters relating to human rights, anti-corruption and bribery. The information is intended to ensure that the enterprise's development, situation and profit or loss, and how the enterprise's activities affect the areas mentioned in the second sentence are understood. The report must include information on the enterprise's CSR policies in respect of the areas mentioned in the subsection, including information on any CSR standards, guidelines or principles applied by the enterprise. If the enterprise has decided not to have a policy in one or more areas, the report must explain why in a clear manner. For each policy area, the following information must be disclosed:

		<ol style="list-style-type: none"> <li>1. the content of the enterprise's CSR policies;</li> <li>2. how the enterprise turns its CSR policies into action, including any relevant systems or procedures;</li> <li>3. due diligence processes if any such processes are applied by the enterprise; and</li> <li>4. the enterprise's assessment of the results achieved as a result of its CSR activities during the financial year and any expectations for its future activities.</li> </ol>
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	Yes, enterprises must include information on how their activities impact the climate.
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	Enterprises have latitude in terms of the format, visualisation and so on of their report. However, the requirements in the Danish Financial Statements Act in relation to the content of the report must be fulfilled.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	Yes, the scope is defined in the Danish Financial Statements Act, and the Danish Business Authority has also provided guidelines on the requirements.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	There is no such specific rule and/or established practice in this respect.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	The answer lies somewhere in the middle, as both investors and other stakeholders have an increasing focus on ESG. However, companies also experience challenges with keeping up with the increased legal requirements.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	Generally, there is a wish for more standardised and transparent data.

20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	<p>ESG disclosure requirements fall under the general rules for prospectus disclosure pursuant to the Prospectus Regulation, as well as the European Securities and Markets Authority's (ESMA)'s guidelines and recommendations.</p> <p>ESG disclosure is more and more viewed as reaching the materiality threshold for inclusion in prospectuses as a result of:</p> <ol style="list-style-type: none"> <li>1. ESMA's statement to national competent authorities from July 2023 and in anticipation of future regulation, including as a result of the potential adoption of the Listing Act;</li> <li>2. an increased focus on such disclosures by the regulators, for instance the Danish FSA has issued a statement that if ESG disclosure is included in marketing materials it is viewed as material and such information should also be included in the prospectus; and</li> <li>3. investor expectations.</li> </ol> <p>With increased disclosure requirements in the annual reports, we expect that a similar level of disclosure of material will be included in prospectuses.</p>
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	<p>There is an increased focus on ensuring that certain ESG-related statements are not misleading. The DFSA has, for this purpose, established a department specialising in ESG-related matters and has indicated it could request supporting documentation for confirmation of certain statements or goals to avoid greenwashing.</p> <p>The Danish FSA has conducted a thematic review of sustainability disclosures in prospectuses and key investor information documents (KIIDs) for a number of funds that have sustainable investments as an objective. This review showed that certain funds had provided overly generic disclosures on sustainability issues: the Danish FSA has issued orders to these management companies to take remedial action.</p>
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	<p>To our knowledge there have not been any such claims in connection with securities issues in Denmark.</p>
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	<p>Please refer to the answer to question 12.</p>
24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	<p>We have seen that companies oversee governance of ESG matters either by designated ESG/sustainability board committees or in the audit committees.</p>

25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<p>The ESRS will apply to Danish companies, and we expect that most Danish companies will follow the relevant standards for the upcoming reporting in accordance with the CSRD.</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>Danish companies are in the process of preparing for the upcoming comprehensive disclosure requirements as a result of the CSRD.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>Yes, in relation to climate-related disclosure mentioned in the answer to question 14, it is also a requirement to set climate-related targets.</p>
28.	<p><b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b></p>	<p>Please refer to the answer to question 27.</p>
29.	<p><b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b></p>	<p>Danish enterprises focus on the future European Corporate Sustainability Due Diligence Directive and CSRD, and how these will impact enterprises.</p>
30.	<p><b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b></p>	<p>Gorrissen Federspiel:  Rikke Schiøtt Petersen, partner, Capital Markets, M&amp;A, Corporate  Emily Nordin, practice area counsel, Capital Markets, M&amp;A, Corporate  Yas Farah Bahsh Akbatani, associate, Capital Markets, M&amp;A, Corporate</p>



# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Finland

### Finland

1.	<b>Which jurisdiction are you covering?</b>	Finland
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>Yes. EU law requires certain companies to disclose information on the way they operate and manage social and environmental challenges under the Corporate Sustainability Reporting Directive (2022/2464/EU) (CSRD). The EU directive has been implemented into Finnish national law mainly in chapter 7 of the Finnish Accounting Act (1336/1997, as amended) (kirjanpitolaki).</p> <p>In addition, the Taxonomy Regulation (EU 2020/852) and Regulation (EU 2019/2088) on sustainability-related disclosures in the financial services sector (SFDR) impose additional mandatory disclosure obligations.</p> <p>Compared to 2022, we have changed references to the EU Accounting Directive (2013/34/EU) and the EU Non-Financial Reporting Directive (2014/95/EU) (NFRD) to the CSRD. The CSRD amended, among others, the EU Accounting Directive, EU laws concerning audits (Regulation (EU) No 537/2014 and Directive 2006/43/EC) and the Transparency Directive (2004/109/EC) and will gradually replace the NFRD.</p>
3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	<p>EU rules on corporate sustainability reporting currently apply to public interest entities (PIEs) that are large undertakings whose average number of employees during the financial year has exceeded 500.</p> <p>As an update to 2022: In addition, the reporting rules apply to parent undertakings of large groups with an average of 500 employees in the group during the financial year. These companies shall begin to report in accordance with the CSRD requirements for the financial year 2024 with reports to be published in 2025.</p> <p>As an update to 2022: As a national expansion to the scope of the CSRD requirements, reporting rules shall apply to comparable cooperative societies, pension foundations and pension funds in Finland. This is to ensure that the published information is consistent regardless of the legal form of business activities.</p> <p>Pursuant to the Finnish Accounting Act, PIEs include:</p> <ol style="list-style-type: none"> <li>1. entities whose shares, bonds or other securities are admitted to trading on a regulated market;</li> <li>2. credit institutions; and</li> <li>3. insurance companies.</li> </ol> <p>Further, pursuant to the Finnish Accounting Act, a large undertaking is defined as a reporting entity exceeding at least two of the following three thresholds on the balance sheet date of the last financial year and the one immediately preceding it:</p>

		<p>1. total assets of €20m;</p> <p>2. net turnover of €40m; and</p> <p>3. average number of employees during the financial year is 250.</p> <p>As an update to 2022: Please see question 11 regarding the tiered disclosure system.</p>
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	<p>Pursuant to the Finnish Accounting Act, if the reporting entity is a parent undertaking of a group located in the European Economic Area, the parent undertaking shall issue a statement regarding the group. Subsidiaries whose information is included in the parent undertaking's statement do not need to issue a separate statement. As an update to 2022: This exception, however, does not apply to a subsidiary that is a large listed undertaking.</p> <p>As an update to 2022, the following has been added: Regarding the limited disclosure obligations, pursuant to the Finnish Accounting Act, small and medium-sized listed companies that are subject to the CSRD may prepare a limited sustainability report.</p> <p>Compared to 2022, we added 'located in the EEA'.</p>
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	<p>ESG disclosures shall be presented in connection with the annual financial statements. As an update to 2022: The disclosures shall be in a digital format.</p>
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>ESG disclosures are a separate component of the management report required in connection with the annual financial statements.</p> <p>As an update to 2022: The sustainability report must be published in digital form. As a consequence of the implementation of the CSRD, the sustainability report can no longer be a separate document from the management report, and it must be published in digital form.</p> <p>The following has been removed from the answer to the 2022 survey due to the implementation of the CSRD: 'However, the reporting entity may disclose the information in a report separate from the management report, provided that it is made public at the same time as the management report. Alternatively, the separate report may be published on the reporting entity's website within six months from the balance sheet date, provided that the management report includes a reference to this separate report to be published later on the website.'</p>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>The disclosure is a part of the management report and is made available on the reporting entity's website.</p> <p>As an update to 2022: The entity must submit the sustainability report together with the annual financial statements to the Finnish Patent and Registration Office. The disclosure must be in the Swedish or Finnish language.</p>
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>Yes. Despite the mandatory disclosure obligation only applying to entities of a certain type and size, some entities that are not subject to the legal requirement for ESG disclosure have chosen to disclose sustainability reports.</p> <p>No changes to the answer of 2022.</p>

9.	<p><b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b></p>	<p>The Finnish Financial Supervisory Authority (the FIN-FSA) supervises compliance with the Finnish Accounting Act by certain entities under its supervision, including the PIEs referred to in the answer to question 3 (entities whose shares, bonds or other securities are admitted to trading on a regulated market, credit institutions and insurance companies).</p> <p>Compared to 2022, the following has been added: The Finnish legislator did not introduce any specific penal sanctions when implementing the CSRD into Finnish law. Non-compliance with mandatory ESG disclosures is limited to administrative sanctions, namely to the appropriate filing of the report: The wilful or grossly negligent failure to file the management report for registration with the Finnish Trade Register may be punishable by a fine.</p> <p>Compared to 2022, the following has been removed: ‘Further, the auditor of the reporting entity shall check whether the ESG disclosures required under the Finnish Bookkeeping Act have been provided.’</p>
10.	<p><b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b></p>	<p>Disclosing false or misleading ESG information is not, in and of itself, subject to specific penalties.</p> <p>As an update to 2022: However, the Finnish Securities Market Act (46/2012, as amended) (arvopaperimarkkinalaki) sets out the general prohibition to give false or misleading information, according to which it is prohibited to provide false or misleading information in the marketing and exchange of securities or other financial instruments in business as well as upon fulfilling the disclosure obligation in accordance with the act (for example, financial disclosures, including the sustainability report in the management report). Intentional or grossly negligent breaches of such prohibition are also criminalised under the Finnish Criminal Code (39/1889, as amended) (rikoslaki) and could lead to fines or imprisonment up to two years.</p> <p>Further, the EU Market Abuse Regulation (MAR) ((EU) No 596/2014) prohibits market manipulation, and pursuant to the Finnish Criminal Code, disseminating false or misleading information concerning a financial instrument (eg, shares or bonds) can constitute the criminal offence of market manipulation, which is punishable by fine or imprisonment. Furthermore, the Finnish Financial Supervisory Authority may impose pecuniary administrative penalties for market manipulation.</p> <p>As an update to 2022: Pursuant to the Finnish Accounting Act, the board of directors and the CEO of the companies subject to the CSRD are collectively responsible for sustainability reporting the same way as they are responsible for the financial statements under the general duty of care. However, the liability for damages of the board of directors and the CEO is determined severally for each person and in accordance with general doctrines governed by the Finnish Companies Act (624/2006, as amended) (osakeyhtiölaki).</p> <p>As an update to 2022: However, enforcers may challenge, for instance, issuers’ disclosed commitments to reach targets related to climate risks in order to identify and prevent potential greenwashing. Enforcers may require further explanations to be disclosed and/or supporting evidence to be provided to ensure the consistency and coherence of the steps planned, actions taken and different milestones. The FIN-FSA has stated that it will pay more attention in its IFRS supervision to the consistency of financial statements and ESG claims in the management report.</p> <p>As an update to 2022: The above-mentioned general prohibitions set out in the Finnish Securities Market Act and MAR apply regardless of whether the ESG disclosure is mandatory or voluntary, and, therefore, the penalties for false or misleading ESG disclosures are mainly the same in both scenarios.</p> <p>As an update to 2022: The main difference in penalties for mandatory or voluntary disclosure relates to the requirement set out in the Finnish Accounting Act, under which companies subject to the CSRD are required to submit ESG reports as part of their management report to the Finnish Patent and Registration Office, as well as to the requirement set out in the Finnish Auditing Act (1141/2015, as amended) (in Finnish: tilintarkastuslaki), under which the statutory auditor must provide assurance of the reported sustainability information. These requirements do not apply to companies that are not subject to the CSRD, and thus the sanctions related to the failure to submit an ESG report to the Finnish Patent and Registration Office under the Finnish Accounting Act or the failure in providing such assurance under the Finnish Auditing Act do not apply either.</p>

		As an update to 2022: The above-mentioned assurance of reported sustainability information is a new requirement under the CSRD. The European Commission has adopted a progressive approach, where the initial approach is 'limited assurance'. The end goal is to progress to 'reasonable assurance' in the longer term. Under Finnish law, only statutory auditors with required special qualifications are eligible for providing such assurances.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	<p>The following answer has been changed in its entirety from 2022:</p> <p>The remaining requirements of the CSRD will come into force in the following order:</p> <p>As of 1 January 2025, rules on reporting apply to large listed and unlisted companies and consolidated groups that meet at least two of the following criteria set out in the Finnish Accounting Act:</p> <ol style="list-style-type: none"> <li>1. more than 250 employees;</li> <li>2. revenue of €20m; or</li> <li>3. more than €40m in turnover.</li> </ol> <p>As of 1 January 2026, rules on reporting apply to listed small and medium-sized undertakings except micro-companies. However, small and medium-sized undertakings that are listed on a stock exchange may prepare their management report without a sustainability report for financial years starting before 1 January 2028, provided that the management report states the reason for this deviation.</p> <p>In addition, ESG disclosures are linked to CS3D, which will impose more requirements in the forthcoming years. The CS3D introduces a corporate due diligence duty to identify, prevent, stop, mitigate and account for negative environmental and human rights impacts.</p>
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	<p>There is no certification or benchmark that the authorities would grant, whereas private entities, such as Nasdaq Helsinki, may grant certifications.</p> <p>However, entities within the scope of the CSRD must disclose how and to what extent their activities are associated with economic activities that qualify as environmentally sustainable under the EU Taxonomy Regulation ((EU) 2020/852). The EU Taxonomy Regulation defines an activity to be environmentally sustainable if it: (1) contributes substantially to one of six defined environmental objectives; (2) does not significantly harm any of the environmental objectives; (3) complies with a series of minimum social safeguards; and (4) complies with the scientifically based technical screening criteria established by the European Commission.</p> <p>As an update to 2022: In addition, Delegated Regulation (2023/2772/EU), issued under the CSRD, contains the first package of European Reporting Standards (ESRS) which specify the sustainability-related information that companies will have to disclose in the format specified in the ESRS. The ESRS have five specific standards for environmental information (climate change, pollution, water and marine sources, biodiversity and ecosystems, resource use and circular economy), four standards for social information (own workforce, workers in the value chain, affected communities, consumers and end-users) and one standard on governance (business conduct).</p>
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	<p>As a short description, the disclosure must contain, among other things, the following information, taking into account the company's own operations and value chain, including its products and services, business relationships and supply chain:</p> <ol style="list-style-type: none"> <li>1. how the reporting entity handles environmental matters, social and employee-related matters, respect for human rights and anti-corruption and anti-bribery matters ('ESG Matters');</li> <li>2. risks and opportunities for the business model and strategy arising from ESG Matters;</li> <li>3. financing and investment plans and other plans to ensure that its strategy and business model are compatible with the transition to a sustainable economy, and with the limiting of global warming to 1.5°C in line with the Paris Agreement and with the objective of achieving climate neutrality by 2050;</li> <li>4. time-bound and outcome-oriented targets concerning the ESG Matters, and progress towards them;</li> </ol>

		<p>5. sustainability-related expertise and functions of the board of directors of the company and incentive schemes related to ESG Matters;</p> <p>6. procedures for taking ESG Matters into account, including a description of the most significant actual or potential adverse impacts related to the company's own operations and its value chain, and a description on its policies and actions to prevent, mitigate and remediate these impacts; and</p> <p>7. a description of the principal risks related to ESG Matters, and an explanation of how the reporting entity manages those risks, and non-financial KPIs relevant to the reporting entity's business.</p> <p>As an update to 2022: The ESG disclosures must also include information on the taxonomy eligibility of the company's activities as set out in the EU Taxonomy Regulation. Non-financial companies must disclose the following KPIs: (1) the proportion of their turnover derived from products or services associated with taxonomy-aligned economic activities; (2) the proportion of their capital expenditure related to assets or processes associated with taxonomy aligned economic activities; and (3) the proportion of their operating expenditure related to assets or processes associated with taxonomy-aligned economic activities.</p> <p>Compared to 2022, we have added items 2–6. We have also shortened our answer and removed the following: 'When preparing the disclosure, the reporting entity may rely on national, EU or international frameworks. If it does so, it shall specify which frameworks it has relied upon.'</p>
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	<p>Yes, there is a specific emphasis, as the environmental objectives defined under the EU Taxonomy Regulation include climate change mitigation and adaptation. Other objectives are the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control, and the protection and restoration of biodiversity and ecosystems.</p> <p>As an update to 2022: One of the standards of the ESRS is a climate change standard, referenced as ESRS E1, which requires companies to disclose whether they have a transition plan for climate change mitigation, including GHG reduction targets, as well as an explanation of how the company's targets are compatible with the limiting of global warming to 1.5°C in line with the Paris Agreement. Climate change is the only ESG standard for which a reporting company has to provide an explanation even if it has determined that the issue is not material to it. The company must include a detailed explanation in its report describing how and why it has reached that conclusion and omitted information on climate change, which underlines the importance of this standard.</p> <p>As an update to 2022: The Finnish Accounting Act requires that the sustainability report must include a summary description of financing and investment plans and other plans to ensure that the objective of the Paris Agreement of limiting global warming and achieving climate neutrality is met.</p> <p>Compared to 2022, we have removed the reference to the European Commission's guidelines.</p>
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	<p>The following answer has been changed in its entirety from 2022:</p> <p>ESG disclosures are standardised as the contents of reporting is governed by Chapter 7 of the Finnish Accounting Act and the ESRS. In addition, ESG disclosures are more standardised as the reported information is required to be prepared in a digital XHTML format.</p>
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	<p>The following answer has been changed in its entirety from 2022:</p> <p>Yes, Chapter 7 of the Finnish Accounting Act contains provisions regarding guidance on ESG disclosures. The ESRS sets out more concrete contents of the ESG disclosures.</p>

17.	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	<p>Under the EU Taxonomy Regulation, one of the three preconditions for an activity to be deemed sustainable is the so-called ‘do no significant harm’ principle. This means that an activity may be treated as sustainable only if it does not cause significant harm to any of the environmental objectives set out in the EU Taxonomy Regulation.</p> <p>As an update to 2022: The CSRD and ESRS set out the information that is required to be disclosed in the sustainability report, but do not as such give a statement on whether an entity is ‘ESG compliant’, encompassing all of the environmental, social and governance factors. There are third party organisations that give out ESG ratings that measure a company’s ESG performance. The EU is going to start regulating these actors and a regulation on the transparency and integrity of ESG rating activities is underway. The regulation sets out requirements on the governance of these actors and on the transparency of the methodologies that they use in giving out ratings. The regulation was approved by the European Parliament on 24 April 2024 and still needs to be formally approved by the European Council. Once the text is formally approved by the Council, the new regulation enters into force on the 20th day following that of its publication in the Official Journal of the EU. It shall apply from 18 months after the entry into force.</p> <p>Further, compared to 2022, we have changed the mention of ‘any other sustainable activity’ to ‘any of the environmental objectives set out in the EU Taxonomy Regulation’.</p>
18.	<p><b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b></p>	<p>The answer lies somewhere in the middle. As an update to 2022: ESG disclosure regulation leads to more extensive reporting and requires companies to have expertise in ESG-related matters. However, the companies that are subject to the CSRD are required to disclose standardised information, and the reports must be published in a digital XHTML format. Standardised disclosure requirements may have a positive impact to the value of ESG reports to investors, as the reported information is more transparent and comparable than before.</p> <p>Compared to 2022, we have removed the following: ‘The compliance burden can be argued to be limited because reporting companies are left with a fairly wide margin of discretion regarding the scope of information to be disclosed – however, the lack of comparability resulting from divergent reporting formats adversely impacts [the value of ESG reports to investors].’</p>
19.	<p><b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b></p>	<p>There seems to be no one single right answer. Some companies find value in ESG reporting, whereas others consider it to be an unnecessary burden.</p> <p>As an update to 2022: However, in the future, increased regulation will require companies to be more aware of ESG disclosures. However, companies with a more pronounced sustainability and ESG agenda perhaps more typically would wish to see at least a more level playing field for a broader range of companies and perhaps clearer and more transparent regulation across the board.</p>
20.	<p><b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b></p>	<p>At the moment there are no specific mandatory ESG disclosure requirements in connection with securities issues, but if sustainability/ESG considerations are relevant for the issue in question, the Prospectus Regulation (PR) and the guidelines issued by the European Securities and Markets Authority (ESMA) in its public statement on sustainability disclosure in prospectuses on 11 July 2023 (‘ESMA Sustainability Disclosure Statement’) must be followed.</p> <p>The PR sets out the test for what information is to be included in the prospectus. According to Article 6(1) of the PR:</p> <p>‘... a prospectus shall contain the necessary information which is material to an investor for making an informed assessment of:</p> <ul style="list-style-type: none"> <li>(a) the assets and liabilities, profits and losses, financial position, and prospects of the issuer and any guarantor;</li> <li>(b) the rights attaching to the securities; and</li> <li>(c) the reasons for the issuance and its impact on the issuer.’</li> </ul>

	<p>Sustainability-related disclosures in prospectuses and particularly as regards risk factors are mentioned in Recital 54 of the PR, which states that '[...] environmental, social and governance circumstances can also constitute specific and material risks for the issuer and its securities and, in that case, should be disclosed'. Accordingly, issuers should consider sustainability-related matters when preparing prospectuses to the extent that the effects of those matters are material. The requirement is context-specific, so that the type of sustainability information that is required to satisfy the test in Article 6(1) will depend on the materiality of the information to an investor, the nature of the issuer, the circumstances of the issuer and the type of securities in question.</p> <p>The ESMA Sustainability Disclosure Statement underlines the relevant requirements concerning both equity and non-equity securities. ESMA expects that material sustainability-related disclosure is included in equity and non-equity prospectuses as well as final terms in accordance with Article 6(1) of the PR.</p> <p>In its public statement, ESMA recommends taking the following points into consideration:</p> <ol style="list-style-type: none"> <li>1. issuers should provide the basis for any statements concerning their sustainability profile or that of the securities they issue;</li> <li>2. while an issuer might state in a risk factor that its sustainability expectations may differ from those of an investor or that the notion of sustainability may change according to scientific progress, relevant legislation and/or investor preferences, ESMA considers that sustainability-related disclaimers should not be used to excuse non-performance of factors over which the issuer exercises control; and</li> <li>3. the comprehensibility of any sustainability disclosure should be ensured by complying with the requirements set out in Article 37(1) (Criteria for the scrutiny of the comprehensibility of the information contained in the prospectus) of Commission delegated regulation 2019/980 supplementing the PR ('Regulation regarding format, content, etc. of Prospectus'). In particular, the prospectus should clearly define the components of mathematical formulas and, where applicable, clearly describe the product structure. Any technical terminology relating to sustainability should also be adequately defined.</li> </ol> <p>ESMA states that to the extent that sustainability-related disclosures published in an issuer's non-financial reporting in accordance with the Non-Financial Reporting Directive and the sustainability reporting under the CSRD are material in the context of Article 6(1) of the PR, issuers should include those disclosures in equity prospectuses.</p> <p>Regarding prospectuses relating to non-equity securities, ESMA expects prospectuses and final terms relating to non-equity securities <i>advertised as taking into account</i> a specific ESG component or pursuing ESG objectives, such as 'use of proceeds' bonds and 'sustainability-linked' bonds, to include the disclosure required pursuant to Article 6(1) PR and the relevant annexes to the Regulation regarding format, content, etc. of Prospectus (Annexes 14 and 19). The necessary disclosure will depend on the characteristics of the non-equity securities in question so that issuers and their advisers should consult with ESMA and national competent authorities (NCAs) if there is any uncertainty regarding the disclosure requirements, as these will vary based on the specific attributes of the non-equity securities being issued.</p> <p>The following guidelines are limited to non-equity securities that are specifically advertised as having an ESG component or pursuing ESG objectives.</p> <ul style="list-style-type: none"> <li>• For 'use of proceeds' bonds, ESMA expects that issuers will disclose details on how the funds will be utilised and managed, as well as data that allows investors to evaluate the sustainability goals guiding the project evaluation and selection process. Prospectuses might, for instance, present a condensed version of the key details from their 'green bond framework' or cite the relevant laws that define the sustainability criteria for the projects, if such legislation exists.</li> <li>• Regarding prospectuses concerning sustainability-linked bonds, ESMA expects information about the selected key performance indicator(s) (KPIs), the sustainability performance target(s) (SPTs) and information enabling investors to assess the consistency of the KPIs and its associated SPTs with the relevant sector-specific science-based targets (if any) and the issuer's sustainability strategy.</li> <li>• ESMA advises issuers of 'use of proceeds' or 'sustainability-linked' bonds to specify in their prospectus if they plan to release post-issuance information. This disclosure should clarify the type of information that will be disclosed and where it can be found. For instance, an issuer might provide the web address where investors can view the post-issuance information.</li> </ul>
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		<p>ESMA and NCAs have observed that some issuers include sustainability-related disclosures in their advertisements that is not included in their prospectus. If this disclosure is material under Article 6(1) of the PR, it should first be included in their prospectus. For example, this could be via a supplement to the prospectus. The importance of the sustainability-related disclosure in the advertisement for investors is an indicator of its materiality. This also ensures the consistency of the information in the advertisement with the information in the prospectus, as required under articles 22(3) and (4) of the PR.</p> <p>The EU is also considering the introduction of ESG disclosure requirements for the prospectuses of non-equity securities that are marketed based on ESG factors. The Listing Act Initiative proposes this inclusion along with the integration of CSRD reporting in equity prospectuses. The Listing Act is expected to enter into force in summer 2024 with the changes becoming applicable 15 months thereafter.</p> <p>The European Supervisory Authorities (ESAs) have assessed risk areas and causes of greenwashing in the sustainable investment value chain and have published their Progress Reports on Greenwashing in the financial sector in June 2023. The ESAs will publish final greenwashing reports in May 2024 and will consider final recommendations, including on possible changes to the EU regulatory framework.</p>
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	<p>The FIN-FSA has not directly approached ESG disclosures in connection with securities issues. In its supervision, the FIN-FSA has emphasised ESG risks as part of the long-term trends in the operating environment, but this cannot be considered the main focus. FIN-FSA has referred to the guidance published by ESMA on sustainability considerations to be considered in the preparation of prospectuses. For further information, please refer to the answer provided above.</p>
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	<p>On the date hereof, we are not aware of any claims in our jurisdiction brought due to ESG disclosures in connection with securities issues.</p>
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	<p>The CSRD, or more specifically, ESRS annexed to the Commission Delegated Regulation (EU) 2023/2772, issued under the CSRD, regulate ESG disclosure requirements in the EU. The ESRS specify the information that companies must disclose in their sustainability report, which under the CSRD must be included in the company's management report, regarding their ESG impacts, risks, and opportunities. The CSRD also introduces a comprehensive supervision and assurance regime for sustainability reporting. The sustainability report is required to be audited by an accredited, independent auditor or certifier who must ensure that the sustainability information provided complies with the ESRS.</p> <p>According to CSRD, large undertakings and small and medium-sized undertakings, except micro undertakings, which are PIEs, shall include a sustainability report in the company's management report. The directive enters into force gradually. From 1 January 2024, large public interest companies are subject to sustainability reporting requirements. These companies must prepare their first reports in 2025. The scope of companies subject to reporting is extended in the following years.</p> <p>The sustainability report in the company's management report shall be verified by an auditor approved as a sustainability reporting auditor or by an audit firm registered as a sustainability audit firm. The statutory auditor or the principal statutory auditor of the audit firm must have a specific qualification as a sustainability reporting auditor. Sufficient knowledge can be acquired by attending a professional training course provided by a professional association of auditors or another body, which includes at least 30 hours of study on sustainability reporting and assurance. Such training is for example offered by the organisation of Finnish auditors (<i>Suomen Tilintarkastajat ry</i>). However, after 1 January 2026, only those who have the training and experience in sustainability reporting and certification as defined by law and who have also passed a qualification exam on the subject can be approved as sustainability reporting auditors.</p>



		<p>The requirements for assurance are not as stringent as those for the audit of financial statements. The purpose is to provide the reader of a sustainability report with only 'limited assurance' on the accuracy of the reported information, whereas for financial statements 'reasonable assurance' is required (however, the possible requirement to provide reasonable assurance for sustainability reports will be revisited by the European Commission in 2028, if providing reasonable assurance is deemed feasible). The company's general meeting shall appoint the sustainability auditor. The same auditor and audit firm can act both as the sustainability auditor as well as the financial auditor.</p> <p>The Finnish Auditing Act, implementing the CSRD, mandates that the sustainability auditor must issue for each financial year a dated and signed sustainability reporting assurance report, which 1) identifies the sustainability reporting company that is the subject of the sustainability report; and 2) a description of the scope of the assurance, identifying the sustainability assurance standards to which the assurance has been performed. In the sustainability assurance report the auditor has to include a statement on whether the requirements of the Finnish Accounting Act implementing CSRD, the ESRS and the requirements of article 8 of the Taxonomy Regulation have been complied with.</p> <p>Many companies in Finland have already had their sustainability disclosures verified on a voluntary basis for example according to the standards set out by the Global Reporting Initiative. These voluntary sustainability disclosures have been verified mostly by the four big consulting firms (KPMG, Ernst &amp; Young, Deloitte and PricewaterhouseCoopers), and these entities continue to have a big presence in the shift to mandatory sustainability reporting assurance.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>In accordance with the CSRD, audit committees of the board of directors should be assigned certain tasks related to sustainability reporting and sustainability reporting assurance. Pursuant to the Finnish Companies Act, the monitoring and assessment of sustainability reporting and its assurance is mandated for the boards of directors of public interest entities. If the public interest entity has established an audit committee, it is tasked with presenting to the board of directors the 1) results of the audit and the sustainability reporting assurance; 2) its view on how the audit and the sustainability reporting assurance has enhanced the trustworthiness of the disclosure; and 3) an assessment of how the audit committee has contributed to the integrity of sustainability reporting and to describe its role in the assurance process. The audit committee is responsible for monitoring the sustainability reporting process and related mandatory electronic reporting process, the process to identify the information reported in accordance with ESRS, the effectiveness of the internal quality control and risk management systems and the internal audit of the sustainability reporting as well as the implementation of the audit and sustainability reporting assurance.</p> <p>In addition, the Finnish Securities Market Association is expected to start the work to update the Finnish Corporate Governance Code with regard to sustainability issues during 2024.</p> <p>ESG indicators are used in the remuneration schemes of many listed companies. In 2022, according to a study conducted by Ernst &amp; Young, the share of ESG metrics in STI programs was 17 per cent, and in LTI programs, it was a slightly smaller 12 per cent, in Finnish large cap and mid-cap companies (€1 billion market capitalisation and €150m market capitalisation, respectively). In all the large and mid-cap companies assessed in the study, 20 per cent of companies had ESG-indicators in place in their remuneration schemes. Another study by Deloitte showed that in 2022, 42 per cent of large companies incorporated ESG metrics into the annual bonus while in long-term incentive plans the figure is 16 per cent.</p> <p>With the introduction of mandatory sustainability reporting, the oversight of ESG reporting is under the responsibility of the board of directors. The board of directors must sign a statement to the effect that the sustainability report has been prepared in compliance with ESRS and article 8 of the Taxonomy Regulation.</p> <p>The expected entry into force of CS3D will set further obligations on large Finnish companies and certain franchising companies within the scope of the Directive in particular with regard to their corporate sustainability policies and risk management systems, climate transition plan and chain of activities. Companies may need to reassess their strategy to make it compatible with the transition to a sustainable economy and limiting global warming to 1.5°C in line with the Paris Agreement, in light of the requirements of the CS3D. Preparations for the national implementation of CS3D could be underway as early as autumn 2024.</p>

<p>25.</p>	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p><b>The sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June</b></p> <p>Implementation of the sustainability disclosure standards of the ISSB is not legally required. However, the recitals of the CSRD state that the EU standards should take account of any sustainability reporting standards developed under the auspices of the IFRS Foundation. According to CSRD, to avoid unnecessary regulatory fragmentation, union sustainability reporting standards should contribute to the process of harmonisation of sustainability reporting standards at global level, by supporting the work of the ISSB.</p> <p>Companies falling into the scope of the CSRD will have to follow the ESRS. As the standards published by the ISSB are not as such interchangeable with the ESRS and are non-binding, companies can only utilise them to support their work on the legally required sustainability disclosures. When using for example the standards of the ISSB, the disclosures shall still meet the requirements for qualitative characteristics of information of the ESRS. However, certain companies that are not yet covered by the CSRD may opt to utilise the ISSB standards to, for example, prepare for the scope of the CSRD expanding in the following years or to have data at hand related to their sustainability impacts.</p> <p>The European Financial Reporting Advisory Group (EFRAG) has proclaimed that complying with the ESRS is in line with the ISSB requirements in relation to climate change. Additionally, the European Commission, EFRAG and the ISSB are working on interoperability guidance material regarding climate-related disclosure requirements that helps entities navigate between the standards set out in the ESRS and the ISSB's standards from a practical point of view. As a result, if the company is under the scope of the CSRD and ESRS, at least disclosures related to climate change should be automatically in line with the ISSB, with further guidance on interoperability inbound.</p> <p>The ISSB standards do not enter into force as such but are adopted by countries at national level. Finland has not yet made the ISSB standards nationally binding. Market pressure and the impact of value chain reporting are expected to encourage voluntary adoption at a large scale. The International Organisation of Securities Commissions (IOSCO) is currently preparing its own recommendation on the implementation of the standards.</p> <p><b>The first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which companies must report under the EU Corporate Sustainability Reporting Directive (CSRD))</b></p> <p>It is mandatory for companies that fall within the scope of the CSRD to assess double materiality under the CSRD and the ESRS and thus identify which parts of the ESRS they must disclose information under. Only reporting of required information under ESRS 2 (General Disclosure) is mandatory for all companies that fall under the scope of the CSRD. However, if a company views climate change as not material for its activities and therefore does not include it in its sustainability report, it must explain why this is the case.</p> <p>In our view, especially large companies in Finland have started preparing for sustainability reporting well in advance, some by preparing 'practice reports'. According to the information received by the FIN-FSA, sustainability reporting implementation projects have started or implementation plans are well advanced.</p> <p>According to the Survey of Large Corporations 2024 conducted by OP Corporate Bank, 56 per cent of respondent companies have had to change subcontractors or suppliers due to corporate responsibility obligations. The share of such companies has grown by 13 per cent in a year.</p> <p><b>The final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September</b></p> <p>As with the standards developed by the ISSB, the disclosure recommendations and guidance prepared by the TNFD are not legally binding and as such do not require companies to adopt them in their disclosures. However, they can be utilised to fill the requirements of ESRS. ESRS E3 and E4 have to do with water and marine resources and biodiversity and the ecosystem, and the ESRS are in many ways aligned with the TNFD's recommendations. The TNFD recommendations are therefore to an extent interoperable with the ESRS. Indeed, EFRAG and the TNFD are working on the finalisation of a detailed interoperability mapping illustrating the high level of commonality achieved, to be published early 2024.</p> <p>The guidelines by the TNFD do not appear to be widely applied by Finnish companies, but some institutional investors and companies at the forefront of sustainability have already reported under the TNFD guidelines or plan to do so in the near future.</p> <p><b>The final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November</b></p> <p>The disclosure framework published by the UK Transition Plan Taskforce is only relevant for businesses operating in the UK.</p>
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26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>It seems that large companies are well prepared for the disclosure requirements, but smaller companies may have some challenges in putting the required reporting processes in place. The FIN-FSA conducted a survey addressed to the audit committees of Finnish listed companies regarding sustainability reporting with the results published in December 2023. According to the survey, Finnish companies are in different stages when it comes to implementing sustainability reporting with some companies being ready to start the process in the beginning of 2024 and some companies struggling with the timetable for the implementation of the new sustainability reporting.</p> <p>The surveyed audit committees have recognised a need for additional internal resources and expertise but, according to several audit committees, there are many challenges in preparing for sustainability reporting. Many companies use external expertise to ensure they have the necessary competences. Sufficient resources are also being ensured through broad organisational involvement. Boards of several companies deem the timetable for different reporting standards too tight. The FIN-FSA also views sustainability reporting as a major skills challenge, and organising sustainability reporting requires extensive cooperation within an organisation. The FIN-FSA considers the scarcity of resources and expertise to be one of the main challenges in implementing sustainability reporting. The FIN-FSA also considers it important that the expertise of external experts is sufficiently transferred to companies and that companies are involved to the extent necessary in the work carried out by external experts.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>Pursuant to the Finnish Accounting Act Chapter 7, Section 4, Subsection 1(4), the sustainability report is required to include a summary of the implementation of financial and investment plans and other plans to ensure the achievement of the objective to limit global warming to 1.5°C as agreed in the Paris Agreement, and the objective of achieving climate neutrality by 2050, as per the European Climate Law (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) ('European Climate Law').</p> <p>Moreover, pursuant to Chapter 7, Section 5, Subsection 1 (1) of the same Act, the sustainability report must include a description of the time-bound sustainability targets set by the company subject to sustainability report <i>for itself</i>. The description shall include absolute targets for the reduction of greenhouse gas emissions for at least the years 2030 and 2050, unless otherwise provided for in the ESRS.</p> <p>A company is therefore required to publish whether it has plans to ensure that its business model and strategy are compatible with limiting global warming to 1.5°C, but companies are not required to set out binding plans per se.</p> <p>The situation will change when the CS3D enters into force. The CS3D, approved by the European Parliament on 24 April 2024, still pending the formal approval of the Council, stipulates that large EU undertakings and certain large non-EU undertakings operating in the EU must have a plan to ensure that their business strategy is compatible with limiting global warming to 1.5 Celsius in line with the Paris Agreement.</p> <p>Proposed Article 22 of the CS3D requires that such plan shall contain:</p> <ol style="list-style-type: none"> <li>1. time-bound targets related to climate change for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence and, where appropriate, absolute emission reduction targets for greenhouse gas for Scope 1, Scope 2 and Scope 3 greenhouse gas emissions for each significant category;</li> <li>2. a description of decarbonisation levers identified, and key actions planned to reach targets referred to under point (1), including, where appropriate, changes in the undertaking's product and service portfolio and the adoption of new technologies;</li> <li>3. an explanation and quantification of the investments and funding supporting the implementation of the transition plan;</li> <li>4. a description of the role of the administrative, management and supervisory bodies with regard to the plan.</li> </ol> <p>EU Member States also have to ensure that said transition plan is updated every 12 months and contains a description of the progress the company has made towards achieving the targets.</p> <p>According to Article 22(2) of the CS3D, companies that report a transition plan for climate change mitigation in accordance with CSRD are deemed to have complied with the obligation set out in Article 22. Therefore, having set out a climate transition plan in accordance with CSRD results in the company being compliant with the upcoming CS3D with regards to the climate transition plan, as long as the plan is updated every 12 months and contains a description of the progress the company has made towards achieving the targets (Article 22(3)).</p>

28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	<p>There has been an increasing number of companies committed to voluntary climate-related targets in Finland. Indeed, according to the data of the Science Based Targets Initiative dashboard, in April 2024, there were 122 Finnish companies that had committed to or set out SBTi-approved climate targets. Seventy-nine companies in total had set out a near-term target with the target being approved by the SBTi-initiative. Of the 122 Finnish companies that have committed to or set out SBTi-approved climate targets, 40 were SMEs and 5 financial institutions.</p> <p>According to a report of Global Compact Network Finland published in May 2023, Finnish companies lag behind other Nordic enterprises in terms of science-based climate work. However, Finland ranks in the middle among other OECD countries in the number of SBTi commitments.</p>
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>The first set of companies to publish their sustainability reports in accordance with the CSRD and the ESRS are large Finnish public interest entities (eg, listed companies), whose reports for the financial period 2024 will come out in 2025. The application of the ESRS and practices relating to sustainability reporting and FIN-FSA's supervision thereof will be developed during the coming years. As regards securities issues, it remains to be seen what kind of recommendations ESMA will propose in its Final Report on Greenwashing. EFRAG is working on developing a draft regarding the ESRS sector-specific standards. EFRAG has announced the second set of standards to be released in 2026.</p> <p>The FIN-FSA has announced that it will in 2024 continue reviewing sustainability information in prospectuses in line with the guidance issued by ESMA. The focus is in particular on sustainable use-of-proceeds bonds and sustainability-linked bonds.</p> <p>Some changes to ESG disclosures in prospectuses can be expected to follow from the EU Listing Act package which is expected to enter into force later in 2024.</p> <p>The Listing Act package introduces changes to the PR and is currently expected to enter into force in 2024. In addition to the proposed amendments to the PR, the European Commission would be empowered to adopt delegated acts to set out the format and content of the prospectus, considering sustainability reporting obligations under the CSRD. For issues of equity securities, the prospectus should consider whether the issuer is subject to sustainability reporting. For issuers of non-equity securities, the prospectus should consider whether those securities are marketed as considering ESG factors or pursuing ESG objectives. However, the proposal does not itself specify which CSRD and ESG disclosure requirements will be involved in delegated acts.</p> <p>Further, the EU Green Bond Regulation (EuGB Regulation) will become applicable in December 2024. The EuGB Regulation introduces the 'European Green Bond Standard'. The EuGB Regulation sets out requirements for issuers of bonds that wish to refer to their environmentally sustainable bonds as 'European Green Bonds' or 'EuGB'. The EuGB Regulation sets standards for how companies and public authorities can use green bonds to raise capital on the capital markets, while meeting sustainability requirements and protecting investors. The EuGB Regulation is expected to generally and indirectly affect disclosure of sustainability information also in other prospectuses.</p> <p>The impact of the forthcoming regulation on sustainability disclosures in prospectuses cannot yet be assessed with certainty. However, it is clear that, in the future, persons preparing prospectuses will have to pay more attention to sustainability-related matters. The aim of the regulation being developed is to meet the growing need of investors for information on sustainability factors and to prevent marketing of securities based on unsubstantiated sustainability claims.</p> <p>The CSRD and CS3D will impact Finnish entities. Taking into account the increasing volume of regulation in the EU, the ESG reporting requirements are likely to become stricter and more prescriptive.</p> <p>Compared to 2022, we have also added CS3D.</p>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	Tom Fagernäs, Krogerus Attorneys Ltd and Mia Mokkila, Borenius Attorneys Ltd

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for France

### France

1.	Which jurisdiction are you covering?	France
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Yes, they are (please refer to question 13 below for further details).
3.	If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?	ESG disclosures are required depending on (1) the nature of the entity and/or (2) certain thresholds (mainly regarding the average number of employees, the amount of turnover and/or balance sheet).  Companies engaged in specific activities may be required to disclose additional information (eg, companies exploiting mines are required to publish a report on payments to governments as per article L. 225-102-3 of the French Commercial Code).
4.	If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?	Yes, there is a distinction.  The publication of non-financial information is currently provided for by Articles L. 225-102-1 and L. 22-10-36 of the French Commercial Code. The rules are essentially derived from the implementation of Directive No 2014/95/EU known as the Non-Financial Reporting Directive (NFRD). In this context, up to and including this year (reporting published in 2024 on the 2023 financial year), a statement of non-financial performance (' <i>déclaration de performance extra-financière</i> ', DPEF) must be included in the management report of (1) joint-stock companies ( <i>sociétés anonymes</i> ) whose securities are admitted to trading on a regulated market and whose balance sheet total exceeds €20m, or whose net turnover exceeds €40m and which employ an average number of permanent employees exceeding 500 during the financial year and (2) joint-stock companies ( <i>sociétés anonymes</i> ) whose securities are not admitted to trading on a regulated market but whose balance sheet total or net turnover exceeds €100m and whose average number of permanent employees exceeds 500 during the financial year. This statement contains information on the corporate social responsibility (CSR) issues related to the company's activity, as well as the policies put in place to manage these issues.  As part of the European Green Deal Investment Plan, which aims at strengthening corporate transparency obligations, Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 or the Corporate Sustainability Reporting Directive (CSRD) requires companies to disclose information on sustainability issues, such as environmental rights, social rights, human rights and governance factors (please refer to question 13).  The main objective of CSRD is to standardise and enhance the accuracy, robustness, and comprehensiveness of corporate sustainability reporting in the EU so as to improve the availability and comparability of published data.

	<p>CSRD was implemented into French law by Ordinance No 2023-1142 of 6 December 2023 (the 'Ordinance'), which was supplemented by Decree No 2023-1394 published on 30 December 2023 (the 'Decree') and by two orders of 28 December 2023. Its application is staggered from 1 January 2024 to 1 January 2028. The national implementation intends to be as close as possible to the provisions of the CSRD and the staggered application, depending on the companies' size, will be identical (and not fastened) to the one set by the CSRD.</p> <p>CSRD requires the provision of much more detailed information than the DPEF. The sustainability report will have to be prepared in accordance with the European Sustainability Reporting Standards (ESRS), which are very detailed standards covering both the structure of the report, the content of the information as well as the methodology to gather and process the data published. These standards have been elaborated by the European Financial Reporting Advisory Group (EFRAG) and adopted by the European Commission in the Delegated Regulation (EU) 2023/2772 on 31 July 2023. There will be both common standards applicable to all companies and sector-specific standards, the application of which will depend on the activity of the companies concerned. Finally, there will be specific standards to small and medium-sized enterprises (SMEs) listed on the regulated market. The European Parliament and Council have announced the deferred adoption of the sector-specific standards, originally planned in June 2024.</p> <p>The entry into force of the obligation to publish a sustainability report is spread over a period of four years:</p> <ul style="list-style-type: none"> <li>• from 1 January 2024 (reporting published in 2025 on the 2024 financial year): companies (or, as the case may be, consolidating companies of a group), whose securities (either equity or debt) are listed on an EU-regulated market that are large companies or consolidating companies of a large group, which employ more than 500 employees, individually or on a consolidated basis (as the case may be) and for which (1) for large companies, the net turnover is greater than €50m and/or the balance sheet total is €25m, and (2) for consolidating companies of a large group, the net turnover is greater than €50m and/or the balance sheet total is €25m (ie, mainly companies that are already subject to the obligation to publish a DPEF);</li> <li>• from 1 January 2025 (reporting published in 2026 on financial year 2025): large companies or consolidating companies of a large group that exceed the thresholds of at least two of the following three criteria: (1) for large companies, an average of 250 employees during the financial year, €50m in net turnover and €25m in balance sheet total, and (2) for consolidating companies of a large group, 250 employees on average during the financial year, €50m in turnover and €25m in balance sheet total;</li> <li>• from 1 January 2026 (reporting published in 2027 on financial year 2026): SMEs that are listed on an EU-regulated market and which do not meet the 'large company' criteria whilst exceeding two of the three following thresholds: (1) an average of 10 employees during the year, (2) €900,000 in net turnover and (3) €450,000 in balance sheet total. Such companies may defer the obligation until 2029 (report on the financial year 2028), provided they briefly explain this decision in their management report; and</li> <li>• from 1 January 2028 (reporting published in 2029 on financial year 2028): companies that do not have a registered office in a Member State of the EU or another state party to the Agreement on the EEA, but (1) generating (individually or on a consolidated basis) a €150m net turnover and (2) operating through a French branch generating a €40m net turnover will have to publish their own sustainability report.</li> </ul> <p>In addition to the DPEF (and soon CSRD) disclosure requirements, the following requirements shall also be mentioned:</p> <ul style="list-style-type: none"> <li>• GHG emissions report and transition plan to be published under the French Environmental Code: Companies or 'permanent facilities' (<i>établissements stables</i>) settled in France with more than 500 employees must prepare, every four years, (1) a GHG emissions report and (2) a transition plan to reduce their GHG emissions.</li> </ul> <p>The transition plan can refer to the sustainability report to be published under CSRD.</p> <ul style="list-style-type: none"> <li>• Rixain Act: companies employing, for three consecutive financial years, at least 1,000 employees shall disclose each year any gaps in the representation of women and men among (1) senior managers (<i>cadres dirigeants</i>) and (2) members of governing bodies (<i>instances dirigeantes</i>).</li> </ul>
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5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	<p>In principle, ESG disclosures are required to be made on a continuous annual reporting basis.</p> <p>By exception, for listed companies, if an ESG information qualifies as inside information (under Art 7 of the Market Abuse Regulation), the company must disclose such information as soon as possible.</p>
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>Companies shall include their ESG disclosure in their management report.</p> <p>Similarly, sustainability information to be disclosed under the implemented CSRD Directive will have to be included in the management report. The vigilance plan shall also be included.</p> <p>However, some disclosures are required to be published in a standalone format:</p> <ul style="list-style-type: none"> <li>the GHG emissions report and transition plan to be published under the French Environmental Code must be sent to the Agence De l'Environnement et de la Maîtrise de l'Énergie, (Ademe) (public agency for the environment and energy management) and published on a dedicated website (<a href="https://bilans-ges.ademe.fr/">https://bilans-ges.ademe.fr/</a>);</li> <li>indicators under the Rixain Act are to be published on the companies' website. As from 1 March 2026, these will be published on a public database established by the French Ministry of Labour.</li> </ul>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>ESG disclosure is located on the website of issuers that are required to make such disclosure. Given that the universal registration document (which includes the management report) is also located on the website of the French Financial Markets Authority (Autorité des Marchés Financiers or AMF), investors may also find ESG disclosure on this website (<a href="https://bdif.amf-france.org/fr">https://bdif.amf-france.org/fr</a>).</p> <p>Non-listed companies must communicate their management report to their shareholders 15 days before the annual general meeting of shareholders.</p> <p>Also see question 6 regarding the publication of information required by the Rixain Act as well as the GHG emissions report and transition plan.</p>
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>Currently, corporate executives of listed companies increasingly tend to make ESG disclosures going further than mandatory requirements (especially for green tech companies) as a result of market practice and investor expectations.</p> <p>Indeed, AMF recommendations (including Recommendation 2012-02) and voting policies of investors and proxy advisers encourage companies to provide certain ESG information.</p> <p>For example, investors' expectations are such that the Afep-Medef Corporate Governance Code, to which most large listed companies adhere, provides that the compensation of directors and executives must be competitive, adapted to the company's strategy and context and must aim, in particular, to improve its performance and competitiveness over the medium and long term, notably by incorporating one or more criteria related to social and environmental responsibility, of which at least one criterion is related to the climate objectives of the company.</p> <p>However, on a European scale, the scope and comprehensiveness of ESG reporting and disclosure drastically widened through the implementation of the CSRD. The European Sustainability Reporting Standards, ie, the standards applicable when publishing a sustainability report under CSRD, were drafted notably in consideration of disclosure requirements lying on investors.</p>



9.	<p><b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b></p>	<p>AMF is the French regulator that monitors ESG disclosure from listed companies and management companies (<i>sociétés de gestion</i>).</p> <p>Currently, under the NFRD (see question 4), in addition to the monitoring of AMF, the largest companies, namely those whose balance sheet total or net turnover exceeds €100m and whose number of employees exceeds 500, shall have this information verified by an independent third party whose opinion is transmitted to the shareholders. The independent third party shall draw up a report containing a statement on the compliance and sincerity of the disclosure, it being specified that such report is transmitted to the shareholders.</p> <p>In the future, under the CSRD, sustainability information will be audited. Indeed, unlike the DPEF, which was not subject to a verification of its accuracy and sufficiency (simple verification of the content), the sustainability information produced by companies will have to be certified by a 'sustainability auditor' who may be either an auditor or an independent third party ('<i>organisme tiers indépendant</i>' or OTI) accredited by the French accreditation committee (COFRAC). In this context, companies subject to the obligation to submit a sustainability report in 2025 for the 2024 financial year are currently submitting the appointment of a sustainability auditor to shareholders for approval as early as the 2024 Annual Ordinary General Meetings.</p> <p>The CSRD requires first an audit of sustainable information under a 'limited assurance' level and introduces a possible transition to 'reasonable assurance' from 2028.</p> <p>In case of failure to comply with ESG mandatory disclosures, any interested person may apply to the courts for an injunction ordering to publish the information.</p> <p>Under its general power to protect stock market functioning, AMF may also impose administrative penalties.</p> <p>To the best of our knowledge, beyond the exemption granted to SMEs listed on a regulated market to implement CSRD (please refer to question 4), and the transitional provisions included directly in the ESRS, French regulations do not provide for any 'grace periods'.</p>
10.	<p><b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b></p>	<p>Civil and/or criminal liability of issuers may be engaged for false and/or misleading ESG mandatory disclosures. The amount of the financial penalty depends on the amount of the damage. For example, with regard to the French corporate duty of vigilance and in the event of a breach, a liability action may be brought against a company that does not comply with such regulations to compensate for the damage that the performance of its obligations would have avoided. In addition to such financial penalty, the publicity of the court decision sanctioning such a breach may also have a serious and lasting effect on the company's reputation.</p> <p>French courts may also sanction the failure of issuers to comply with their voluntary commitments (provided for in codes of conduct or in publicity materials) in the event of a contractual breach.</p> <p>Also, as any information disclosed to the public by listed companies, ESG information shall be accurate, precise and fairly presented. Hence, AMF may also impose administrative penalties for false or misleading disclosures.</p> <p>Moreover, in accordance with the CSRD, any person may apply for summary proceedings to order either the production, communication or transmission of documents or information relating to sustainability, or the appointment of an authorised representative responsible for carrying out such communication.</p> <p>Finally, failure to have sustainability information audited is punishable by a fine of €30,000 and two years' imprisonment and for obstructing the audit, penalties can reach up to €75,000 and five years' imprisonment.</p>
11.	<p><b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b></p>	<p>Yes, there is a two-tiered disclosure system in our jurisdiction (please refer to question 9).</p> <p>An extension of ESG disclosure requirements to all listed companies and to 'large' unlisted companies is expected after 2024 when the Corporate Sustainability Reporting Directive (CSRD) will replace the Non-Financial Reporting Directive (NFRD) (see question 4).</p>



<p>12.</p>	<p><b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b></p>	<p><b>Sustainable finance</b></p> <p>In terms of sustainable finance, there are three labels in France: the ISR Label, the GreenFin Label and the Finansol Label. All asset management companies (<i>sociétés de gestion</i>) can apply to have their funds labelled.</p> <p>The ISR Label identifies responsible and sustainable investments. Created and supported by the French Ministry of Finance, this label guarantees investors that the fund has developed a methodology for evaluating financial actors on the basis of ESG criteria, and that it integrates them into its investment policy.</p> <p>The GreenFin Label was created by the French Ministry of the Environment. It aims at guaranteeing the 'green' quality of financial investments, due to their transparent and sustainable practices, and is oriented towards financing the energy and ecological transition.</p> <p>The Finansol Label exclusively concerns solidarity savings products, ie, those that notably finance activities to fight exclusion, social cohesion or sustainable development (housing, employment, environment, international solidarity, etc).</p> <p>The European Sustainable Finance Disclosure Regulation (SFDR), though not strictly being a label system, provides a classification of financial products marketed by management companies into three categories – 'Article 6', 'Article 8' and 'Article 9' – based on the level of integration of sustainability factors in investment decisions.</p> <p>Finally, issuers can optionally label their bonds financing economic activities qualifying as environmentally sustainable as 'European Green Bonds' (EuGB) if they meet the standards set by the EU Regulation No 2023/2631.</p> <p><b>Sustainability of companies' activities:</b></p> <p>Although not resulting from a governmental initiative, these can also be referenced:</p> <ul style="list-style-type: none"> <li>• the B Corp certification which is a world-renowned certification awarded to commercial companies that meet high standard ESG and public accountability requirements. The name is an abbreviation of 'Benefit Corporation', designating a company that is known to have a beneficial impact on the world while being profitable. There are today more than 200 French companies granted with the B Corp certification; and</li> <li>• EthiFinance, which is a European rating, research and advisory group serving sustainable finance and sustainable development. More specifically, EthiFinance provides all company stakeholders (in particular investors) with high-quality financial and extra-financial analysis, to assess their contribution to sustainable economic, financial and social development.</li> </ul> <p>Companies are also monitored by ESG rating agencies who establish 'sustainability profiles', which have an increasing impact on investment decisions. Companies may use such ratings as part of their communication, including in their extra-financial reports. As the rating systems are not standardised, the European Parliament and European Council have been working on a proposal of regulation to strengthen the reliability and comparability of such ratings and announced an agreement on such proposal in February 2024.</p>
<p>13.</p>	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p>In a nutshell, under French law, two kinds of ESG disclosures may be identified:</p> <ul style="list-style-type: none"> <li>• on the one hand, joint-stock companies (<i>sociétés anonymes</i>) with at least 5,000 employees within their company and in their direct and indirect subsidiaries when their registered office is in France, and 10,000 employees when their registered office is located abroad shall draw up a vigilance plan (<i>plan de vigilance</i>) disclosed in their management report on an annual basis. Such plan shall include reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment, resulting from the activities of the company and those of the companies it controls, directly or indirectly, as well as from the activities of subcontractors or suppliers with which it has an established business relationship, when these activities are linked to this relationship. The vigilance duty is not merely a disclosure duty. Companies can be held liable for their inadequate measures to identify, prevent, address and remedy risks (please see question 22 for a description of the first conviction of a company on the grounds of the French duty of vigilance). Please note that a Corporate Sustainability Due Diligence Directive proposal is currently discussed at the EU level and would (1) increase the number of in-scope companies and (2) tend to strengthen the obligations regarding the vigilance plans; and</li> </ul>

		<ul style="list-style-type: none"> <li>• on the other hand, under the NFRD, a statement of non-financial performance must be included in the management report of (1) joint-stock companies (<i>sociétés anonymes</i>) whose securities are admitted to trading on a regulated market and whose balance sheet total exceeds €20m or whose net turnover exceeds €40m and which employ an average number of permanent employees exceeding 500 during the financial year and (2) joint-stock companies (<i>sociétés anonymes</i>) whose securities are not admitted to trading on a regulated market but whose balance sheet total or net turnover exceeds €100m and whose average number of permanent employees exceeds 500 during the financial year (also see question 4 which describes the CSRD that will replace the NFRD). Following the entry into force of the EU taxonomy regulation (which provides for a classification system to determine whether a company's activities can be considered as 'sustainable'), this obligation has been further developed: since 1 January 2022, companies in the non-financial sector publishing a DPEF (or a sustainability report upon CSRD entry into force) include sustainability indicators regarding the contribution of turnover derived from their sustainable activities, as well as the contribution of capital expenditure and the contribution of operating expenditure linked to the assets or processes associated with these activities.</li> </ul> <p>The information that must be published under CSRD is much more extensive than the NFRD, and must be reliable, comparable and accessible.</p> <p>The reporting is based on the principle of 'double materiality', ie, it represents both the company's impact on environmental, social and corporate governance issues, known as 'sustainability issues' ('impact materiality'), and the impact of these issues on the evolution of the business, the results and the company's situation ('financial materiality').</p> <p>The reporting will be written according to the 12 ESRS standards, as described in the Delegated Regulation of 31 July 2023. The first two standards cover the general requirements and disclosures. The 'topical standards' pertain to environmental (climate change, pollution, water and marine resources, biodiversity and ecosystems, resource use and circular economy), social (workforce, value chain, affected communities, consumers and end users) and governance issues. Finally, the sector-specific standards address impacts, risks and opportunities that are likely to be material for the companies to the sector and that are not covered by the topical standards.</p> <p>In addition, disclosure may be required depending on the number of employees of the companies (Rixain Act, GHG report) or their specific activities (please refer to question 4).</p>
14.	<p><b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b></p>	<p>The French Environmental Code specifically requires some companies to publish specific information regarding their impact on climate: they shall publish, every four years, a GHG emissions report and transition plan.</p> <p>The CSRD introduces stringent obligations as it requires disclosure of the plans defined by the company, if any, 'to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement, and the objective of achieving climate neutrality by 2050' and GHG reduction targets at least for 2030 and 2050.</p> <p>Also, AMF expects issuers whose securities are admitted to trading on a regulated market to implement the European Securities and Markets Authority's (ESMA) guidelines, it being specified that ESMA stresses the importance for issuers to communicate on their policies on climate issues: the risks and opportunities for issuers' activities and the impact (positive or negative) of issuers' actions on the climate.</p> <p>In addition to the ESMA guidelines on climate change related disclosures, AMF published on December 16, 2021 and updated in November 2022 a report on good practices in terms of reporting on the consequences of the issuers' activity and of the use of the goods and services it produces on climate change.</p> <p>In such report, AMF focuses on the following matters:</p> <ul style="list-style-type: none"> <li>• the quantitative climate-related indicators published by issuers in their non-financial performance statement, in particular with regard to greenhouse gas emissions (scope of data to be taken into account, methodology used, publication of comparative data, etc), energy consumption (renewable and non-renewable) and exposure to physical climate risks (eg, hurricanes, floods); and</li> <li>• the communication made by issuers that have made voluntary commitments to carbon neutrality (intelligibility of such commitments, levels of ambition, levers for action and operational implementation).</li> </ul>

		<p>It should also be noted that, since December 2022, the Afep-Medef Code recommends elaborating a strategy to address climate change. Such strategy must have specific objectives for different time horizons and must be presented to the shareholders' general meeting every three years or in the event of significant change.</p> <p>Please note that under the currently discussed Corporate Sustainability Due Diligence Directive, in-scope companies will be required to establish and implement a climate transition plan aimed at ensuring, through best efforts, that their business model and strategy are compatible with the transition to a sustainable economy and the limiting of global warming to 1.5°C in line with the Paris Agreement and the objective of achieving climate neutrality as established in Regulation (EU) 2021/1119. The plan should address the company's interim and 2050 climate-neutrality targets.</p>
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	<p>Under French law, the information to be included in the statement of non-financial performance is organised by headings (employment, work organisation, training, pollution, circular economy, climate change, etc) and should only be indicated in the statement if it is relevant to the main risks identified or to the policies pursued by the company. It is however common for companies to rely on soft law standards (please refer to question 25).</p> <p>Under CSRD, the disclosure will be standardised by the European Sustainability Reporting Standards (ESRS), both in terms of extent and manner of reporting. However, the extent of disclosures may vary due to the application of the double materiality principle (ie, a sustainability issue which is material to one company may not be to another company). Indeed, part of the information is required to be published only if the company deems it 'material' after applying the double materiality test.</p>
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	<p>There is no definition under French law of the concept of ESG. Nevertheless, French law provides for a list of information to be included in the statement by headings to cover all components of ESG (employment, work organisation, training, pollution, circular economy, climate change, etc).</p> <p>CSRD defines the scope of what is included in ESG through the twelve ESRS (please refer to questions 13 and 16).</p>
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	<p>ESG covers various concepts so that investors may take into account the global ESG disclosure but also focus on certain ESG criteria depending on the business sector.</p> <p>For example, on the one hand, some banks, insurance companies or investors have committed to finance, insure or invest primarily in low-carbon activities (eg, the Net-Zero Banking Alliance, Net-Zero Insurance Alliance, Net-Zero Asset Managers gathered within the Glasgow Net-Zero Financial Alliance (GFANZ)). On the other hand, some investors focus on other areas covered by ESG, such as the risks of corruption, embargoes, international economic sanctions, or human rights abuses affecting the value chain.</p> <p>The EU Taxonomy framework, applicable in France, relies on a 'cross impact' approach of sustainability: under this regulation, an activity can only be qualified sustainable on an environmental level if it (1) contributes substantially to one or more environmental objectives listed in said regulation, (2) does not significantly harm the other objective listed and (3) is carried out in compliance with minimum safeguards focusing on the pillars 'S' and 'G' of the ESG (the alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organization on Fundamental Principles and Rights at Work and the International Bill of Human Rights).</p>
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	<p>From our end, the compliance with ESG disclosure regulations becomes a competitive and attractive feature firstly for green tech companies (ie, innovative companies whose business models benefit the environment and the fight against global warming) since investors will consider such compliance when it comes to making an investment or a financing decision in such companies, but also for more traditional activities as it leads companies on the path of a sustainable transition, which is highly expected by the market, clients and consumers.</p> <p>Moreover, ESG disclosure regulations tend to fight 'greenwashing' so that the compliance with ESG disclosure relations may help investors in their investment decision-making process. However, ESG disclosure regulations may constitute a major burden for small and mid-cap companies whose business model is not green or 'ESG' oriented.</p>

19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	We believe that our clients would like to see clearer and harmonised (ie, a unified corpus and not a patchwork of regulations, this being in progress with CSRD), but not greater ESG disclosure regulations.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	<p>Currently, law or regulators do not provide for such ESG disclosure requirements specifically regarding securities issues.</p> <p>However, the following shall be noted: as per the EU Regulation on Prospectus, securities can only be offered to the public or admitted to a regulated market after publication of a prospectus drafted according to said regulation (some exemptions exist).</p> <p>This prospectus shall notably include a description of the 15 most material risk factors specific to securities. Those risks are to be presented in relevant categories. The ESMA emphasised that ESG risks could constitute a risk-category on their own.</p> <p>Current discussions are being held at the EU level in the context of the proposed Listing Act, considering that 'it is necessary to prevent greenwashing by defining the ESG information to be provided, where applicable, in prospectuses concerning equity securities or other types of securities offered to the public or admitted to trading on a regulated market' (European Parliament legislative resolution of 24 April 2024).</p> <p>AMF also stated that the fight against greenwashing is part of its Strategic Orientations 2023-2027 and 2024 Action Plan.</p> <p>When it comes to investment products, SFDR requires an extensive disclosure of how the product promotes ESG goals (investment policy, investment strategy, exclusion policies of companies and securities for not upholding some ESG standards). This extensive disclosure aims at discouraging greenwashing practices. Furthermore, AMF sets out requirements on how French collective investment schemes and foreign UCITS authorised to be marketed in France may disclose the way they include non-financial criteria in their investment policies whether it is in their regulatory documents or commercial ones (Position-recommendation DOC-2020-03).</p>
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	<p>The fragmentation and sometimes the inconsistency between the different ESG mandatory disclosure frameworks has been outlined. As such, it seems that the legislators and regulators, both European and national, tend to adopt a more systemic approach, intending to harmonise the different requirements.</p> <p>It should also be noted that both ESMA and AMF recommend issuers to make sure that the financial statements and the extra-financial information disclosed are consistent with one another.</p> <p>See question 20 above regarding the general approach of the regulators towards greenwashing.</p>
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	<p>At the moment, most legal actions regarding ESG matters and how companies address them are not led by investors or regulators, but by NGOs and territorial government bodies (<i>collectivités territoriales</i>). Furthermore, they are mainly based on an alleged violation of the duty of vigilance which is broader than mere disclosure (see question 13). On 5 December 2023, the Paris Judicial Court issued its first decision on the merits, in a case brought by the SUD PTT union against La Poste. The Court ruled that the vigilance plan drawn up by La Poste was not sufficient and ordered the latter to:</p> <ul style="list-style-type: none"> <li>• complete its vigilance plan with a risk map designed to identify, analyse and prioritise risks;</li> <li>• establish procedures for assessing subcontractors on the basis of the specific risks identified in the risk map;</li> <li>• supplement its vigilance plan with an early-warning mechanism drawn up in consultation with representative trade unions; and</li> <li>• put in place a system for monitoring vigilance measures.</li> </ul> <p>Regarding claims brought by investors, we note that one legal action is led by minority shareholders of a listed company on the ground of unlawful dividends (article L232-12 of the French commercial code) and insincere accounts. Dividends are considered unlawful when they are distributed while profits are insufficient. In the case referred to above, the plaintiffs claim the impairment test of assets was wrongfully conducted by the company, as climate risks and their financial consequences are deemed not to be appropriately considered, leading to an overvaluation of its distributable earnings and payment of fictitious dividends.</p> <p>So far, investors generally tend to launch shareholder activists' campaigns to express their dissatisfaction with companies' ESG disclosure or practices.</p>

23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	<p>See questions 7 and 9.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>As a whole, boards and directors are strongly encouraged to directly oversee the management of ESG matters. As such, the Afep-Medef Governance Code (to which many listed companies declare to comply) recommends that the board of directors elaborate multi-year strategic guidelines regarding ESG matters. This strategy shall address climate change with specific objectives for different time horizons. The Afep-Medef Code also provides that, every three years, the AGM should be presented with a follow-up on the implementation of the climate strategy.</p> <p>To address appropriately those matters and their preeminence, AMF and legal scholars underlined that the directors shall be adequately trained and that the skills of the board members should allow the board, as a whole, to do so.</p> <p>The CSRD also intends to extend the audit committee's responsibilities to include sustainability-related disclosures (or another specialised committee if the board chooses so). Said committee shall, among other things, oversee (1) the production of the sustainability report and (2) the effectiveness of the internal control and risk management systems in the production of the sustainability report and, where applicable, the internal audit in this regard. The committee will be required to inform the board of directors or supervisory board of the results of the audit of sustainability information and explain how it contributed to the integrity of that information and what role the audit committee played in this process.</p> <p>Corporate executives of listed companies increasingly tend to make ESG disclosures on a voluntary basis (especially for green tech companies) as a result of market practice and investor expectations. Investors' expectations are such that the Afep-Medef Corporate Governance Code provides that the compensation of directors and executives must be competitive, adapted to the company's strategy and context and must aim, in particular, to improve its performance and competitiveness over the medium and long term, notably by incorporating one or more criteria related to social and environmental responsibility, of which at least one criterion must be related to the climate objectives of the company.</p> <p>Also, investors increasingly require that board members demonstrate professional capabilities regarding CSR matters. The Forum pour l'Investissement Responsable (Forum for Responsible Investment or FIR) submitted written questions to CAC 40 companies ahead of their 2024 AGM, asking them to disclose the CSR expertise and experience of their board members.</p>

<p>25.</p>	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<p>Companies in our jurisdiction are mainly affected by ESRS under CSRD. They will have to implement operational changes to collect the data required and to carry out the double materiality analysis, as every business unit is affected by sustainability issues. For instance, this may require recruiting qualified personnel to oversee the reporting and training of people involved in the data collection and analysis, including at board and C-level (in connection with question 24).</p> <p>Companies also frequently refer to TCFD. Indeed, out of a panel of 100 large French companies (mainly from the list of companies making up the SBF 120, a French stock market index), 79 refer to such recommendations (Deloitte, EY, Medef, <i>Reporting ESG des entreprises françaises : sont-elles prêtes pour CSRD?</i>)</p> <p>Companies with cross-listing in the US will be particularly attentive to the cross-compatibility between ISSB and ESRS disclosures and any future disclosures required by the SEC.</p>
<p>26.</p>	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>Large companies that are already subject to the DPEF (under the NFRD) have worked on implementing an organisation to collect, analyse and report the relevant ESG data. They also often collect information on a voluntary basis, in accordance with the European Commission's various guidelines, or in line with the recommendations of international organisations (TCFD), of ESMA, and in France, of AMF. Even then, the amount of work required to rise up to the expectations of CSRD is significant due to the scope and depth of the ESRS and to the double materiality analysis.</p> <p>Therefore, it is rather unlikely that SMEs companies that were not in the scope of the DPEF have acquired the capability and resources to do so, hence the two-year extension given by CSRD, in order to give them sufficient time to prepare for the first reporting (please refer to question 4).</p> <p>Discussions with sustainable auditors will be particularly useful.</p> <p>AMF also indicated that it will pursue its approach of supporting market participants in the implementation of the evolving regulatory framework.</p>
<p>27.</p>	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>Companies having to publish a GHG report and a transition plan under the provisions of the French Environmental Code shall set climate objectives. The nature or extent to these objectives are not precisely defined. Regarding this question, please also see developments in question 14.</p> <p>Also, as the listed companies who apply the Afep-Medef Code are meant to define and present a strategy to address climate change (please refer to question 14), and as such strategy must be based on precise objectives, we may consider that in practice there is an underlying recommendation to set climate-related targets.</p>
<p>28.</p>	<p><b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b></p>	<p>Even when not mandatory, commitments to climate-related targets are increasingly popular, due to the recommendations described above and to the pressure exerted by investors, proxy advisers, ESG rating agencies and public scrutiny in general.</p> <p>To the best of our knowledge, such commitments are mainly based on the objective to reduce greenhouse gas emissions (according to the Scope 1, 2 and 3 classification) and to be 'net zero' by 2050. A vast majority of large listed companies (including nearly all CAC 40 companies) have committed to science-based targets.</p>

<p>29.</p>	<p><b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b></p>	<p>Since the entry into force of Law no 19-486 dated 22 May 2019, French civil law has provided that a company has to be managed in accordance with its corporate interest, taking into consideration the social and environmental challenges of its activity. This recent consideration of the social and environmental challenges shows that the French regulations on ESG matters tend to increase.</p> <p>The obligation to draw up a vigilance plan (<i>plan de vigilance</i>) is very likely to be strengthened and broadened since a proposal for a directive on corporate sustainability due diligence (CS3D) was published by the European Commission on 23 February 2022 providing for lower thresholds than those currently applicable in France. This proposal provides for the creation of a supervisory authority responsible for monitoring and sanctioning non-compliance with the obligations imposed on companies. In March 2024, the European Parliament announced an agreement on the scope of the CS3D directive.</p> <p>We also anticipate that more and more investors and proxy advisers will keep on challenging issuers through 'say on climate' and 'say on pay' resolutions to make sure that ESG components make part of the business model of issuers. Challenged by shareholders of TotalEnergies, AMF declared in 2022 that the French regulator was not competent to force the oil company to include a climate resolution on the agenda of its annual shareholders' meeting in light of regulations in force. However, the French regulator is in favour of a new legal framework for climate resolutions which could be inspired by the regulations in force for 'say on pay' resolutions.</p> <p>In 2023, ten companies added the approval of climate resolutions to their shareholders' meetings' agenda. In March 2023, the Climate and Sustainable Finance Committee (Commission Climat et Finance Durable or CCFD) of AMF recommended that companies include climate resolutions proposed by shareholders to the meeting's agenda and proposed standardised content for such resolutions. The CCFD does not represent the views of the regulator, and such recommendations are not binding.</p> <p>French government is currently working on a proposal to make the 'say on climate' resolution compulsory. A first attempt was unsuccessful in October 2023.</p>
<p>30.</p>	<p><b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b></p>	<p>The law firms contributing are Jeantet and Bredin Prat.</p> <p>The Jeantet partner's name is Cyril Deniaud. Cyril Deniaud is Co-Head of the Listed Companies and Capital Markets Law department at Jeantet. He started his career in 2005 at Freshfields Bruckhaus Deringer, before joining Herbert Smith Freehills in 2011. In 2014, he joined Jeantet as Counsel in order to assist Frank Martin Laprade in the development acceleration of the Listed Companies and Capital Markets Law practice and became partner four years later (in January 2018). Cyril is a recognised practitioner regarding Public M&amp;A and ECM transactions.</p> <p>He has been assisted in the preparation of this ESG Survey by Fanny Alexanian and Nafiy Saïd, associates at Jeantet.</p> <p>The Bredin Prat Partner's name is Sophie Cornette de Saint Cyr. Sophie Cornette de Saint Cyr is a Partner of the Corporate team. She has extensive experience in public and private M&amp;A transactions and securities law and also advises listed companies on corporate governance issues.</p> <p>She has been assisted in the preparation of this ESG Survey by Guillaume Agbodjan and Pauline Joly, associates at Bredin Prat.</p>



# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Germany

### Germany

1.	<b>Which jurisdiction are you covering?</b>	Germany
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>ESG disclosures in Germany are determined by European law and are based on a system consisting of EU directives and national implementing legislation (in particular, in the German Commercial Code). As a first step, Directive 2006/46/EC provided that listed companies shall include a corporate governance statement in their annual reports as a specific section with certain information on corporate governance measures. However, these transparency obligations did not specifically relate to ESG criteria. In Germany, the corporate governance statement is governed by section 289f of the German Commercial Code.</p> <p>Directive EU 2014/95 (the CSRD) established the obligation to include a non-financial statement in the management report containing information to the extent necessary for an understanding of the undertaking's development, performance, position and the impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters. These obligations are applicable to listed companies that employ more than 500 employees. The directive was implemented, inter alia, by section 289b et seq of the German Commercial Code. In addition, diversity reporting has been added to the corporate governance statement set forth in section 289f of the German Commercial Code.</p> <p>In April 2021, the European Commission adopted a proposal for the CSRD that will amend the existing CSRD reporting requirements and, inter alia, extend the scope to all large companies and all companies listed on a regulated market, with the exception of listed micro-companies. As a result, significantly more companies will have to publish non-financial statements. Upon transposition into national law, the amended CSRD will initially apply to companies with 500 employees. For financial years beginning on or after 1 January 2025, the provisions will apply to all other large companies (as defined in section 267 para 3 German Commercial Code). Finally, for the financial years beginning on or after 1 January 2026, the provisions of the amended CSRD will also apply to all capital market-oriented small and medium-sized enterprises (SMEs), unless they opt to defer until 2028.</p> <p>Since June 2020, the EU Taxonomy Regulation has been in place. The EU Taxonomy Regulation establishes a classification system by defining criteria to determine whether an economic activity is environmentally sustainable. Thereby, to what extent investments are environmentally sustainable can also be identified. The EU Taxonomy Regulation stipulates six environmental objectives: (1) climate change mitigation; (2) climate change adaptation; (3) sustainable use and protection of water and marine resources; (4) transition to a circular economy; (5) pollution prevention and control; and (6) the protection and restoration of biodiversity and ecosystems.</p>



		<p>The EU Taxonomy Regulation provides for several transparency obligations, in particular, the expansion of the reporting requirements in the non-financial statement (Article 8). This obligation is linked to the CSRD in terms of its scope, which means that only those undertakings that have to publish a non-financial statement have to comply with the new reporting requirements pursuant to the EU Taxonomy Regulation. Article 8 of the EU Taxonomy Regulation requires a disclosure on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable. In particular, for each of their turnover, capital expenditure and operating expenditure, non-financial undertakings have to disclose the proportion by which these are associated with environmentally sustainable activities.</p> <p>Since 2023, the EU's Carbon Border Adjustment Mechanism (CBAM) requires importers to submit a CBAM report to the European Commission for each quarter in which they have imported carbon intensive goods subject to CBAM into the EU. From the start of the reporting phase in 2026, there will only be an annual reporting obligation. However, importers will then have to purchase and surrender CBAM certificates that correspond to the emissions of their imported goods.</p> <p>The national Act on Corporate Due Diligence in Supply Chains (Lieferkettensorgfaltspflichtengesetz or LkSG) has been in place since January 2023. Core elements of this act include the establishment of a risk management system to identify, prevent or minimise the risks of human rights violations and damage to the environment. According to section 10 LkSG, an annual report on the fulfilment of due diligence obligations must be prepared for the respective past fiscal year, which in turn must be publicly available free of charge for seven years.</p> <p>In May 2024 the European Corporate Sustainability Due Diligence Directive (CS3D) was adopted by the European legislative bodies. The CS3D extends the environmental and human rights due diligence obligations for companies compared to the national LkSG. The EU Member States will be obliged to transpose the provisions of CS3D into national law within two years of its publication which is expected for June 2024. In Germany, this is likely to be done by amending the LkSG. With the transposition of CS3D, certain companies will be required to adopt and implement a plan to reduce their impact on climate change. For certain companies that are not already subject to the CSRD, the CS3D also provides for an obligation to report annually on compliance with their due diligence obligations.</p> <p>Therefore, as described above, German and European law provides for certain ESG-related disclosure obligations, most of which are not triggered by capital market transactions, but are rather of an ongoing or periodic nature. The regulations with relevant disclosure obligations include:</p> <ul style="list-style-type: none"> <li>• the EU Taxonomy Regulation;</li> <li>• section 289b of the German Commercial Code (Handelsgesetzbuch) that requires certain companies to publish an annual non-financial statement (nicht-finanzielle Erklärung) implementing the European CSRD;</li> <li>• the CBAM;</li> <li>• the LkSG;</li> <li>• the CS3D, which will not apply until transposition into national law; and</li> <li>• 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 (SFDR) applicable to 'financial market participants' and 'financial advisers'.</li> </ul>
3.	<p><b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b></p>	<p>German and European law stipulates certain prerequisites and thresholds for the respective disclosure requirements.</p> <ul style="list-style-type: none"> <li>• As an example, a non-financial statement needs to be published only if certain thresholds relating to the number of employees, turnover or balance sheet totals are met. Furthermore, the company needs to be a PIE, that is, a company whose transferable securities are admitted to trading on a market, be it equity or debt. These prerequisites will change once the amended CSRD is implemented in German national law.</li> </ul> <p>As another example, the SFDR provides for mandatory ESG disclosures that only apply to 'financial market participants' and 'financial advisers'.</p>

4.	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b></p>	<p>As indicated under question 2 above, according to section 289b of the German Commercial Code, a company is obliged to publish a non-financial statement if it:</p> <ul style="list-style-type: none"> <li>• meets two of three requirements relating to the balance sheet total, turnover and number of employees;</li> <li>• is ‘capital market-orientated’, that is, its transferable securities are admitted to trading on a regulated market; and</li> <li>• has an annual average of more than 500 employees.</li> </ul> <p>By means of reference to the CSRD (underlying section 289b of the German Commercial Code), the same prerequisites apply to the EU Taxonomy Regulation.</p> <p>A company can be exempted from these disclosure obligations if it is a subsidiary of a parent company that itself is subject to relevant reporting requirements.</p> <p>Once the reporting requirements under the CSRD are implemented in Germany, significantly more companies will have to publish non-financial statements and comply with the EU Taxonomy Regulation. For example, the CSRD governs all companies that are either large or listed, except for listed micro-companies. The transposition of CSRD into national law is expected shortly, since a draft has already been published by the ministry of justice on March 22, 2024.</p> <p>Similarly, the LkSG applies to companies, regardless of their legal form, that have their central administration, principal place of business, administrative headquarters, statutory seat or branch office and 3,000 or more employees in Germany. Since 1 January 2024, the act applies to companies with 1,000 or more employees.</p> <p>The CS3D, upon transposition in national law, will be implemented in three phases. Initially the provisions of the directive will apply to companies, regardless of their legal form, with a net annual turnover of €1.5bn in the EU and – for European companies – at least 5,000 employees. Later the provisions of CS3D also apply to companies with a net annual turnover of €900m in the EU and – for European companies – at least 3,000 employees. Finally – five years after coming into force – the provisions of CS3D will apply to all companies with a net turnover of €450m in the EU and – for European companies – at least 1,000 employees.</p>
5.	<p><b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b></p>	<p>Most of the ESG disclosures are not triggered by capital market transactions, but are rather of an ongoing or periodic nature. For example, this is the case for the non-financial statement and the report pursuant to the LkSG, CSRD and CS3D; they are linked to various balance sheet key figures.</p> <p>Financial institutions are required to disclose information to supervisors as well as to the broader public. Under the SFDR, some ESG disclosures are required on a periodic basis. Others at financial product level require, for instance, pre-contractual disclosures.</p> <p>Although no ESG disclosure obligation is triggered by a specific transaction, we anticipate an increased focus on ESG due diligence in M&amp;A transactions. We expect that buyers will not only review the company’s ESG strategy and systems (including any past non-compliance, stakeholder complaints, regulatory risk and general ESG philosophy) but also take a deeper dive into the target company’s ESG standards – particularly with regard to environmental commitments of the company and its suppliers.</p>
6.	<p><b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b></p>	<p>Under current law, the non-financial statement can be published either as a separate report or as part of the (group) management report. Once the amended CSRD is transposed into German national law, the option of a separate ESG report will no longer exist. All required information will have to be disclosed in a dedicated section of the management report and be digitally tagged so that it is machine-readable.</p> <p>Pursuant to Article 8 of the EU Taxonomy Regulation, the non-financial instrument needs to include information on how and to what extent the company’s activities are associated with economic activities that qualify as environmentally sustainable.</p>

		<p>The LkSG currently stipulates that the non-financial statement and LkSG report must be two separate reports, even though the content may overlap, to some extent. As part of the implementation of the CSRD, the German Federal Ministry of Justice (Bundesjustizministerium) has proposed replacing the previous non-financial statement with a more comprehensive sustainability report in accordance with the German Commercial Code. In future, companies will be able to replace the LkSG-report with mandatory or voluntary sustainability reporting in accordance with the German Commercial Code in order to avoid a double reporting obligation.</p>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>The aforementioned reports – the non-financial statement including information pursuant to the EU Taxonomy Regulation and LkSG report – must be published and must then be held publicly available for a specified period of time (seven to ten years, depending on the statute involved) and free of charge. The most common location for publishing the reports is the company's website. The LkSG report also must be submitted to the competent authority (Bundesamt für Wirtschaft und Ausfuhrkontrolle or BAFA).</p>
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>Some companies that do not have to publish their own report, either because they do not reach the aforementioned thresholds or because they are an exempted subsidiary of a parent company that is subject to the relevant reporting requirements, do in fact publish sustainability reports. Companies seek to meet the expectations not only of investors but also society at large. Moreover, even though ESG disclosure requirements currently only affect certain (large) entities, it is already clear that the scope will be significantly extended soon; companies have already started to voluntarily publish ESG-related information as an opportunity to familiarise themselves with the future requirements.</p> <p>With regard to the CSRD, the European Financial Reporting Advisory Group (EFRAG) published a draft of a voluntary sustainability reporting standard for Non-Listed Small- and Medium-Sized Enterprises (VSME ESRS) in January 2024. The VSME ESRS underlines the interest in and need of voluntary ESG reporting by providing a sustainability reporting standard to all companies that are not obliged to report under the CSRD but nevertheless wish to take similar measures. As a possible area of application, EFRAG states, among other things, that the provision of information can contribute to satisfying the demand for data from lenders and investors and can therefore make it easier for companies to access funding. EFRAG also sees a potential area of application in meeting the data requirements of large companies that demand sustainability information from their suppliers.</p>
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>Which regulator monitors ESG disclosure compliance is dependent on the relevant regulation, directive or implemented national law. On a European level, the European Securities and Markets Authority (ESMA) is competent. However, particular national authorities, such as the Federal Office for Economic Affairs and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle), the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht) or the Federal Office of Justice (Bundesamt für Justiz) ensure compliance with mandatory ESG disclosure in Germany.</p> <p>The Member States are responsible for setting forth rules for penalties. The specific penalties for non-compliance with mandatory ESG disclosure can therefore be found in the respective national laws: If the non-financial statement is not prepared or if it is incomplete, this constitutes an administrative offence and can trigger a fine of up to €50,000, or – for large public interest companies – a fine of up to €2m or twice the economic benefit derived from the administrative offence. These provisions apply to the non-financial statement, including the reporting obligations under the EU Taxonomy Regulation.</p> <p>With regard to the LkSG, it is a regulatory offence to intentionally or negligently fail to prepare a correct report. A fine of up to €100,000 can be imposed.</p> <p>With regard to CS3D, potential sanctions will include periodic penalty payments and public statements by national supervisory authorities naming the company and the offence if it fails to comply with instructions from the competent authority in a timely manner. Member States must base the periodic penalty payment on the company's worldwide net turnover, without limiting themselves exclusively to this. The fines envisaged under this provision can amount to up to 5 per cent of net turnover.</p> <p>Normally, it takes a while for the respective regulation to be effective in Germany. In particular, EU directives first need to be implemented by German law. Therefore, companies often have months or even years to prepare for the new legislation. However, once the ESG-related regulations are effective, the penalty provisions usually apply immediately without a grace period.</p>

		<p>If the management report has not been supplemented by a non-financial statement, or if a separate non-financial report has not been prepared or if individual disclosures are missing therein, then the management report is incomplete and the auditor may qualify or withhold the audit certificate. These rules apply to both financial and non-financial reporting, as well as the obligations of the EU Taxonomy Regulation as part of the non-financial statement.</p>
10.	<p><b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b></p>	<p>An incorrect description of the company's circumstances in the non-financial statement required by the German Commercial Code (see question 16) is punishable by law; a member of the governing body authorised to represent the company (eg, the management board) or a member of the supervisory board is liable to imprisonment for up to three years or a monetary fine if they act intentionally or with gross negligence. These existing sanctions in the German Commercial Code will be extended to sustainability reporting under CSRD. Please note that the relevant sections of the German Commercial Code specifying the penalties do not distinguish between voluntary and mandatory disclosures that the company makes as part of its non-financial statement (in future: sustainability report).</p> <p>Depending on the circumstances in the individual case, the company, or even its management, could also be held liable in civil law cases, for example, by third parties.</p> <p>According to the LkSG, companies with more than 1,000 employees must prepare an annual report on the fulfilment of their obligations under this Act in the previous financial year. A false or misleading report may result in fines up to €100,000.</p>
11.	<p><b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b></p>	<p>An annual LkSG report to the competent authority and the internet is currently required. The same applies to the disclosure of information on the strategies for fulfilling the battery due diligence obligation under the EU Batteries Regulation (Batterie-VO).</p> <p>The EU Taxonomy Regulation and the Corporate Sustainability Reporting Directive (CSRD), which has to be transposed into national law by mid-2024, have expanded both the scope of companies subject to reporting requirements and the necessary content of required reporting (see question 12 ff. for details).</p> <p>The introduction of further ESG disclosure requirements can also be observed at a national level. For example, the Corporate Governance Code (Deutscher Corporate Governance Kodex or DCGK) in Germany includes various provisions including an obligation to take ESG into account. While the code is legally non-binding, listed companies must disclose any deviations from the standards.</p> <p>Another regulation is the CS3D which will come into force in mid-2024. The CS3D is to be implemented into national law in Germany by mid-2026 by amending the LkSG. The regulations of the CS3D go beyond the applicable provisions of the LkSG and require annual reporting on the fulfilment of due diligence obligations.</p>
12.	<p><b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b></p>	<p>The EU Taxonomy Regulation establishes a classification system by defining criteria to determine whether an economic activity is environmentally sustainable. Thereby, to what extent investments are environmentally sustainable can also be identified.</p> <p>The EU Taxonomy Regulation primarily focuses on environmental sustainability. It therefore stipulates six environmental objectives: (1) climate change mitigation; (2) climate change adaptation; (3) sustainable use and protection of water and marine resources; (4) transition to a circular economy; (5) pollution prevention and control and (6) the protection and restoration of biodiversity and ecosystems. Environmentally sustainable activity requires a substantial contribution to any of these environmental objectives, the absence of significant harm to any other of the environmental objectives and compliance with specified performance thresholds (known as 'technical screening criteria').</p> <p>However, as an additional criteria, the EU Taxonomy Regulation takes into account whether an activity complies with a number of minimum social safeguards (ie, the activity has to be carried out in a way that ensures alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights).</p>

		<p>The EU Taxonomy Regulation provides for several transparency obligations, in particular, the expansion of reporting requirements in a non-financial statement (in future: sustainability report) (Article 8). This obligation is linked to sustainability reporting in terms of its scope, which means that only those undertakings that have to publish a non-financial statement (in future: sustainability report) have to comply with the new reporting requirements pursuant to the EU Taxonomy Regulation. Article 8 of the EU Taxonomy Regulation requires disclosure on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable. In particular, for each of their turnover, capital expenditure and operating expenditure, non-financial undertakings have to disclose the proportion by which these are associated with environmentally sustainable activities.</p> <p>The EU Taxonomy Regulation is binding in all EU Member States. However, it should be noted that the assessment of environmental sustainability is not made by an authority or other third party, but by the undertaking itself. The management board is obligated to duly make this assessment, and the supervisory board is obligated to duly control the assessment and corresponding disclosures made by the management board. Prior to the EU Taxonomy Regulation, there was no comparable system in Germany.</p>
13.	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p>The Non-Financial Reporting Directive (NFRD), which amended the EU Accounting Directive, established the obligation to include a non-financial statement in the management report containing information to the extent necessary for an understanding of the undertaking's development, performance, position and the impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters. These obligations are applicable to listed companies of certain legal forms that employ more than 500 employees. The directive was implemented, inter alia, by section 298b et seqq of the German Commercial Code. In addition, diversity reporting has been added to the corporate governance statement set forth in section 289f of the German Commercial Code.</p> <p>By means of the EU Taxonomy Regulation, the content of the non-financial statement has been expanded, as already described under question 12.</p> <p>The CSRD, which again amends the Accounting Directive and thus also the requirements of the NFRD, extends the personal scope for the sustainability reporting obligation. The requirements are also changing considerably: Binding reporting standards (European Sustainability Reporting Standards or ESRS) provide uniform content and formal requirements for sustainability reporting. Another new feature is a mandatory external audit of sustainability reporting. In addition, the sustainability report will become a mandatory part of the (Group) management report. As the transposition of the CSRD into national law is imminent, companies are already working on implementing the requirements.</p> <p>The disclosures in the corporate governance statement, as well as in the non-financial statement (in future: sustainability report), are mandatory by law and non-compliance may result in severe sanctions, in particular, consequences for board members in terms of criminal law and fines (see questions 9 and 10).</p> <p>Additional disclosure requirements may result from the German Corporate Governance Code, which includes several ESG-related recommendations. For example, the supervisory board should have expertise regarding sustainability. The Corporate Governance Code sets out standards. In the event of non-compliance, there is no sanction but an obligation for companies to disclose any deviations from the standards.</p> <p>Subject matter of the annual LkSG-report is the fulfilment of the obligations under this Act in the previous financial year. The competent authority's questionnaire that may be used as a template contains questions regarding, inter alia, the company's human rights strategy, its risk analysis regarding human rights-related and environmental risks, preventive and reactive measures and the internal complaints procedure.</p> <p>Companies covered by the CS3D are also subject to a duty to report on due diligence and the impact of their business activities. The CS3D provides for an exemption rule to relieve companies that would be required to report under both the CSRD and the CS3D: these are exempt from additionally reporting under the CS3D.</p>

14.	<p><b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b></p>	<p>As described in the answer to question 12, climate change mitigation is one of the environmental objectives for the purpose of the EU Taxonomy Regulation and thereby has gained importance. It is necessary to disclose if and to what extent activities qualify as environmentally sustainable pursuant to the EU Taxonomy Regulation. However, the EU Taxonomy Regulation does not require a specific climate change disclosure.</p> <p>The CSRD requires reporting companies to provide information on how the company intends to ensure that its business model and strategy are compatible with the transition to a sustainable economy and limiting global warming in line with the Paris Agreement. Across industries and regardless of whether they are listed, many companies use the standards of the Science Based Targets Initiative (SBTi) for this purpose. The ESRS further specify this disclosure obligation provided for in the CSRD.</p> <p>According to the CS3D, companies are obliged to adopt and implement a climate protection plan that aims to ensure that the company's business activities are compatible with the goal of the Paris Climate Agreement and the goal of climate neutrality within the meaning of EU Regulation 2021/1119 (European Climate Act). The CS3D is linked to the CSRD also in this regard: companies that already report on their climate protection plan in accordance with the CSRD are considered to fulfil the obligation under CS3D.</p> <p>The CBAM, already mentioned in question 2, also aims to curb climate change by obliging companies to keep detailed records and documentation of all information relating to imported goods and the calculation of the emissions associated with them.</p>
15.	<p><b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b></p>	<p>Previously, there has been no mandatory standardised form, so companies relied on national, EU-based or international frameworks according to section 289d of the German Commercial Code (based on the NFRD). Therefore, currently the non-financial statement has to contain information about whether a framework was used, and if so, which framework or why no framework was used. In German practice, the GRI Standards of the GRI have become the most frequently used framework. In addition, companies had quite a lot of leeway with regard to the content of the disclosures.</p> <p>The implementation of the CSRD will significantly reduce companies' leeway for sustainability reporting. The CSRD provides for the introduction of mandatory uniform reporting standards throughout the EU (ESRS). They specify the content and format of the sustainability report in detail (see question 16). An initial set of ESRS has already been issued.</p> <p>With regard to the annual report under the LkSG, the authority responsible for the LkSG has issued a questionnaire that may be used as a template.</p>
16.	<p><b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b></p>	<p>Section 289c of the German Commercial Code stipulates the content of the non-financial statement and provides a further explanation in terms of examples for each of five subjects (environmental concerns, workforce concerns, social concerns, respect for human rights and the fight against corruption and bribery).</p> <p>As part of the implementation of the CSRD into national law, Section 289c of the German Commercial Code will be amended. The ESG matters covered by the CSRD reporting obligation also include environmental, social and human rights factors, governance factors, employee concerns, respect for human rights and the fight against corruption and bribery. Beyond that, the CSRD contains clear specifications as to what ESG disclosures are required. They include:</p> <ol style="list-style-type: none"> <li>1. a brief description of the business model and strategy of the corporation, including information on: <ol style="list-style-type: none"> <li>a) the resilience of the corporation's business model and strategy to risks in connection with sustainability aspects;</li> <li>b) on the opportunities for the corporation in connection with sustainability aspects;</li> <li>c) the manner, including implementation measures and associated financial and investment plans, in which the corporation intends to ensure that its business model and strategy are compatible with the transition to a sustainable economy and limiting global warming to 1.5°C in line with the Paris Climate Agreement goal of achieving climate neutrality by 2050 and, where applicable, the corporation's exposure to coal, oil and gas related activities;</li> </ol> </li> </ol>

		<p>d) the way in which the corporation takes into account the concerns of its stakeholders and the impact of its activities on sustainability aspects in its business model and strategy; and</p> <p>e) on the way in which the strategy of the corporation is implemented with regard to sustainability aspects;</p> <p>2. a description of the time-bound sustainability targets that the corporation has set for itself, if any, including absolute greenhouse gas emission reduction targets for at least 2030 and 2050, a description of the progress the corporation has made towards achieving these targets, and an explanation of whether the corporation's targets related to environmental factors are based on conclusive scientific evidence;</p> <p>3. a description of the role of the management, supervisory or administrative bodies in relation to sustainability aspects and their expertise and skills to perform this role or their access to such expertise and skills;</p> <p>4. a description of the company's sustainability policy;</p> <p>5. Information on the existence of incentive schemes linked to sustainability aspects offered to members of the management, supervisory or administrative bodies;</p> <p>6. a description:</p> <p>a) of the due diligence process carried out by the corporation with regard to sustainability aspects and, where applicable, in accordance with the requirements of the EU for companies to carry out a due diligence process;</p> <p>b) the main actual or potential negative impacts associated with the company's own operations and with its value chain, including its products and services, its business relationships and its supply chain, the measures taken to identify and monitor these impacts, and other negative impacts that the company is required to identify in accordance with other EU requirements for companies to carry out a due diligence process; and</p> <p>c) any measures taken by the corporation to prevent, mitigate, remedy or terminate actual or potential negative effects and the success of these measures;</p> <p>7. a description of the main risks to which the corporation is exposed in connection with sustainability aspects, including a description of the main dependencies in this area, and the management of these risks by the corporation; and</p> <p>8. indicators relevant to the disclosures referred to in points 1 to 7.</p> <p>These reporting requirements are further specified by the extensive ESRS, which are issued by the European Commission as EU-delegated regulations on the basis of the CSRD. The ESRS are therefore directly applicable in all EU Member States without any transposition act.</p>
17.	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	<p>Because there is still no general obligation to comply with ESG standards, there is also no measurement of cross impacts between ESG goals. With regard to the non-financial statement, the disclosures have to be made separately in relation to each of the topics mentioned in section 289d of the German Commercial Code (already described under question 16). The implementation of the CSRD will not change this concept.</p> <p>The EU Taxonomy Regulation primarily takes the environmental aspect into account. In addition, the minimum social safeguards also need to be met.</p>
18.	<p><b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b></p>	<p>Given the strong interest by institutional investors in ESG information on the activities of listed companies, a standardised framework for ESG disclosure may improve investor information as it makes disclosure by individual companies comparable. The introduction of the mandatory ESRS for sustainability reporting under CSRD is therefore an important step.</p>



19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	<p>Clients currently face the challenge of implementing the numerous requirements of the EU Taxonomy Regulation, LkSG, CSRD, CS3D, Batterie-VO, CBAM, EU Deforestation Regulation (EU-Entwaldungs-VO or EUDR) and would therefore not be expected to wish for additional regulation that needs to be digested.</p> <p>However, companies would like to see clearer guidelines, for example with regard to standardisation, as well as better coordination of the various regulatory instruments and opportunities to consolidate the various reporting obligations.</p>
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	<p>The European Commission has recently pursued further legislative projects with regard to ESG disclosures and ESG compliance. First, the CSRD needs to be mentioned, which will provide for sustainability reporting, in particular, more detailed reporting standards. Further, the Green New Deal provides for a comprehensive package of measures to achieve the 2030 climate targets, including provisions to define sustainability targets for economic sectors and companies.</p> <p>Further disclosure requirements that may be relevant in this regard arise from the EU Sustainable Finance Disclosure Regulation (EU) 2019/2088 (SFDR), which has been in force since 9 January 2024 and lays down rules for financial market participants and financial advisers on transparency in the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and in the provision of information on the sustainability of financial products.</p> <p>Furthermore, the implementation of the CS3D mentioned in question 11 will stipulate the obligation for all EU Member States to ensure that companies conduct human rights and environmental due diligence. The implementation will result in a comprehensive due diligence obligation with regard to negative impacts on human rights and the environment in value chains, which companies, ie, board members, will have to observe.</p> <p>This development indicates the direction that will be taken, meaning that ESG-related measures will go beyond disclosure by establishing actual duties of conduct. The amendments to the Corporate Governance Code in Germany (as described above) point in the same direction.</p>
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	<p>The public offer of securities and their admission to trading require the prior publication of a prospectus. ESG disclosures in the prospectus are already required not only within the scope of certain special regulations, but in some cases also independently of these in accordance with the provisions of the Prospectus Regulation. This applies in particular (but not only) to 'green' bonds. Here, the prospectus must contain a number of ESG-related disclosures. ESMA recently clarified that issuers of securities are also required under current law to check whether and to what extent information on ESG is required in the prospectus, in accordance with the principle that the prospectus must contain all the information that the investor needs to make an informed investment decision.</p> <p>The European legislator recently passed the Listing Act, which, among other things, amends the Prospectus Regulation and contains provisions on ESG disclosures in the prospectus. Further ESG disclosure requirements for prospectuses are likely to follow in the foreseeable future. The Commission is empowered to adopt Delegated Acts that take into account whether debt securities are advertised as including ESG factors or pursuing ESG objectives.</p> <p>The European Green Bonds Regulation, which will apply from 21 December 2024, creates a voluntary offer for bond issuers. They can issue bonds with the designation 'European green bond', but these must then comply with the regulated European Green Bond Standard (EUGBS) established by the regulation.</p> <p>Deceiving investors about sustainability aspects by providing false or incomplete information in the prospectus to be prepared for an IPO for a correspondingly advertised investment is suitable for triggering tortious prospectus liability.</p> <p>A regulatory sanction for environmental disclosure obligations is possible by means of a balance sheet control procedure by the Authority for Financial Supervision (BaFin).</p> <p>As a result of the stricter requirements of the ESG disclosures in the prospectus investors might soon increasingly attempt to assert prospectus liability claims due to false ESG information.</p>



22.	<p><b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b></p>	<p>Since a ruling by the Federal Constitutional Court on climate protection in 2021, climate lawsuits have been on the rise in Germany. One example is lawsuits against a car manufacturer with the aim of stopping the sale of cars with combustion engines and reducing CO2 emissions. Even though the lawsuits were dismissed, the company incurred legal costs and reputational damage.</p> <p>With regard to greenwashing, there have also been several judgments under competition law for misleading advertising. One example is the lawsuit filed by the Verbaucherzentrale Baden-Württemberg against the fund company DWS on suspicion of greenwashing. Recently, Deutsche Umwelthilfe, a non-profit association for environmental aid, filed a lawsuit against a tourism company that had advertised 'decarbonised cruise operations' by 2050, which the plaintiff considers to be consumer deception.</p> <p>Furthermore, since October 2023, Germany has had a new legal remedy with which consumer associations can sue companies directly for damages. The subject of these lawsuits can also be ESG issues, for example regarding greenwashing of products or sustainability performance. As the requirements for filing and participating in such actions have been significantly lowered compared to the previous collective redress instruments (eg, the model declaratory action – <i>Musterfeststellungsklage</i>), an increase in actions by consumer associations for false or misleading ESG disclosures is expected in the future.</p>
23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	<p>The auditor of a company subject to reporting requirements must check whether the annual report contains a non-financial statement or – alternatively – a separate non-financial report. Under current legislation, there is no obligation to review the content of the non-financial statement or the separate non-financial report submitted. A voluntary review of the content by the auditor is possible. In this case, the result of this review must be made publicly available.</p> <p>Following implementation of the CSRD, there will be an obligation to review the content of sustainability reporting – initially with limited assurance, in the medium term with reasonable assurance. In principle, the auditor of the financial statements (<i>Abschlussprüfer</i>) is responsible for auditing the sustainability report. The CSRD includes the option that alternatively other auditors (<i>Wirtschaftsprüfer</i>) or even other accredited independent providers of assurance services may be approved to audit the sustainability report. It remains to be seen whether the German legislator will implement this option. The draft Implementation Act stipulates that auditors other than the auditor of the financial statements, but not other accredited independent providers of assurance services, may audit the sustainability report.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>Companies affected by the LkSG have installed a human rights representative or even a human rights council as a supervisor of human rights-related internal efforts and the fulfilment of corresponding legal obligations under the LkSG. Almost all large German companies also have sustainability departments. A sustainability officer or sustainability representative is often appointed.</p> <p>Furthermore, the German Corporate Governance Code suggests the supervisory board shall have ESG expertise.</p>
25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> </ul>	<p>German companies will primarily focus on the provisions of the CSRD and ESRS, as these will be implemented into national law and will therefore affect most German companies. The reporting obligations of the CSRD and ESRS burden the companies with additional logistical and administrative challenges and can usually only be realised by partially readjusting internal processes.</p> <p>The ISSB also affects a number of internationally operating companies in Germany, which had also campaigned for the ISSB standards to be transposed into European law in a formalised process like the IFRS. Companies fear that they will have to report according to two different, and in the worst case contradictory, sustainability standards if the European standards are not in line with the ISSB standards. Despite some conceptual differences, intensive work has been done on the interoperability between the two standards in order to make implementation easier for companies and ensure the greatest possible comparability. However, it remains to be seen how the two standards will be accepted in practice by companies and recipients of sustainability reporting and how they will contribute to the further integration of sustainability aspects into business strategies and decision-making processes.</p> <p>With regard to TNFD, six of the 319 companies that belong to the so-called 'Early Adopters' of the TNFD are German companies. The implementation of the CSRD, which will become mandatory for the first group of companies this financial year, is expected to increase the number of companies in Germany reporting in accordance with the TNFD. This is because individual environment-related standards of the CSRD recommend the use of the TNFD methodology, known as the LEAP approach, to determine nature-related risks and opportunities. In addition, no standardised metric for assessing nature-related risks has yet been established on the market.</p>

	<ul style="list-style-type: none"> <li>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	The TPT Framework affects primarily UK listed companies. In order to harmonise with the CSRD and ESRS reporting, the TPT has provided introductions and a comparison document to the ESRS.
26.	In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?	Currently there are high thresholds that need to be met prior to mandatory disclosure requirements being triggered (see question 4), which means that the companies currently concerned have the necessary resources and capacity to meet their reporting obligations. However, with the implementation of the CSRD and the CS3D, SMEs will also be increasingly affected by reporting requirements. As the CSRD and CS3D reporting requirements result in a considerable administrative effort, they will be particularly challenging for these SMEs. With regard to the CSRD, the EU has already reduced the reporting requirements for (capital market-oriented) SMEs compared to the reporting requirements of large companies. Nevertheless, careful financial and personal preparation for the upcoming reporting requirements is of the essence.
27.	Is it mandatory for companies to set climate-related targets?	<p>Currently it is not mandatory for companies to set climate-related targets.</p> <p>However, with implementation of the CS3D into national law, companies will be required to adopt and implement a transition plan to mitigate climate change. This climate plan should aim to ensure, through best endeavours, that the company's business model and strategy is aligned with the transition to a sustainable economy and the limitation of global warming to 1.5°C and, where appropriate, with the company's involvement in coal, oil and gas-related activities. In addition, companies should set out in this document, among other things, a precise timetable with defined time periods, defined emission reduction targets for greenhouse gases and list the key measures planned to achieve these targets and their financing.</p> <p>There is also a link between the CSRD and the CS3D in order to avoid redundancies: companies that are obliged to report on sustainability in accordance with the CSRD are exempt from the obligation to draw up a climate plan in accordance with the CS3D.</p>
28.	If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets ( <a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?	<p>Currently it is not mandatory for companies to set climate-related targets.</p> <p>Therefore, it is not very common amongst German companies to voluntarily set any climate targets. However, there are a few examples that might indicate the start of an overall trend:</p> <ul style="list-style-type: none"> <li>in May 2023, the executive board of a German stock corporation proposed a climate roadmap to the annual general meeting, which was passed with a majority of 95.3 per cent of the votes cast; and</li> <li>in April 2024, the annual general meeting of a DAX company voted on a binding climate plan up to 2040. The proposed climate plan was adopted almost unanimously by the shareholders with a majority of 98.44 per cent of the votes cast.</li> </ul> <p>In addition, in recent years a scientific discussion has begun regarding the necessity of a so called 'Say-on-climate' resolution for German stock corporations. With the Say-on-climate resolution the annual general meeting would vote on a Climate Transition Action Plan proposed by the executive board.</p>
29.	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	<p>With the CS3D the European Commission is currently finalising another legislative project with regard to ESG disclosures and ESG compliance. The CS3D stipulates the obligation for all EU Member States to ensure that companies conduct human rights and environmental due diligence. This directive will result in a comprehensive duty of care with regard to negative impacts on human rights and the environment in value chains that needs to be observed by companies, that is, by board members.</p> <p>With regard to the national law, the implementation of the CSRD needs to be mentioned. The CSRD shall provide for expanded non-financial reporting, in particular, more detailed reporting standards.</p> <p>The recent endeavours of the European Commission indicate the direction that will be taken, meaning that ESG-related measures will go beyond disclosure by establishing actual duties of conduct. The adoption of the LkSG (as described above) points in the same direction.</p>
30.	Please provide your name, firm name, and a brief biography (optional) about yourself.	Michael Arnold, Gleiss Lutz. Simon Link, Hengeler Mueller.

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Grand Duchy of Luxembourg

### Grand Duchy of Luxembourg

1.	<b>Which jurisdiction are you covering?</b>	Grand Duchy of Luxembourg
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>ESG disclosure obligations in Luxembourg derive from EU law and are provided by national laws transposing EU directives as well as by directly applicable EU regulations.</p> <p>ESG disclosures became mandatory pursuant to the Law dated 23 July 2016 that transposed the Non-Financial Reporting Directive (NFRD) through amendments to various laws, including in particular the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of companies (the 'Accounting Law') and the Law of 10 August 1915 on commercial companies (the 'Company Law').</p> <p>The provisions of the Accounting Law and the Company Law are currently being further amended by Bill of Law 8370 (the 'CSRD Bill') transposing the Corporate Sustainability Reporting Directive (CSRD). New ESG disclosure obligations are laid down in Articles 19a and 29a of the CSRD. For the purposes of this survey, we will mainly refer to the requirements of the CSRD, which will become gradually applicable to various types of undertakings in Luxembourg as from financial year 2024 and as soon as the CSRD is transposed. We will refer in limited respects to the provisions of the CSRD Bill, which are not yet in force but give an indication of the direction that the Luxembourg legislator proposes to take in its CSRD transposition approach.</p> <p>ESG disclosures are also required by the EU Taxonomy Regulation. The obligations under the EU Taxonomy Regulation are further detailed in Commission Delegated Regulation EU 2021/2178 of 6 July 2021, as amended by the Delegated Act (EU) 2023/2485 (the 'Disclosures Delegated Act'). Because EU Regulations are directly applicable in EU Member States, the EU Taxonomy Regulation is directly applicable in Luxembourg. Hence, ESG disclosures under the EU Taxonomy Regulation by in-scope market participants are mandatory in Luxembourg.</p> <p>ESG disclosures are also required under the Sustainable Finance Disclosure Regulation (SFDR). However, this regulation does not apply to issuers but imposes, in essence, a range of ESG disclosure obligations at entity and product/contract level to different types of actors alongside the distribution chain of financial products, such as alternative investment fund managers (AIFMs), investment firms and credit institutions providing portfolio management services or insurance undertakings making available insurance-based investment products. Hence, the SFDR will not be covered in this survey.</p>

<p>3.</p>	<p><b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b></p>	<p>Entities in scope of the NFRD and subject to the NFRD Law are large undertakings which are public interest entities within the meaning of the Accounting Directive (ie, entities admitted to trading on a EU-regulated market ('listed entities'), credit institutions, insurance companies and other companies designated by Member States to be of public interest), exceeding on their balance sheet dates the criterion of the average number of 500 employees as well as public interest entities which are parent undertakings of a large group (see also definitions below).</p> <p>Under the CSRD, ESG disclosures take the form of sustainability reporting included in the management report. They are required on a staggered basis (see also question 11 below with respect to the CSRD implementation timeline) for a larger group of companies, namely all large undertakings as well as small and medium-sized undertakings admitted to trading on a regulated market and parent undertakings of a large group.</p> <p>The CSRD qualifies undertakings as follows:</p> <p><b>Large undertakings</b> exceed the limits of at least two of the following three criteria:</p> <ol style="list-style-type: none"> <li>1. balance sheet total: €25m</li> <li>2. net turnover: €50m</li> <li>3. 250 employees.</li> </ol> <p><b>Medium-sized undertakings</b> do not exceed the limits of at least two of the following three criteria:</p> <ol style="list-style-type: none"> <li>1. balance sheet total: €25m</li> <li>2. net turnover: €50m</li> <li>3. 250 employees.</li> </ol> <p><b>Small undertakings</b> do not exceed the limits of at least two of the following three criteria:</p> <ol style="list-style-type: none"> <li>1. balance sheet total: €5m</li> <li>2. net turnover: €10m</li> <li>3. 50 employees.</li> </ol> <p><b>Large groups</b> are groups consisting of parent and subsidiary undertakings to be included in a consolidation and which, on a consolidated basis, exceed the limits of at least two of the following three criteria on the balance sheet of the parent undertaking:</p> <ol style="list-style-type: none"> <li>1. balance sheet total: €25m</li> <li>2. net turnover: €50m</li> <li>3. 250 employees.</li> </ol> <p>Article 8 of the EU Taxonomy Regulation applies to the same type of entities as those subject to the disclosure obligations pursuant to the NFRD (see above). However, it provides for different disclosure rules for financial and non-financial entities. Financial entities are defined as asset managers, credit institutions, investment firms, insurance undertakings and reinsurance undertakings as defined in Article 1(8) of the Disclosures Delegated Act.</p>
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4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	See above regarding the thresholds that need to be met to trigger the CSRD disclosure requirements (question 3) and the timeline for implementation (question 11).  Moreover, the CSRD provides for some proportionality for small and medium-sized undertakings, small and non-complex institutions and captive insurance and reinsurance undertakings. Those entities may provide limited sustainability reporting in accordance with alleviated sustainability reporting standards proportionate to their capacities and characteristics as well as the scale and complexity of their activities.
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	ESG disclosures are not triggered in the case of certain transactions only, but are required to be made by in-scope entities on a continuous annual reporting basis in a management report or consolidated management report (as applicable). As opposed to the NFRD, the CSRD does not allow the publication of the ESG disclosures in a separate report.
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	As mentioned above, ESG disclosures can no longer be published in separate ESG reports. They must be included in a clearly identifiable dedicated section of the management report or consolidated management report (as applicable).
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	ESG disclosures can either be found in clearly identifiable dedicated sections of management reports or consolidated management reports (see questions 5 and 6). According to the amended Article 79 of the Accounting Directive, the management report shall be published on the Electronic Register of Companies and Associations ( <i>Recueil électronique des sociétés et associations</i> , the RESA). In such case, it will be available free of charge on the website of the Trade and Companies Register. However, the company may choose not to publish the management report in the RESA. In this case, the report shall be made available to the public at the company's registered office. A full or partial copy of this report must be available free of charge on request.  Moreover, for the issuers having their securities admitted to trading on a regulated market for which Luxembourg is the home Member State, the sustainability reporting will comprise the annual financial report, which will qualify as regulated information and will be filed with the Luxembourg financial sector regulator, the Commission de Surveillance du Secteur Financier (CSSF). The CSSF may thereafter decide to publish such information on its website.
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	As mentioned above, under the CSRD and the EU Taxonomy Regulation, there are mandatory disclosure obligations. Besides that, in the current financial environment, certain companies that are not subject to mandatory disclosure requirements may decide to disclose such information voluntarily for the purpose of accessing sustainable financing or for other business-related reasons. In this respect, the European Financial Reporting Advisory Group (EFRAG) is currently in the process of public consultation on draft voluntary standards for entities that are out of CSRD scope, namely non-listed small and medium-sized undertakings, in order to support them in the preparation of such voluntary sustainability reports.
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	In Luxembourg, the CSSF is competent to oversee compliance with the EU Taxonomy Regulation by companies subject to its supervision. The Commissariat aux Assurances (CAA), the supervisor of the insurance sector, has the same competences with respect to insurance companies.  With respect to the disclosure obligations resulting from the CSRD and according to the CSRD Bill, the CSSF shall be empowered to impose administrative sanctions on issuers having their securities admitted to trading on a regulated market for which Luxembourg is the home Member State in the event that the regulated information (including sustainability reporting) is not published within the required deadline. With respect to sustainability disclosure obligations resulting from the CSRD and as provided by the CSRD Bill, the following specific sanctions/liabilities shall also apply:

		<ul style="list-style-type: none"> <li>• civil law liability, that is, the collective liability of the members of the administrative, management and supervisory bodies of an undertaking, acting within the competences assigned to them by law, in case they have not ensured that the management report, consolidated management report or separate report (as applicable) are drawn up and published in accordance with the applicable law and, where applicable, in accordance with international accounting standards, Commission Delegated Regulation (EU) 2019/815 (electronic reporting format) and the applicable European Sustainability Reporting Standards (ESRS – see below); and/or</li> <li>• criminal liability, that is, a fine of €500–€25,000 for managers and directors who have failed to (1) establish sustainability reporting, (2) have it verified by a statutory auditor, (3) file or publish the sustainability reporting within applicable deadlines, (4) file or publish the management report together with the assurance opinion on sustainability reporting, and as applicable, sustainability statement.</li> </ul> <p>With respect to disclosure obligations resulting from Article 8 of the EU Taxonomy Regulation, there is no specific sanctions framework. The CSRD sanctions shall apply <i>mutatis mutandis</i>.</p>																	
10.	<p><b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b></p>	<p>See above with respect to mandatory disclosure obligations (question 9).</p> <p>In addition, general rules on Luxembourg corporate liability, as well as Luxembourg civil liability, requiring proof of fault, damage and causal link would apply.</p>																	
11.	<p><b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b></p>	<p>According to the CSRD, in-scope entities will have to start reporting according to the following timetable:</p> <table border="1" data-bbox="824 646 2107 1094"> <thead> <tr> <th colspan="2">Timeline</th> <th rowspan="2">In-scope entities</th> </tr> <tr> <th>Financial year</th> <th>Report due</th> </tr> </thead> <tbody> <tr> <td>2024</td> <td>2025</td> <td>Companies previously subject to the NFRD (large listed companies, large banks and large insurance undertakings), as well as large non-EU listed companies and listed parent undertakings of a large group – all if they have more than 500 employees.</td> </tr> <tr> <td>2025</td> <td>2026</td> <td>Other large companies, including other large non-EU listed companies as well as parent undertakings of a large group.</td> </tr> <tr> <td>2026 (opt-out until 2028)</td> <td>2027 (opt-out until 2029)</td> <td>Listed SMEs, including non-EU listed SMEs.  However, listed SMEs may decide to opt out of the reporting requirements until financial year 2028.</td> </tr> <tr> <td>2028</td> <td>2029</td> <td>Non-EU companies that generate over €150m per year in the EU and that have in the EU either a branch with a turnover exceeding €40m or a subsidiary that is a large company or a listed SME.</td> </tr> </tbody> </table>	Timeline		In-scope entities	Financial year	Report due	2024	2025	Companies previously subject to the NFRD (large listed companies, large banks and large insurance undertakings), as well as large non-EU listed companies and listed parent undertakings of a large group – all if they have more than 500 employees.	2025	2026	Other large companies, including other large non-EU listed companies as well as parent undertakings of a large group.	2026 (opt-out until 2028)	2027 (opt-out until 2029)	Listed SMEs, including non-EU listed SMEs.  However, listed SMEs may decide to opt out of the reporting requirements until financial year 2028.	2028	2029	Non-EU companies that generate over €150m per year in the EU and that have in the EU either a branch with a turnover exceeding €40m or a subsidiary that is a large company or a listed SME.
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<p>12.</p>	<p><b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b></p>	<p>As mentioned above, the EU Taxonomy Regulation introduces harmonised standards for ESG reporting by financial and non-financial entities and defines on what basis activities can be qualified as environmentally sustainable.</p> <p>Regarding benchmarks, Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (the BMR) represents a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts, or to measure the performance of investment funds in the EU. Thereby, it contributes to the proper functioning of the internal market while achieving a high level of consumer and investor protection.</p> <p>The BMR targets three types of market participants: benchmark administrators; natural or legal persons contributing input data to a benchmark; and supervised entities using a benchmark. Regulation (EU) 2019/2089 of 27 November 2019 amending the BMR as regards the EU climate transition benchmark (EU CTB), EU Paris-aligned benchmark (EU PAB) and sustainability-related disclosures for benchmarks creates two new categories, or labels, of climate-related benchmarks:</p> <ul style="list-style-type: none"> <li>• EU CTB, which brings the resulting benchmark portfolio onto a decarbonisation trajectory; and</li> <li>• EU PAB, which brings the resulting benchmark portfolio's carbon emissions in line with the Paris Climate Agreement target to limit the global temperature rise to 1.5°C compared to pre-industrial levels.</li> </ul> <p>For these two new benchmarks, a delegated regulation specifies the minimum standards of the benchmark methodology.</p> <p>At Luxembourg level, the following voluntary labels relevant for capital market transactions exist (the list is not exhaustive).</p> <ul style="list-style-type: none"> <li>• LuxFLAG Climate Finance Label: The primary objective of this label is to reassure investors that each investment fund awarded the label invests at least 75 per cent of its total assets in investments related to the mitigation and/or adaptation of climate change or cross-cutting activities, and must prove a clear and direct link to these activities;</li> <li>• LuxFLAG Environment Label: This label was created with the primary objective of reassuring investors that an investment fund invests primarily in environment-related sectors in a responsible manner. This label requires each eligible fund to have a portfolio of investments in environment-related sectors corresponding to at least 75 per cent of the fund's total assets; and</li> <li>• LuxFLAG ESG Label: The primary objective of this label is to reassure investors that each investment product awarded the label incorporates ESG criteria throughout the entire investment process. The eligibility criteria for this label requires applicable funds to screen 100 per cent of their invested portfolio according to one of the ESG strategies and standards recognised by LuxFLAG.</li> </ul> <p>Moreover, the securities displayed on the Luxembourg Green Exchange (LGX) are categorised as Green, Social, Sustainable or Sustainability-linked. In order to be displayed, they must be aligned with sustainability standards such as the International Capital Market Association (ICMA)'s Green Bond Principles (ICMA GBP), Social Bond Principles (ICMA SBP) and Sustainability Bond Guidelines (ICMA SBG), and they must meet other eligibility criteria specific to LGX.</p> <p>Finally, as far as eligible standards are concerned, the European Green Bond Regulation was published on 30 November 2023 and will apply as of 21 December 2024. The regulation lays down uniform requirements for issuers of bonds who wish to use the designation 'European Green Bond' or 'EuGB' for their bonds that are made available to investors in the EU and also provides optional disclosure templates for bonds marketed as environmentally sustainable and for sustainability-linked bonds in the EU.</p>
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<p>13.</p>	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p>Under the CSRD, obliged companies shall include in the management report or consolidated management report (as applicable) a dedicated section including information necessary to understand its impacts on sustainability matters and how sustainability matters affect its development, performance and position (ie, sustainability reporting). This information will have to be disclosed according to the ESRS developed by EFRAG and published on 22 December 2023 in Commission Delegated Regulation (EU) 2023/2772.</p> <p>Under the ESRS, all in-scope entities will be required to comply with standards consisting of general principles and general disclosure requirements applicable regardless of the entity's business sector (covering in particular governance, strategy, impacts, risks, opportunity management, metrics and targets – the ESRS 2). Additional disclosures related to governance, environment and social topics will be required when they are considered material for the entity, depending on the entity's sector. To this effect, the ESRS require in-scope entities to conduct an assessment in accordance with the principle of 'double materiality' and to consider both impact materiality (inside-out approach: the entity focuses on the impact of its activities on sustainability matters) and financial materiality (outside-in approach: the entity focuses on whether a sustainability matter is material for its development, performance and position). It follows that the precise list of ESRS disclosure requirements will be determined based on the outcome of this materiality assessment.</p> <p>Moreover, entities subject to sustainability reporting obligations shall prepare their (consolidated) management report in the electronic reporting format specified in Article 3 of Commission Delegated Regulation (EU) 2019/815 (xHTML) and shall mark up their sustainability reporting, including the disclosures provided for in Article 8 of the EU Taxonomy Regulation, in accordance with the electronic reporting format specified in that delegated regulation (iXBRL).</p> <p>Furthermore, under Article 8 of the EU Taxonomy Regulation, any undertaking which is subject to an obligation to publish sustainability information pursuant to the CSRD shall include in its reporting information on how and to what extent its activities are associated with economic activities that qualify as environmentally sustainable under Articles 3 and 9 of the EU Taxonomy Regulation. An economic activity is environmentally sustainable, ie, 'taxonomy-aligned', when that activity:</p> <ol style="list-style-type: none"> <li>1. contributes substantially to one or more of the six environmental objectives <ul style="list-style-type: none"> <li>• climate change mitigation;</li> <li>• climate change adaptation;</li> <li>• sustainable use and protection of water and marine resources;</li> <li>• transition to a circular economy;</li> <li>• pollution prevention and control; and</li> <li>• protection and restoration of biodiversity and ecosystems.</li> </ul> </li> <li>2. does not significantly harm any of the above six environmental objectives;</li> <li>3. is carried out in compliance with minimum safeguards; and</li> <li>4. complies with the technical screening criteria.</li> </ol>
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14.	<p><b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b></p>	<p>Yes. The EU Taxonomy Regulation establishes for EU Member States a general framework for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable. That regulation applies to measures adopted by the EU or Member States that set out requirements for financial market participants or issuers in respect of financial products or corporate bonds that are made available as environmentally sustainable; to financial market participants that make available financial products; and to undertakings that are subject to the NFRD/CSRD. Economic operators or public authorities that are not covered by the EU Taxonomy Regulation may also apply that regulation on a voluntary basis.</p> <p>The EU Taxonomy Regulation disclosure regime exhaustively sets out climate-related disclosure obligations. These are based on technical screening criteria for determining whether an economic activity contributes substantially to climate change mitigation or climate change adaptation, which are set out in the Climate Delegated Act.</p> <p>The use of technical screening criteria ensures that an investor understands to what extent the economic activity has a positive impact on the climate objective or reduces the negative impact on the climate objective. These technical screening criteria refer to thresholds or performance levels that the economic activity should achieve in order to qualify as contributing substantially to one of the climate objectives. The technical screening criteria for ‘do no significant harm’ ensure that the economic activity has no significant negative environmental impact. Consequently, these technical screening criteria specify the minimum requirements that the economic activity should meet in order to qualify as environmentally sustainable.</p> <p>Moreover, the CSRD provides that sustainable information shall include plans of the entity, including implementing actions and related financial and investment plans, to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement under the United Nations Framework Convention on Climate Change adopted on 12 December 2015 (the ‘Paris Agreement’) and with the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119 of the European Parliament and of the Council (the ‘European Climate Law’), and, where relevant, the exposure of the undertaking to coal-, oil- and gas-related activities.</p>
15.	<p><b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b></p>	<p>See above about the exhaustive disclosure regime introduced by the CSRD and the EU Taxonomy Regulation (question 13).</p>
16.	<p><b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b></p>	<p>Reference should be made to the concepts defined in the EU Taxonomy Regulation and the delegated acts together with the CSRD and related ESRS. There is otherwise no definition of scope of the term ESG under Luxembourg law.</p>
17.	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	<p>The EU Taxonomy Regulation considers cross impacts.</p> <p>To qualify as environmentally sustainable under the EU Taxonomy Regulation, an economic activity must also be compliant with certain minimum safeguards. These are defined as procedures implemented by an undertaking that is carrying out an economic activity to ensure alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organization on Fundamental Principles and Rights at Work and the International Bill of Human Rights.</p> <p>When implementing these procedures, undertakings must adhere to the principle of ‘do no significant harm’. EU regulators introduced that principle to prevent investment processes that focus on a particular environmental or social objective without sufficient consideration for other such objectives.</p>

<p>18.</p>	<p><b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b></p>	<p>The answer undoubtedly lies in the middle.</p> <p>On the one hand, the compliance burden for companies resulting from the complex and demanding disclosure framework described above is very significant when also considering the extreme granularity of the requirements resulting from the EU Taxonomy Regulation's delegated acts together with the CSRD and related ESRS. Implementation timelines are also challenging because harmonised and reliable data may not be available yet.</p> <p>Nevertheless, all actors in the Luxembourg financial market strongly support sustainable finance initiatives as a means of creating investor value.</p> <p>Reference can be made to government-sponsored initiatives, such as the Luxembourg Sustainable Finance Initiative (LSFI), a not-for-profit association that designs and implements the Sustainable Finance Strategy for the Luxembourg financial centre. The idea of creating an association to promote sustainable finance in Luxembourg dates back to 2018, when the Luxembourg Government published, in collaboration with the UN Environment Programme, the Luxembourg Sustainable Finance Roadmap. One of the main recommendations of the Roadmap was to create a sustainable finance initiative. In April 2024, the Ministry of Finance announced a ten-point action plan for sustainable finance which will guide the efforts over the next five years to further develop Luxembourg's sustainable financial ecosystem.</p> <p>In addition, the Luxembourg Green Exchange was the world's first green-dedicated exchange. In 2016, the Luxembourg Stock Exchange launched a platform dedicated to green financial instruments – the Luxembourg Green Exchange (LGX) – which is the largest platform of its kind worldwide, where issuers and investors can come together to fulfil their green objectives.</p> <p>On 6 October 2023, the European Securities and Markets Authority (ESMA) published an analysis of the European sustainable debt market, analysing the existence of an ESG pricing effect, so called 'Greenium', across different types of sustainable-labelled debt instruments. ESMA notes that the existing research suggests, without being conclusive, that sustainable-labelled debt issuers may benefit from the Greenium, meaning that investors would accept lower yields in exchange for the sustainability profile of the bond or the issuer.</p>
<p>19.</p>	<p><b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b></p>	<p>The CSRD together with the ESRS and the EU Taxonomy Regulation created an exhaustive standardised framework for ESG disclosures. However, its great technicality and complexity make it difficult to understand and apply, which is regrettable. The work will have to be directed to accompanying the companies in the implementation of this new framework.</p> <p>In addition, interoperability, harmonisation and standardisation of ESG standards beyond the EU will be key to ensure fair and sustainable global financial markets.</p>
<p>20.</p>	<p><b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b></p>	<p>The Listing Act, which amends inter alia the Prospectus Regulation, sets out disclosures with respect to sustainability matters considering whether the issuer of equity securities is subject to the CSRD disclosures and whether non-equity securities are advertised as taking into account ESG factors or pursuing ESG objectives. It shall enter into force around the summer of 2024 and apply directly in the Member States within the following 18 months. During the period before the Listing Act applies, on 11 July 2023, ESMA made a public statement on 'Sustainability Disclosures in prospectuses' regarding the sustainability-related disclosure that should be included in prospectuses under the current legislation. While the statement is addressed to NCAs, ESMA noted that its contents should be taken into account by issuers and advisers when drawing up prospectuses, including sustainability-related disclosure. In this respect the regulator expects that the following sustainability related disclosures are made:</p> <ul style="list-style-type: none"> <li>• in equity and non-equity prospectuses: material sustainability-related disclosures in accordance with Article 6(1) of the PR;</li> <li>• in equity prospectuses: sustainability-related disclosures published in the issuer's non-financial reporting in accordance with the NFRD or CSRD when it is considered material in the context of Article 6(1) of the PR; and</li> <li>• in non-equity prospectuses related to non-equity securities advertised as taking into account a specific ESG component or pursuing ESG objectives, such as 'use of proceeds' bonds and 'sustainability-linked' bonds: information enabling investors to assess sustainability ambition or performance together with information of any post-issuance information.</li> </ul>

21.	<p><b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b></p>	<p>On 31 May 2023, the European Supervisory Agencies (ESAs) published their respective progress reports on greenwashing risks in the financial sector. In its report, ESMA noted, with respect to issuers, that areas such as forward-looking information and pledges about future ESG performance are particularly exposed to greenwashing risks. ESMA stated that issuers have a responsibility to communicate in a balanced manner about their sustainability commitments and performance through fair, clear and not misleading claims.</p> <p>In this context, on 25 October 2023, ESMA, together with the European national accounting enforcers, including the CSSF, identified European common enforcement priorities for the 2023 annual reports.</p> <p>In both financial and non-financial statements, the enforcement priorities are:</p> <ul style="list-style-type: none"> <li>• disclosures under Article 8 of the Taxonomy Regulation;</li> <li>• disclosures of climate-related targets, actions and progress; and</li> <li>• Scope 3 emissions.</li> </ul> <p>Accordingly, on 8 January 2024, the CSSF published a communication outlining its enforcement priorities for the 2023 annual reports published by issuers subject to its supervision according to the Transparency Law.</p>
22.	<p><b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b></p>	<p>On 11 March 2024, Greenpeace Luxembourg filed a complaint with the OECD National Contact Point (NCP) against the sovereign pension fund <i>Fonds de Compensation de la Sécurité sociale SICAV FIS</i> (FDC SICAV). The complaint alleges that the fund's investment strategies are not in line with the OECD Guidelines for Multinational Enterprises. Greenpeace Luxembourg demands that the fund:</p> <ul style="list-style-type: none"> <li>• set up a sustainable investment strategy in line with the standards for responsible business conduct in the Guidelines, including risk-based human rights and environmental due diligence and clear commitment to the Paris Agreement;</li> <li>• carry out human rights and environmental due diligence on its investments; and</li> <li>• establish a grievance mechanism in line with the United Nations Guiding Principles on Business and Human Rights (UNGPs) allowing stakeholders to report sustainability-related issues.</li> </ul> <p>On 22 March 2024, the CSSF announced its supervisory priorities in the area of sustainable finance concerning inter alia investment asset managers (IAMs). Regarding IAMs, the CSSF will notably assess and verify that sustainability-related disclosures made by IAMs are consistent across the fund documentation and marketing material. In case of breaches of the applicable framework, enforcement actions may be launched by the regulator.</p> <p>Furthermore, with respect to greenwashing, it is worth mentioning the recent Directive 2024/825 as regards empowering consumers for the green transition through better protection against unfair practices and through better information, amending the Consumer Rights Directive and the Unfair Commercial Practices Directive. In particular, pursuant to this directive, greenwashing through making an unsubstantiated environmental claim unverified by an independent third party shall be considered as a prohibited unfair commercial practice subject to enforcement. The directive must be transposed into national law within 24 months after its entry into force.</p> <p>Moreover, in March 2023, the European Commission proposed the Green Claims Directive (GCD), which aims to tackle greenwashing. The proposal is currently being negotiated between EU legislators. The GCD seeks to protect consumers against greenwashing by setting clear standards on how companies can substantiate, communicate and verify their green claims. Member States will be required to establish systems or entities to verify claims and ensure that businesses comply with the GCD. Any breach of the provisions of the GCD shall be subject to fines.</p>

23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	<p>According to the CSRD Bill, statutory auditors, on the basis of a limited assurance engagement, will issue an opinion on:</p> <ul style="list-style-type: none"> <li>• the compliance of the (consolidated) sustainability information with CSRD requirements, including the compliance with the ESRS;</li> <li>• the process implemented by the entity or the group to which such entity belongs to determine the information to be disclosed in accordance with the ESRS;</li> <li>• the requirement to mark up sustainability information; and</li> <li>• publication requirements.</li> </ul> <p>According to the CSRD Bill, the limited assurance can only be performed by a statutory auditor, as Luxembourg has not exercised the option provided by the CSRD of allowing independent service providers to perform the limited assurance engagement on (consolidated) sustainability information.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>According to the CSRD, the management report of the in-scope entities will contain a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, and of their expertise and skills in relation to fulfilling that role or the access such bodies have to such expertise and skills.</p> <p>The ESRS specify the information that undertakings are to disclose about the following governance factors:</p> <ul style="list-style-type: none"> <li>• the role of the undertaking's administrative, management and supervisory bodies with regard to sustainability matters, and their composition as well as their expertise and skills in relation to fulfilling that role or the access such bodies have to such expertise and skills;</li> <li>• the main features of the undertaking's internal control and risk management systems, in relation to the sustainability reporting and decision-making process;</li> <li>• business ethics and corporate culture, including anti-corruption and anti-bribery, the protection of whistleblowers and animal welfare;</li> <li>• activities and commitments of the undertaking related to exerting its political influence, including its lobbying activities; and</li> <li>• the management and quality of relationships with customers, suppliers and communities affected by the activities of the undertaking, including payment practices, especially with regard to late payment to small and medium-sized undertakings.</li> </ul> <p>Moreover, entities whose transferable securities are admitted to trading on an EU-regulated market shall include a corporate governance statement in their management report in the form of a specific section on, inter alia, diversity policy applied in relation to the undertaking's administrative, management and supervisory bodies with regard to gender and other aspects such as age, disabilities or educational and professional background, the objectives of that diversity policy, how it has been implemented and the results in the reporting period. If no such policy is applied, the statement shall contain an explanation as to why that is the case.</p>

25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<p>See above with respect to the nature and extent of ESG disclosures required in Luxembourg in accordance with the CSRD together with the ESRS (question 13). It is to be noted that the ESRS are highly aligned with ISSB standards.</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>The scope of application of the CSRD will progressively expand the number of companies concerned by sustainability reporting, according to the European Commission, from around 11,700 companies covered by the NFRD to around 50,000 to be covered by the CSRD. Moreover, the scope of the reporting obligations themselves has been broadened. For many companies the scale of efforts required to comply with the CSRD will be significant. In particular, the sustainability reporting shall not only contain information about the company's own operations, but also its value chain, requiring considerable efforts in data collection, including data which currently may not be available.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>Yes, it is. According to the CSRD, the management report of the in-scope entities shall contain:</p> <ul style="list-style-type: none"> <li>• a description of the time-bound targets related to sustainability matters set by the undertaking, including, where appropriate, absolute greenhouse gas emission reduction targets at least for 2030 and 2050;</li> <li>• a description of the progress the undertaking has made towards achieving those targets; and</li> <li>• a statement of whether the undertaking's targets related to environmental factors are based on conclusive scientific evidence.</li> </ul>
28.	<p><b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b></p>	<p>See above for mandatory commitments (question 27).</p>

29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>ESG disclosures are still developing in Luxembourg and in the EU, in general. The focus is expected to be on the implementation of the existing framework, but also on simplifying the rules and making them proportionate for the purpose.</p> <p>An important future trend is the work at EU level on a social taxonomy meant to determine which businesses and thus, which investments could be considered social. In theory, this is meant to help to direct money into social sectors and activities.</p> <p>Finally, also worth mentioning is the directive on corporate sustainability due diligence which is still awaiting the final approval of the EU Council. The directive aims at fostering sustainable and responsible corporate behaviour throughout global value chains through an EU standard on corporate due diligence. Companies will be required to identify and, where necessary, prevent, end or mitigate the adverse impacts of their activities on human rights, such as child labour and exploitation of workers, and on the environment, for example pollution and biodiversity loss.</p>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	Katrien Verannemen, Caroline Bocklandt and Karolina Szpinda, Elvinger Hoss Prussen.

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Greece

### Greece

1.	Which jurisdiction are you covering?	Greece
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Yes, for certain entities based on Law 4403/2016 (transposed Directive 2014/95/EU) and based on Law 4548/2018 (re <i>societes anonymes</i> or SAs).
3.	If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?	Yes, mandatory ESG disclosure applies currently only to large and listed companies.
4.	If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?	Mandatory disclosure applies only to large and listed companies. Large includes companies of public interest which employ more than 500 employees.
5.	What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?	Mainly the second, as part of the annual obligation of SAs to publish their financial data (Articles 151 and 150, para 2 of Law 4548/2018).
6.	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	Mainly as an annex in the annual reporting of financial data, but also separately.
7.	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?	ATHEX filings, company website, sustainability reports, annual financial reporting filings to GEMH (companies registry).
8.	In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?	Yes. Moreover, even for smaller SAs their annual reporting may include ESG criteria (ie, non-financial data) that allows a better understanding of the company.

9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	For listed companies the Capital Markets Committee; for the rest mainly GEMH.
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	For mandatory, the penalties for non-reporting of financial data apply. For non-mandatory, penalties depend on the targeted audience of the false statements.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	A taxonomy disclosure system will apply based also on the CSR Directive that is expected to be transposed in Greece by end of 2022, to apply to large enterprises and to listed enterprises, and which shall include enforcement steps for large enterprises for financial year 2024 (published 2025) and for listed companies for financial year 2025 (published 2026).
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	There are certification systems applicable offered by certified companies.
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	Environmental topics, social engagement and workforce respect; for listed companies, the corporate governance system in place.
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	Not generally applicable.
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	Yes, for listed companies.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	Yes, for listed companies (which non-listed companies can also follow), as published recently for 2022 by the ATHEX.



17.	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	In principle, as a whole.
18.	<p><b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b></p>	For the time being, it is hard to say since generalised and mindset changes are expected with the upcoming legislative changes with the transposition of the Corporate Sustainability Reporting Directive (CSRD). However, based on research, both investors and consumers (irrespective of mandatory or not-mandatory measures that apply) have started to pay attention on the ESG footprint of a company. But it is still not very clear what the parameters of ESG are.
19.	<p><b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b></p>	In principle yes, the ESG disclosure regime is expected to change with the transposition of the CSRD.
20.	<p><b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b></p>	In principle, until now ESG-relevant reporting requirements are governed through the Non-Financial Reporting Directive (NFRD) regime. Additional requirements might be introduced after the transposition of the CSRD, mainly for greenwashing after the transposition of the Greenwashing Directive (2024/825).
21.	<p><b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b></p>	In principle, until now ESG-relevant reporting requirements are governed through the NFRD regime. Additional requirements might be introduced after the transposition of the CSRD and mainly for greenwashing after the transposition of the Greenwashing Directive (2024/825).
22.	<p><b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b></p>	Not to my knowledge.
23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	N/A

24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	More developments are expected after the transposition of the CSRD.
25.	<b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	N/A
26.	<b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b>	Yes, for the existing ones (large and listed companies); for the companies that will be part of such requirements following the CSRD, they might need to seek external support from specialised service providers.
27.	<b>Is it mandatory for companies to set climate-related targets?</b>	The National Climate Law, adopted in May 2022 (Law 4936/2022), sets amongst other things, targets to reduce total greenhouse gas (GHG) emissions by 55 per cent by 2030, by 80 per cent by 2040 and to reach net zero emissions by 2050.
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	N/A
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	A lot is expected to change after the transposition of the CSRD but the latter alone will not suffice, without a change of mindset. A greater effort needs to be made towards the latter and Greece has adopted an ongoing relevant awareness effort.
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	Name: Dimitris Paraskevas Firm Name: Paraskevas Law Firm Brief Biography  Dimitris' career spans 38 years, €400bn, approx 100 countries including as Secretary for Privatisation of three Greek Governments in the 1990s, advisor to more than 300 leading international companies, international organisations (including UNIDO in Zambia) and governments including the US Government. Currently serving as Vice Chair of the International Banking and Finance Law Committee of the International Bar Association ( <a href="http://www.dimitrisparaskevas.com">www.dimitrisparaskevas.com</a> ).

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Hungary

### Hungary

1.	Which jurisdiction are you covering?	Hungary
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>Yes, under three different regimes based on EU legislation or ‘preparatory’ Hungarian law:</p> <p><b>1. Sustainable Finance Disclosure Regulation (SFDR)</b></p> <p>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</p> <p>Under the scope of SFDR which is directly applicable in the EU inclusive of Hungary as of 10 March 2021, financial market participants and financial advisers, as defined in SFDR, are obliged to comply with transparency requirements (basically online disclosure obligation and periodic reporting) with regard to the integration of sustainability risks (primarily via due diligence) and the consideration of adverse sustainability impacts in their investment decision processes and the provision of sustainability-related information with respect to financial products specified in the SFDR. To ease the interpretation of the legal framework, the National Bank of Hungary, as financial supervisor issued a number guidances, eg:</p> <ul style="list-style-type: none"> <li>• Circular from the Chair of the National Bank of Hungary on the application of the SFDR (<a href="http://www.mnb.hu/letoltes/129526-3-2021-sfdr-vezetoi-korlevel.pdf">www.mnb.hu/letoltes/129526-3-2021-sfdr-vezetoi-korlevel.pdf</a>);</li> <li>• Guidance on FAQ (<a href="http://www.mnb.hu/letoltes/20220629-sfdr-tr-qa-final.pdf">www.mnb.hu/letoltes/20220629-sfdr-tr-qa-final.pdf</a>);</li> <li>• Recommendation No 10/2022. (VIII.2.) of the National Bank on climate-related and environmental risks and the integration of environmental sustainability considerations into the activities of credit institution <a href="http://www.mnb.hu/letoltes/green-recommendation-vol2-no-10-2022-viii2.pdf">www.mnb.hu/letoltes/green-recommendation-vol2-no-10-2022-viii2.pdf</a>; and</li> <li>• Sustainability Risk Management Recommendation No. 12/2023 (XI.27) to insurance companies.</li> </ul> <p><b>2. Corporate Sustainability Reporting Directive (CSRD)</b></p> <p>Act C of 2000, as amended, on Accounting earlier transposed the Non-Financial Reporting Directive (NFRD, 2014/95/EU Directive) and as of 1 January 2024 transposed the CSRD (2022/2464 Directive) into Hungarian law. This means that above certain thresholds (see Q3) listed companies in their 2024, large companies in their 2025 and listed SMEs in their 2026 annual reports must include a sustainability report as part of the so-called business report in a form of so-called non-financial statements.</p> <p>Market participants are systematically prepared by the Budapest Stock Exchange (ESG Guide – Bet site (<a href="http://bse.hu">bse.hu</a>) on the regulatory roadmap of the EU.</p>

		<p><b>3. Sustainable Finance and Corporate Responsibility Act (Act CVIII of 2023, hereinafter ESG Act)</b></p> <p>To ensure ESG transformation and prepare domestic businesses on the pending EU Corporate Sustainability Due Diligence Directive (CS3D) proposal to avoid a competitive disadvantage within the EU, Hungary adopted a supply chain sustainability due diligence requirement act applicable gradually as of 2024 on volunteers, as of 2025 onto listed large companies (undertakings of public interest), as of 2026 onto large companies and as of 2027 onto listed SMEs above a certain threshold (see question 3). This means a requirement on the establishment of a supply chain sustainability risk identification, prevention and monitoring system and annual ESG reporting on it. The Act also regulates the accreditation and recording of ESG advisers, ESG auditors, ESG IT software solutions and ESG certifiers to create a transparent domestic service provider framework.</p>
<p>3.</p>	<p><b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b></p>	<p><b>SFDR</b></p> <p>Under the scope of SFDR obliged:</p> <ol style="list-style-type: none"> <li>1. alternative investment fund managers,</li> <li>2. mutual and pension fund managers,</li> <li>3. insurance companies offering investment backed insurance products and</li> <li>4. credit institutions who engage in portfolio management, as well as</li> <li>5. investment firms offering investments</li> </ol> <p>have to publish their decision-making policies on how they integrate sustainability risks in their investment decision-making process and whether they carry out sustainability related due diligence; if not why, and if yes how adverse sustainability (environmental or social) impacts are evaluated in the course of an investment or financing decision; and how adverse sustainability impacts are monitored in the portfolios, AIFs, IBIPs, PEPPs, UCITS, pension products and schemes, if any, managed by them.</p> <p>This may mean a publication of an online description of their sustainable investments target and method of assessing, evaluating and monitoring the effectiveness of investments from sustainability aspects with the obligation to keep it up to date. Financial market participants, but also advisers, must report on their remuneration policies in relation to the integration of sustainability risks in the distribution of sustainable investment products. The disclosure obligation applies from 10 March 2021.</p> <p><b>CSRD/Accounting Act</b></p> <p>‘Large undertaking’ means a company at which any two of the below three conditions were met on the balance sheet date of the financial year preceding the financial year of the sustainability reporting:</p> <ol style="list-style-type: none"> <li>i. balance sheet total above HUF 10 000m;</li> <li>ii. annual net revenue above HUF 20 000m; and</li> <li>iii. average number of employees over 250 persons.</li> </ol> <p>Start of application: already for the 2024 business activity, with the first sustainability report to be prepared in 2025.</p> <p>Listed SMEs, who are not considered a ‘Micro-undertaking’ means a company where at least two of the below benchmarks are not more than the below thresholds on the balance sheet date of the financial year preceding the financial year of the sustainability reporting:</p>

		<p>i. balance sheet total not more than HUF 150m;  ii. annual net turnover not more than HUF 300m; and  iii. average number of employees not more than ten.</p> <p>Start of application: already for the 2025 business activity, with first sustainability report to be prepared already in 2026.</p> <p><b>ESG Act</b></p> <p>a) large undertakings of public interest (ie, traded on an EEA-regulated market, or), at which any two of the below three conditions were met on the balance sheet date of the financial year before the relevant financial year.</p> <p>i. balance sheet total above HUF 10,000m;  ii. annual net revenue above HUF 20,000m; and  iii. average number of employees over 500 persons.</p> <p>'Public interest entity' (PIE) means entities that are listed on a regulated market in the EEA, or designated by law as public interest entities, which are of significant public relevance (ie, among others, credit institutions, insurance companies and investment enterprises are also PIEs, but these are exempted from the scope of (this type of) ESG-reporting and due diligence).</p> <p>Start of application: already for the 2024 business activity, with first ESG report to be prepared in 2025.</p> <p>b) large undertakings, at which any two of the below three conditions were met on the balance sheet date of the financial year before the relevant financial year.</p> <p>i. balance sheet total above HUF 10,000m;  ii. annual net revenue above HUF 20,000m; and  iii. average number of employees over 250 persons.</p> <p>Start of application: for the 2025 business activity, with first ESG report to be prepared in 2026.</p> <p>c) small and medium undertakings of public interest (practically: listed SMEs). This excludes micro-undertakings, even if listed.</p> <p>Start of application to listed SMEs: for the 2026 business activity, with first ESG report to be prepared in 2027.</p>
4.	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b></p>	<p>Yes, there is a distinction. For the time being only the entities listed in Q3 are obliged to make mandatory SFDR disclosure, CSRD sustainability reporting or ESG Act-based ESG reports from the commencement date specified in Q3.</p>
5.	<p><b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b></p>	<p>SFDR disclosures must be made available pre-investment and must be kept up to date online, or in periodic or annual reports.</p> <p>CSRD sustainability reporting must be made in the annual report.</p> <p>ESG disclosures required to be made on a continuous annual reporting basis should be carried out on a case-by-case basis when the entity is faced with a significantly changed or significantly increased risk situation in the supply chain, including in particular the introduction of new products, projects or participation in new business. The ad hoc risk analysis may be targeted specifically at the changed or significantly increased risk situation. In short, ESG reports shall be made annually, but also must be kept up to date in case of changes.</p>

6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>Under SFDR, obliged financial market participants must dedicate a sustainability area on their websites to sustainability disclosures in respect of investment policy and sustainability risk assessment and monitoring in respect of financial products distinguishing between the requirements for financial products which promote environmental or social characteristics, and those for financial products which have as an objective a positive impact on the environment and society.</p> <p>Sustainability reports under the CSRD must be made as part of the annual financial statements in a form of an attachment as a non-financial report.</p> <p>It can also be published as a standalone report. The different formats have different advantages and it is up to companies to decide which type is best for them and their investors. Regardless of the form, the report should meet the relevant legal requirements and be easily accessible on the company's website. For basic non-financial reports, standardised reports, assured reports and Integrated reports, the Budapest Stock Exchange provides samples to help market participants as well as a roadmap for building reporting capacity ESG Guide – Bet site (bse.hu) (pg16).</p> <p>Furthermore, those entities who fall under the scope of the ESG Act shall have to prepare an annual ESG report on the fulfilment of their sustainability due diligence obligations for the previous financial year, which must be audited by an ESG certifier. The ESG report shall be approved by the managing body of the undertaking. The ESG report shall be prepared in Hungarian, in electronic form, in accordance with the content and format requirements laid down in the Regulation of the President of the Authority, and shall be certified by the person authorised to represent the entity or the parent company as provided by law. The ESG accounts shall be authentic if they are signed or stamped and time-stamped by the person authorised to represent the entity with at least an advanced electronic signature or a stamp and time stamp. The frame content of the report is regulated by the Hungarian ESG Act and more specific regulation will follow in the decrees of the Supervisory Authority of Regulated Activities, which have not been issued yet.</p>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>Both financial and non-financial service sector entities who are obliged to prepare sustainability disclosures shall make the report available on their websites.</p> <p>Those who are obliged to prepare CSRD sustainability reports must also make them available free of charge to interested parties.</p> <p>The ESG report shall have to be submitted to a so-called management platform to be operated by the ESG supervisory authority, which is the Supervisory Authority of Regulated Activities.</p>
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>Yes, we see that corporations who are not obliged to by law make sustainability disclosures.</p> <p>The purpose can be getting access to sustainable financing or for other business-related reasons, eg, to support the compliance of their listed customers who are subject to mandatory disclosure and also to improve their image in the general public opinion.</p> <p>Under the new ESG Act market participants may voluntarily submit themselves under the Act when the reporting obligations start to trigger.</p>
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>Under the SFDR obligations, the supervisory authority of financial market participants and advisers is the National Bank of Hungary, as financial supervisory authority. The Hungarian National Bank that monitors ESG disclosures is entitled to impose a fine on those entities that do not comply with their reporting obligations. The amount of such fine may be between 100,000 and 2bn forints (€250–€5m). In order to orient the market participants, there is no explicit grace period, however the National Bank of Hungary issues a lot of guidance on the principles of supervision as quoted in Q1.</p> <p>In case of those non-financial sector entities who fall under the CSRD reporting obligation, it is the Hungarian National Tax Authority (in Hungarian, NAV) that reviews the publication of the annual reports via a public platform operated by the Ministry of Justice. Those triggered enterprises who will not comply with the publication will face regular fines from the tax authority for lack of complete disclosure of their annual statements.</p> <p>Those who will not comply with ESG reporting will face fines and probably other sanctions from the Supervisory Authority of Regulated Activities, but the implementing regulation is not published yet.</p>

10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>Again, so far only financial sector entities are threatened by serious sanction, as the Hungarian National Bank is entitled to impose a fine on those entities that do not comply with their reporting obligations or their reports contain false or misleading information. The amount of such fine may be between 100,000 and 2bn forints (€250–€5m).</p> <p>Under the ESG Act the sanction policy on the merits for misleading reporting is not yet published. That can be expected in 2024 Q2. So far only the administrative fine is known for obstruction of the inspection of the Authority, when the Authority may impose a procedural fine on the person who fails to comply with the obligation. The minimum amount of the procedural fine shall be HUF 500,000 (approx €1,300) and the maximum HUF 1m (approx €2,600). The Authority investigation can be a dawn raid type of site visit and the collection of electronic and physical documents, known from antitrust proceedings.</p>
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	<p>Currently three-level ESG disclosure systems apply, depending on the obliged circles (ie, financial market participants/SFDR or non-financial market participants CSRD, and ESG Act) and subject matters (making financial investments and offering financial products/SFDR, or sustainable operating requirements for enterprises with significant sustainability impact/CSTD extended on their supply chain/ESG Act). There is no tiered disclosure system. In the short term we expect a number of implementation decrees to the ESG Act in Q2 2024.</p>
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	<p>CSRD sustainability reports shall have to be assured by an assurance audit opinion which may be issued by an auditor.</p> <p>Under the ESG Act, the ESG reports shall have to be audited by an ESG certifier who will be registered in the record of the Supervisory Authority of Regulated Activities. The certification shall confirm that the ESG report complies with the principles which shall be specified in a decree of the Supervisory Authority of Regulated Activities and of the government. The ESG certifier shall be liable for the opinion based on the rules of civil law.</p>
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	<p>SFDR-triggered financial market participants and advisers are triggered directly by the transparency disclosure requirements specified in the SFDR.</p> <p>CSRD-triggered enterprises in line with the requirements of the CSRD (large undertakings more broadly and public interest SMEs in a more limited scope) must prepare their sustainability report in respect to sustainability factors, as defined in the SFDR based on ESRS standards.</p> <p>Under the ESG Act the report shall contain the following:</p> <ol style="list-style-type: none"> <li>1. a description of the sustainability due diligence process carried out with regard to sustainability issues;</li> <li>2. the entity's findings as to whether and which social responsibility and environmental risks or breaches of human rights or environmental obligations have been identified;</li> <li>3. the measures taken by the entity to prevent, mitigate or remedy actual or potential adverse sustainability impacts and their results;</li> <li>4. a description of how the entity assesses the impact and effectiveness of the measures taken pursuant to point (3);</li> <li>5. how the entity draws conclusions for future measures; and</li> <li>6. the stakeholders identified for CSR, the objectives set, the description and results of the sustainability due diligence process carried out, and the measures taken to prevent, mitigate or remediate potential adverse impacts and their results.</li> </ol>
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	<p>Yes, in line with the principles of SFDR, CSRD and the pending CS3D.</p>

15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	<p>CSRD sustainability reporting must follow ESRS standards.</p> <p>As to SFDR and ESG Act-related disclosures, both the National Bank of Hungary and the Supervisory Authority of Regulated Activity wish to help investee companies and suppliers with a so-called harmonised minimum due diligence questionnaire on ESG disclosures of respondents. There is a plan that the responses on the questionnaires shall be recorded on a platform which may be shared with obligers subject to the approval of the respondent. A large market inquiry is pending on what information and questions various due diligence obligers may request to help the transparency of the data collection and distribution flow, and help those who are obliged to perform due diligence and those who need to respond.</p>
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	<p>To the greatest extent possible, the National Bank of Hungary helps financial market participants with guidelines on reporting obligations and supervision principles.</p> <p>The Budapest Stock Exchange tries to prepare listed corporations on CSRD disclosure.</p> <p>The Government and the Supervisory Authority of Regulated Activities will issue in Q2 2024 further decrees to clear the obligation of triggered undertakings.</p>
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	<p>There is no general approach on the level of applicable law. We note that the Hungarian National Bank has recommendations on the field of 'green finance' and it also initiated an ESG-based programme: <a href="http://www.greenfinanceplatform.org/policies-and-regulations/central-bank-hungary%E2%80%99s-green-program">www.greenfinanceplatform.org/policies-and-regulations/central-bank-hungary%E2%80%99s-green-program</a></p> <p>Nevertheless, ESG compliance is mostly a matter to be assessed by the financial market participants and advisers.</p> <p>The Budapest Stock Exchange in its ESG Guide – Bet site (bse.hu) recommendations stated that public issuers are expected to publish at least a standalone ESG disclosure in 2023 and 2024 (covering years 2022 and 2023) in order to meet 'entry level' classification, and then gradually move to the next levels to help their assessment by investors.</p> <p>In respect to the assessment of supply chain risks under the ESG Act, new decrees are expected to come in Q2 2024.</p>
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	<p>In our view the answer lies somewhere in between. There is no doubt that the ESG disclosure regulation imposes a greater compliance burden on companies, which is specifically true for smaller entities if they are obliged by their customers or suppliers to demonstrate ESG compliance. On the other hand, investors expect more transparency of ESG reporting and they tend to make decisions after the assessment of ESG compliance. We also believe that these trends will aid the market participants to avoid competitive disadvantages compared to more sophisticated markets.</p>
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	<p>Yes. All triggered market participants are watching the numerous different pieces of legislation both on EU and national level as compliance deadlines are already starting.</p> <p>The Ministry of National Economy has created an education platform agency – Hungarian Economic Development Agency <a href="https://mgfu.hu/en">https://mgfu.hu/en</a> – to be responsible for the education and accreditation of education service providers.</p>
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	<p>Yes.</p> <p>For financial market participants and advisers, that is SFDR, and for the rest of the market – although the pending EU Directive on substantiation and communication of explicit environmental claims (Green Claims Directive) is not yet compulsory – Hungarian advertising and consumer protection rules prohibit misleading green claims. The Hungarian Competition Office also briefs the market with greenwashing guidance with yearly updates. <a href="http://www.gvh.hu/en/press_room/press_releases/press-releases-2024/gvhs-analysis-of-green-marketing-messages-are-in-the-international-focus">www.gvh.hu/en/press_room/press_releases/press-releases-2024/gvhs-analysis-of-green-marketing-messages-are-in-the-international-focus</a></p>



21.	Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?	Yes, as described in question 20.
22.	Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?	Not yet specifically in the banking/financial sector, but the Hungarian Competition Authority published a summary on greenwashing cases since 1995.
23.	If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?	Yes, please see question 6 and question 12.
24.	What kind of developments have you seen in relation to board oversight and governance of ESG matters?	No specific cases yet in Hungary (except for harassment cases at the workplace).
25.	<p>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	See question 13.

26.	<b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b>	Generally, yes.
27.	<b>Is it mandatory for companies to set climate-related targets?</b>	Not specifically.
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	Plans need to be described under the sustainability and ESG reports.
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	We expect upcoming regulations to clear the obligation of the market participants.
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	Judit Szórádi – <a href="https://szecskay.com/hu/team/szoradi-judit/">https://szecskay.com/hu/team/szoradi-judit/</a> Judit Budai – <a href="https://szecskay.com/team/judit-budai/">https://szecskay.com/team/judit-budai/</a> Gergely Benyo – <a href="https://szecskay.com/team/gergely-benyo/">https://szecskay.com/team/gergely-benyo/</a> Viktoria Cseh – <a href="https://szecskay.com/team/viktoria-cseh/">https://szecskay.com/team/viktoria-cseh/</a> Szecskay Attorneys at Law – <a href="http://www.szecskay.com">www.szecskay.com</a> Hungary

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for India

### India

1.	<b>Which jurisdiction are you covering?</b>	India
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>Yes, ESG disclosures are required to be mandatorily made by the top 1,000 (Indian) public listed entities (by market capitalisation) for each financial year (FY) commencing from FY 2022–23 under a reporting framework introduced and called as the Business Responsibility and Sustainability Reporting ('BRSR Disclosures'). In fact, the Indian securities market regulator, the Securities and Exchange Board of India (SEBI) has very recently clarified that the provisions of BRSR Disclosures which become applicable to listed companies on the basis of market capitalisation criteria shall continue to apply to such companies even if they fall below such thresholds. For other listed or unlisted companies, ESG disclosures are voluntary.</p> <p>SEBI also introduced an additional subset of BRSR Disclosures, namely the BRSR Core (as defined below) consisting of nine key ESG reporting parameters such as greenhouse gas footprint, water footprint, energy footprint, embracing circularity, enhancing employee wellbeing and safety, enabling gender diversity in business, enabling inclusive development, fairness in engaging with customers and suppliers and openness of business ('BRSR Core').</p> <p>Effective FY 2023-24, the top 150 (Indian) public listed entities (by market capitalisation) will be required to undertake reasonable assurance of the BRSR Core reporting parameters. For the reasonable assurance requirement, the following time-bound glide path has been prescribed:</p> <ol style="list-style-type: none"> <li>1. FY 2023–24: Top 150 (Indian) public listed entities (by market capitalisation);</li> <li>2. FY 2024–25: Top 250 (Indian) public listed entities (by market capitalisation);</li> <li>3. FY 2025–26: Top 500 (Indian) public listed entities (by market capitalisation); and</li> <li>4. FY 2026–27: Top 1,000 (Indian) public listed entities (by market capitalisation).</li> </ol> <p>In July 2023, SEBI also made it mandatory for certain types of public listed entities to make disclosures under the BRSR Core tenets for their value chain entities. The top 250 (Indian) public listed entities (by market capitalisation) are required to make ESG disclosures for their value chain on a comply or explain basis from FY 2024-25. The value chain of a listed entity will encompass the top upstream and downstream partners, cumulatively comprising 75 per cent of its purchases/sales (by value), respectively. To clarify, the value chain related disclosures are required to be made to the extent they are attributable to the inter se business relationship shared between the entity and the value chain partner.</p> <p>SEBI had further clarified that while undertaking BRSR Disclosures, entities already preparing and disclosing sustainability reports based on internationally accepted reporting frameworks (eg, GRI, SASB, Integrated Reporting and TCFD) may cross-reference the disclosures made under these international frameworks to disclosures sought under the BRSR Disclosures.</p>

3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	<p>Yes, as set out in our response to question 2 above, there is a distinction drawn in terms of the ESG disclosures required to be made based on the type and nature of the reporting entity. The differentiation is categorised based on the market capitalisation of the underlying listed reporting entity. Further, the ESG disclosures for the core tenets, ie, the BRSR Core also prescribe the following glide path for undertaking reasonable assurance:</p> <ol style="list-style-type: none"> <li>1. FY 2023–24: Top 150 (Indian) public listed entities (by market capitalisation);</li> <li>2. FY 2024–25: Top 250 (Indian) public listed entities (by market capitalisation);</li> <li>3. FY 2025–26: Top 500 (Indian) public listed entities (by market capitalisation); and</li> <li>4. FY 2026–27: Top 1,000 (Indian) public listed entities (by market capitalisation).</li> </ol> <p>A copy of the reasonable assurance certificate is mandatorily required to be attached while submitting the BRSR Disclosures to the relevant stock exchanges.</p> <p>Additionally, the top 250 (Indian) public listed entities (by market capitalisation) are required to make ESG disclosures for their value chain on a comply or explain basis from FY 2024–25.</p>
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	<p>As set out in our responses to questions 2 and 3 above, ESG disclosures are mandated only for the top 1,000 (Indian) public listed entities (by market capitalisation).</p> <p>For private companies, public unlisted companies, limited liability partnerships, partnership firms and other types of entities, ESG disclosures have not yet been mandated by law in India. However, disclosures pertaining to: (1) reasonable assurance of the BRSR Core tenets are required to be made only by the top 150 (Indian) public listed companies (by market capitalisation) as indicated in our response to question 2 above; and (2) value chain entities and their BRSR Core tenets are applicable only to the top 250 (Indian) public listed entities (by market capitalisation) on a comply or explain basis (effective FY 2024–25).</p> <p>On a separate but related note, certain ESG-related disclosures are also mandated for issuers of green debt securities during the issuance process. SEBI published a circular on 6 February 2023 pursuant to which SEBI revised disclosures for issuers of green debt securities to align the disclosure regime with the updated Green Bond Principles recognised by International Organisation of Securities Commissions (IOSCO). The issuers of such green debt securities are inter alia required to disclose details of taxonomies, green standards or certifications both Indian and global, if any referenced, the alignment of projects with said taxonomies, related eligibility criteria information on a project-by-project basis and pertaining to reporting of the environmental impact of the projects financed by the green debt securities.</p>
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	<p><b>Circumstances for reporting:</b> As set out in our response to questions 2 and 4 above, ESG disclosures are mandated only for the top 1,000 (Indian) public listed entities (by market capitalisation) and disclosures pertaining to assurance mechanism and value chain disclosure will become applicable as per our response to question 2 above.</p> <p><b>Reporting periodicity:</b> ESG disclosures are required to be made annually in the annual report of the (publicly traded) reporting company, which is required to be uploaded on the reporting company's website, the website of the stock exchanges where the equity shares of the listed entity are traded and also shared with the investors at large. A link to the ESG disclosures can be found in the annual report of the reporting company.</p>
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>The BRSR Disclosures (in the prescribed format) are required to be linked in the annual report of the relevant target company and are also required to be uploaded on the website of the relevant stock exchanges.</p>

7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>There is no change to the response provided in the 2022 ESG survey.</p> <p>[Khaitan Comment: For ease of reference, response provided in the 2022 ESG survey is as follows:</p> <p>ESG disclosures are made in the BRSR/BRR, which form part of the annual report required to be prepared by each company.</p> <p>Annual reports are public documents filed with stock exchanges (where the relevant companies are listed) and the jurisdictional registrar of companies. Companies are also required to publish their annual reports on their respective websites and send a copy to their respective shareholders.]</p>
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>We find that many listed companies that are not mandatorily required to make ESG disclosures are opting to voluntarily make such disclosures. Similarly, many unlisted companies and multinational companies also make such disclosures on a voluntary basis given investor sentiment, stakeholders' and bankers' expectations.</p> <p>As per a recent market analysis, it was observed that 51 per cent of India's top 100 (Indian) public listed entities (by market capitalisation) disclosed their Scope 3 data for FY 2022–2023 despite such Scope 3 disclosures being a voluntary disclosure. SEBI has also prescribed a lighter version of BRSR which allows smaller companies (non-obligated entities) that do not have prior experience in sustainability reporting to transition from BRR to BRSR by adopting a lite version of the BRSR format on a voluntary basis.</p>
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>There is no change to the response provided in the 2022 ESG survey.</p> <p>[Khaitan Comment: For ease of reference, response provided in the 2022 ESG survey is as follows:</p> <p>SEBI primarily monitors ESG disclosure compliance. The obligation to make ESG disclosures was enacted by SEBI by amending certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015.</p> <p>While no specific penalties have been prescribed for non-compliance with mandatory ESG disclosures, the parent statute, Securities and Exchange Board of India Act 1992, contains a residual provision that prescribes a minimum penalty of INR 100,000. Such a penalty may extend to INR 100,000 each day that failure continues subject to a maximum of INR 10m. Such a penalty may be applicable for the failure to furnish any information within the time period prescribed for furnishing the same under the relevant regulations. There is no statutorily prescribed grace period, although the compounding (<i>suo moto</i> rectification application filing) of certain offences is permissible under law.]</p>
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>Principles governing disclosures include that the listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading. While there are no specific provisions prescribing penalties for false or misleading disclosures under the SEBI LODR, the Companies Act 2013 (CA 2013) prescribes penalties for making false or fraudulent statements in reports. Any person found guilty of such fraud shall be punishable with imprisonment for a minimum term of six months, which may extend to ten years, and shall also be liable to a minimum fine of the amount involved in the fraud, which may extend to three times the amount involved in the fraud. In the event that the fraud in question involves public interest, the term of imprisonment shall not be less than three years. In such instances, the violation becomes attributable to the person responsible for making false statements.</p> <p>In our view, there is no difference in enforcement based on whether the ESG disclosure is mandatory or voluntary as long as the false or fraudulent statement is made in any return, report, certificate, financial statement, statement or other document required by, or for, the purposes of the provisions of the CA 2013 (which also includes preparation of the annual report of a company).</p> <p>Additionally, the Advertising Standards Council of India (ASCI), a self-regulatory body, published the <i>Guidelines for Advertisements Making Environmental/Green Claims</i> to monitor and enforce transparent environmental claims and provide guidance on avoiding greenwashing, on 15 January 2024, which became effective from 15 February 2024. The aforesaid guidelines inter alia provide that absolute claims such as 'environment friendly', 'sustainable', etc, must be substantiated by robust data and credible accreditations.</p>
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	<p>As set out in our response to question 2 above, specifically with respect to BRSR Core disclosures: (1) a reasonable assurance mechanism will be applicable as per a time bound glide path and based on the market capitalisation of listed entities; and (2) a disclosure mandate for the value chain entities will be applicable to the top 250 (Indian) public listed entities (by market capitalisation) effective FY 2024–25.</p>

		Additionally, SEBI has also prescribed a lighter version of BRSR which allows smaller companies (non-obligated entities) that do not have prior experience in sustainability reporting to transition from BRR to BRSR by adopting a lite version of the BRSR format on a voluntary basis.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	<p>Presently, there is no concept of 'ESG approved/compliant' status under Indian law. However, a reasonable assurance mechanism of the BRSR Core disclosures has been prescribed wherein an independent assessment is undertaken by a third-party assurance provider confirming that a company's BRSR Core disclosures are accurate and not misleading. Further, there are various ESG rating providers (ERPs) that operate in India. These ERPs collect ESG data related to companies, analyse it and process it into a single score or rating for the respective companies.</p> <p>SEBI has recently amended the SEBI (Credit Rating Agencies) Regulations, 1999 to put in place a regulatory framework to govern the ERPs. The amended regulations came into effect on 3 July 2023. Pursuant to this amendment, ERPs have to inter alia disclose the ESG ratings, type of ESG rating (whether risk based or impact based or otherwise), their rating methodologies (including and any subsequent changes thereto), parameters forming part of the ESG rating, the general nature of compensation arrangements with clients, whether ESG ratings were solicited or not, etc. As of 8 May 2024, there are 6 SEBI registered ERPs in India.</p>
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	<p>As mentioned in our responses to earlier questions, the top 1,000 (Indian) public listed entities (by market capitalisation) have to mandatorily make BRSR and BRSR Core disclosures by reporting them in the prescribed format.</p> <p>The BRSR is structured around disclosures about the performance of eligible companies based on nine principles laid down in the National Guidelines on Responsible Business Conduct (NGRBC) issued by the Ministry of Corporate Affairs. These principles are, in turn, largely based on the UN SDGs. The NGRBC principles are as follows:</p> <ol style="list-style-type: none"> <li>1. Businesses should conduct and govern themselves with integrity in a manner that is ethical, transparent and accountable.</li> <li>2. Businesses should provide goods and services in a manner that is sustainable and safe.</li> <li>3. Businesses should respect and promote the wellbeing of all employees, including those in their value chains.</li> <li>4. Businesses should respect the interests of and be responsive to all their stakeholders.</li> <li>5. Businesses should respect and promote human rights.</li> <li>6. Businesses should respect and make efforts to protect and restore the environment.</li> <li>7. Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.</li> <li>8. Businesses should promote inclusive growth and equitable development.</li> <li>9. Businesses should engage with and provide value to their consumers in a responsible manner.</li> </ol> <p>Further, the ESG disclosures required to be made are summarised below:</p> <p><b>BRSR</b></p> <p>Environmental: The BRSR has placed a substantial thrust on environmental compliance by mandating many quantitative and qualitative disclosures with respect to energy consumption from renewable and non-renewable sources, water withdrawal, water discharge and level of treatment, air emissions (including for greenhouse gas emissions), waste management and sustainable sourcing, as well as compliance with extended producer responsibility. Intensity ratios such as energy consumption, water consumption, Scope 1 and Scope 2 emissions, waste generated, additional intensity ratios adjusted for purchasing power parity and intensity in terms of physical output for energy consumption are required to be disclosed as part of the prescribed format.</p>

		<p>Social: Recognising the increased focus of investors seeking businesses to be responsible towards society, as well as in compliance with the UN Guiding Principles on Business and Human Rights, the BRSR lays down comprehensive reporting requirements regarding measures undertaken for the wellbeing of employees, quantifying gender and social diversity indicators, performance and career development policies, health and safety management, accessibility of workplaces, equal opportunities, turnover rates, grievance redressal, gross wages paid to females as a percentage of total wages paid by the entity, job creation in smaller towns and welfare benefits. Further, businesses are also required to make disclosures on social impact assessments of projects, product labelling, safe disposal of products, policy on data privacy and cybersecurity, and complaints received in respect of data privacy, advertising, restrictive trade practices and so on.</p> <p>Governance: Disclosures regarding anti-corruption/anti-bribery policies of the entities, training and awareness programmes conducted, and fines/penalties imposed on any directors/key management personnel are mandatory. Additionally, the reporting entities are required to disclose their affiliations with trade and industry associations, and provide details of any corrective action taken by authorities on issues related to anti-competitive conduct, if any, by the concerned entities. Further, disclosures regarding number of days of accounts payable, concentration of purchase and sales and related party transactions are also required to be disclosed.</p> <p>In terms of the format of reporting, the BRSR is divided into three parts: (1) general disclosures; (2) management and process disclosures; and (3) principle-wise performance disclosures. The first two categories are mandatory. The last category is further divided into essential indicators and leadership indicators. Essential indicators reflect the minimum standards to be followed by the reporting company, and therefore, such disclosures have been made mandatory. Leadership indicators are 'good to have' provisions that the reporting company should aim for and accordingly, reporting on leadership indicators is purely voluntary, although listed entities are encouraged to report on them.</p> <p><b>BRSR Core</b></p> <p>Every entity required to make the BRSR Core disclosure under Indian law is in any event also required to make the BRSR Disclosures (details of which are set out above). In addition to the BRSR Disclosures, few entities as per the applicability criteria mentioned in our response to question 2 above are also required to undertake reasonable assurance under nine key parameters, namely greenhouse gas footprint, water footprint, energy footprint, embracing circularity, enhancing employee wellbeing and safety, enabling gender diversity in business, enabling inclusive development, fairness in engaging with customers and suppliers and openness of business. The parameters for which reasonable assurance is to be undertaken are listed below:</p> <p>Environmental: Disclosures regarding parameters such as total Scope 1 emissions, total Scope 2 emissions, greenhouse gas emission intensity, total water consumption, water consumption intensity, water discharge by destination and levels of treatment, total energy consumed, energy intensity, plastic waste, e-waste, bio-medical waste, construction and demolition waste, battery waste, radioactive waste, waste intensity, total waste recovered through recycling, re-using or other recovery operations and total waste disposed by nature of disposal method are required.</p> <p>Social: Disclosures regarding parameters such as spending on measures towards wellbeing of employees and workers – cost incurred as a percentage of total revenue of the company, safety-related incidents for employees and workers, gross wages paid to females as a percentage of wages paid, complaints regarding sexual harassment and job creation in smaller towns are required.</p> <p>Governance: Disclosures regarding parameters such as number of days of accounts payable, concentration of purchases and sales done with trading houses, dealers, and related parties, loans and advances and investments with related parties are required.</p> <p>In order to facilitate the verification process for undertaking assurance, the BRSR Core specifies the data and approach for reporting and assurance. It is however clarified that the approach specified is only a base methodology. Any changes or industry specific adjustments/ estimations are required to be disclosed.</p>
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14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	<p>The BRSR mandated disclosures relating to energy and water consumption, Scope 1 and Scope 2 emissions (disclosures regarding Scope 3 emissions are voluntary), waste management, extended producer responsibility, environmental impact assessments undertaken by the reporting companies and general disclosures relating to the environmental impact of the respective companies' operations.</p> <p>SEBI had further clarified that while undertaking BRSR disclosures, entities already preparing and disclosing sustainability reports based on internationally accepted reporting frameworks (eg, Global Reporting Initiative (GRI), the Task Force on Climate-related Financial Disclosures (TCFD), the Sustainability Accounting Standards Board (SASB) and Integrated Reporting) may cross-refer to disclosures made under these frameworks. For instance, many entities in India follow the Carbon Disclosure Project (CDP) disclosure system on a voluntary basis, and CDP questionnaires are, to some extent, aligned with the environment-based questions in the BRSR. Further, with respect to energy consumption, water consumption, Scope 1 and Scope 2 emissions, waste generated, additional intensity ratios adjusted for purchasing power parity and intensity in terms of physical output for energy consumption have been added under BRSR Core.</p> <p>In our experience, we see companies aligning their disclosures under international reporting frameworks (including CDP and TCFD) and therefore, they report on climate change-related aspects accordingly.</p>
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	<p>Yes, ESG disclosures are standardised and must be mandatorily disclosed in the prescribed format by all reporting companies. Apart from the leadership indicators under section C of the prescribed format, data must be disclosed by all reporting entities in the prescribed format. The prescribed format provides for specific, quantitative disclosures, with latitude being provided to companies only with respect to certain qualitative queries, as well as certain voluntary disclosures under leadership indicators. As set out in our response to question #2 above, entities already preparing and disclosing sustainability reports based on internationally accepted reporting frameworks (eg, GRI, TCFD, Integrated Reporting and TCFD) may cross-reference the disclosures made under these frameworks to disclosures sought under the BRSR Disclosures.</p>
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	<p>Yes, there is a clear format and guidance note prescribed by SEBI with respect to the ESG disclosures under BRSR and BRSR Core. In our view, the scope is well laid out.</p>
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	<p>As mentioned in our response to question 12 above, barring the assurance mechanism, Indian law currently does not provide for the concept of 'ESG approved or ESG compliant' assessment or certification. That said, post the amendment to the SEBI (Credit Rating Agencies) Regulations, 1999 for enacting a regulatory framework to govern ERPs, we have noted that several ERPs do weigh cross impacts in their rating methodologies to arrive at their scores/ratings. The final ESG score/ rating factors in the sector in which a particular entity operates. This approach allows the flexibility to bring nuanced sector-specific parameters into the rating methodology, while at the same time retaining the cross-sector comparability of the final scores.</p>
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	<p>While of course the advent of BRSR Core and the continuing disclosure obligations under BRSR have increased the compliance burden, we understand that most listed companies are now well equipped to make ESG disclosures. In fact, even the smaller listed companies which are not mandated under law to make ESG disclosures are already assimilating their ESG compliance, obtaining sustainability scores, conducting voluntary audits, etc, to ensure that their ESG compliance and metrics are well covered. The introduction of BRSR and BRSR Core has aided standardisation of disclosures and enhanced comparability and transparency which has resulted in a great value addition for the investors.</p>
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	<p>The current ESG disclosure regime in India is robust, and eventually we will have to ensure that there is global parity in terms of reporting frameworks given the dependence of businesses and economies across the globe. For instance, the EU Corporate Sustainability Reporting Directive, European Carbon Border Adjustment Mechanism, the climate disclosures prescribed by the US Securities and Exchange Commission, etc, will eventually require Indian companies doing business in the global north to enhance their ESG metrics and compliance. Clients are, therefore, mindful of the ESG transparency based on their geographical presence and other such reporting requirements from their investors, lenders, etc.</p>



20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/ or sustainability or similar reports)?</b>	<p>Please refer to our response to question 4 above with respect to disclosures to be made by issuers of green debt securities. One of the rationales for amending the disclosure regime for green debt securities was to counter greenwashing issues.</p> <p>Additionally, the Central Consumer Protection Authority (CCPA), has published draft guidelines for prevention and regulation of greenwashing and the final guidelines are expected to be released soon. The guidelines inter alia provide that any business that makes environmental claims as part of an advertisement or label claim, by using terms such as 'clean', 'green', 'eco-friendly', 'eco-consciousness', 'good for the planet', 'minimal impact', 'cruelty-free', 'carbon-neutral', etc, will have to substantiate it through an appropriate disclosure. The disclosure will have to be backed by verifiable evidence to support the environmental claim. Further, while using technical terms like environmental impact assessment, greenhouse gas emissions, ecological footprint, etc, the meaning and implications of such terms are required to be explained. As mentioned in our response to question 10 above, ASCI has also issued guidelines for advertisements making environmental/ green claims in January 2024. The guidelines inter alia provide that absolute claims such as 'environment friendly', 'sustainable', etc, must be substantiated by robust data and credible accreditations.</p> <p>Further, SEBI has also prescribed a catena of compliance requirements for ESG mutual fund schemes to mitigate the risk of greenwashing. Such compliance requirements inter alia include prescribing strategies for schemes, disclosure of security wise BRSR Core scores, investment criteria, etc.</p>
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	Please refer to our response to question 20 above with respect to disclosures to be made by issuers of green debt securities.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	None.
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	As set out in our response to question 2 above, there is a regular ESG disclosure requirement in the form of BRSR and BRSR Core. Certain entities are required to undertake a reasonable assurance mechanism based on the time-bound glide path mentioned in our response to question 2 above. Assurance of BRSR Core is profession agnostic and the board of directors of a company is required to ascertain that the assurance provider has the necessary expertise for undertaking reasonable assurance and that there is no conflict of interest with the assurance provider.
24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	<p>With the ESG landscape in India growing at a rapid pace, we have seen larger listed companies and entities with international investor exposure appoint sustainability officers and constitute ESG committees. For smaller companies, the board of directors of a company have either taken the mandate upon itself or has a compliance officer from amongst themselves to oversee the governance of ESG matters.</p> <p>More compliant entities are also engaging with sustainability counsels and advisers to better their ESG scores, to increase their compliance metrics, boost investor confidence, address risk mitigation and gain competitive advantage in accessing the global market.</p>

25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<ol style="list-style-type: none"> <li>1. <b>The sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June:</b> The sustainability disclosure standards namely, General Requirements for Disclosure of Sustainability-related Financial Information and Climate-related Disclosures came into effect on 1 January 2024, but it is up to each jurisdiction whether to adopt it or not. That said, as mentioned in our response to question 14 above, listed companies in India can prepare and disclose sustainability reports (as part of their annual report) based on internationally accepted reporting frameworks and can cross-refer the disclosures made under such frameworks to the disclosures sought under the BRSR. Given this relaxation, companies may voluntarily make disclosures in terms of the sustainability disclosure standards published by ISSB. For instance, Tata Steel Limited, in its annual report for the FY 2022–23 had mentioned that it would look again at its medium targets in light of the ISSB standards.</li> <li>2. <b>The first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD)):</b> While ESRS and CSRD are specific to countries in the EU ('EU'), its implications extend beyond the EU. Indian companies with significant presence in the EU ie, companies having a net turnover of more than €150m in the EU for two consecutive financial years and have at least: (1) one branch in the EU that has a net turnover of €40m; or (2) one subsidiary in the EU that meets certain thresholds set out in the CSRD, including being a large company or a listed small and medium-sized enterprise in the EU are required to disclose information like climate-related data, diversity, human rights, composition of board, anti-corruption measures, etc, in a prescribed format. Meeting the CSRD's detailed reporting requirements, which cover aspects like greenhouse gas emissions, social impact and gender pay gap, will be resource-intensive for many companies. Since investors are increasingly prioritising ESG factors while making investment decisions, it would be beneficial for Indian entities to align their reporting practices with ESRS and CSRD to attract sustainable investments and build investor trust. Given that CSRD has recently become effective, companies are still deliberating its impact on their operations in the EU.</li> <li>3. <b>The final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September:</b> Although the guidance provided by TNFD is voluntary in nature, we have seen instances where companies have welcomed the TNFD guidance. Since the recommendations of TNFD are consistent with global sustainability standards of the ISSB and the impact materiality approach used by the Global Reporting Initiative, it will be easier for entities to adopt the guidance provided by TNFD. This guidance by TNFD will propel companies and capital providers towards more informed decision-making and ultimately contribute to a shift in global financial flows toward nature-positive outcomes.</li> <li>4. <b>The final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November:</b> While the UK Transition Plan focuses on a climate transition plan for the UK, given the proliferation of sustainability standards across the globe, stakeholders are likely to welcome TPT's alignment with ESRS and ISSB. Since numerous entities in India are aiming to transition to net zero, such entities can be guided by this disclosure framework. The transition plan inter alia requires entities to break down their aims into short-term, medium-term and long-term. Action plans should include details of any key assumptions, dependencies or uncertainties. In essence, this framework will help entities with the disclosure of their transition plans.</li> </ol>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>Since the ESG disclosures are applicable only to the top 1,000 (Indian) public listed entities (by market capitalisation), therefore, in our view, these companies have the necessary capability and resources to make the required disclosures. However, it will be interesting to see how the companies manage the disclosures with respect to their value chains. In this regard, companies are revising their supplier code of conducts to ensure compliance with the value chain ESG disclosure requirements, and they have started investing significantly in a data management program vis-à-vis suppliers.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>No, it is not mandatory for companies to set climate-related targets in India.</p>

28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	In light of the rapidly growing ESG landscape in foreign jurisdictions and the increased importance given by investors and asset managers to ESG performance, we have noted companies voluntarily committing to climate-related targets. Numerous companies have set climate-related targets, and net zero targets. For instance, Tata Steel Limited's net zero target is 2045, Reliance Industries Limited targets to become net carbon zero by 2035, etc.
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>We expect to see an increase in voluntary disclosures as investor interest increases in their portfolio companies. Further, we expect alignment with global climate-related disclosures in the near future.</p> <p>Post the issuance of guidelines for making environmental/ green claims by ASCI, we expect development of some jurisprudence in this area. Additionally, as mentioned in our response to question 20 above, we expect the CCPA's guidelines for prevention and regulation of greenwashing to be enacted.</p> <p>Further, due to the enactment of the Carbon Border Adjustment Mechanism in the EU, we envisage domestic producers of classified goods to transition to greener carbon technologies.</p> <p>In light of the enactment of a host of ESG-related regulations in the EU, businesses in India will have to improvise their current technologies and green practices. Given India is the fifth largest economy in the world, poised to become the third largest economy in the next two years, it has set aggressive net zero, carbon neutral and green energy transition targets for itself. The aggressive outlay of budget towards green energy is a testament to India's efforts towards achieving its climate targets. Green Hydrogen Mission, One Sun, One World, One Grid, mission, vehicle scrapping policy – all launched in India will have a significant impact on the Indian ESG regulatory landscape.</p> <p>That apart, the release of Carbon Credit Trading Scheme, 2023 and the Green Credit Rules, 2023 has also increased the requirement for an energy intensive entity to actively manage its greenhouse gas emissions. We see a lot of potential for investment in the evolving carbon credits space in India.</p>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Name: Pavi Jain</p> <p>Firm Name: Khaitan &amp; Co</p> <p>Brief Biography: Pavi Jain is a Counsel in the M&amp;A and Private Equity Practice Group at Khaitan &amp; Co's Mumbai office. Pavi has been associated with Khaitan for the last 11 years. Pavi co-heads the ESG practice group at Khaitan and is also the Asia Co-head for the Meritas group of law firms for the ESG Practice. Pavi is also a member of the Inter-Pacific Bar Association and has been a speaker at the IPBA annual conferences for last several years. As an industry specialist, Pavi is regularly invited to speak at international legal summits and conferences. Pavi considers the Blackstone Group as a key repeat client and continues to work with several large conglomerates such as, Reliance Industries, RPG Group, Micron Technology, etc. Pavi has also judged and acted as chair arbitrator at more than 15 international and national arbitration and mooted events held by several international law universities.</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Ireland

### Ireland

1.	<b>Which jurisdiction are you covering?</b>	Republic of Ireland
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>Yes, certain Irish corporates are subject to the Irish legislation transposing the Non-Financial Reporting Directive (NFRD), the EU (Disclosure of Non-Financial &amp; Diversity Information by certain large undertakings and groups) Regulations 2017, as amended. The provisions of the Accounting Directive relating to non-financial reporting introduced by NFRD have been replaced by the sustainability reporting provisions of the Corporate Sustainability Reporting Directive (CSRD) which came into force in January 2023. The deadline for national implementing legislation to be in place is 6 July 2024.</p> <p>The CSRD applies on a phased basis, with those already reporting under NFRD – public interest entities such as banks and insurers as well as large, listed companies – falling within the first wave and required to prepare sustainability statements in 2025 in respect of the 2024 financial year.</p> <p>The CSRD also broadens the scope of the sustainability reporting obligations to a much larger group. Currently around 11,000 businesses are mandatorily required to report under the NFRD. It is anticipated that more than 50,000 businesses will be required to report under the CSRD with others likely to report on a voluntary basis.</p> <p>In addition, in-scope Irish entities need to comply with the ESG disclosure obligations set out in the Taxonomy Regulation, the Sustainable Finance Disclosures Regulation (SFDR), the Capital Requirements Regulation (CRR) and the Benchmarks Regulation (BMR).</p> <p>See response to question 3 for more details on the types of entities that are required to prepare ESG disclosures.</p>
3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	<p>The EU (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017, requires ‘applicable companies’ to make certain non-financial disclosures, with additional disclosures required for ‘large, traded companies’. These regulations required an applicable company to include, in respect of each financial year, a statement by its directors in their report that contains the information necessary for an understanding of the development, performance, position and the impact of its activity relating to at least the following matters: environmental matters, social and employee matters, human rights, bribery and corruption. The CSRD has now replaced the NFRD and not only broadens the scope of the reporting obligation to a much broader group, but also introduces specific standards which in scope entities are required to report against, the European Sustainability Reporting Standards (ESRS).</p>

		<p>There are a wide range of entities captured within the scope of the CSRD. As set out in the response to question 2, reporting obligations apply on a phased basis with those already required to report under the NFRD within the first wave required to prepare sustainability statements in 2025 in respect of the 2024 financial year. Also included in this wave are non-EU issuers whose securities are admitted to trading on an EU regulated market that meet the definition of a large undertaking and have more than 500 employees.</p> <p>In the second wave, those required to report in 2026 in respect of the 2025 financial year include all 'large' EU businesses, whether listed or not, that are not subject to the reporting obligations under the NFRD and all non-EU issuers who meet the criteria for large undertaking that didn't fall within the first wave.</p> <p>SMEs with securities listed on an EU-regulated market (excluding micro-enterprises), small and non-complex institutions and captive insurance/reinsurance undertakings are captured within the third wave and will be required to report in 2027 in respect of the 2026 financial year, but will have optionality for the 2027 and 2028 reporting years.</p> <p>The fourth and final wave requires the in scope non-EU ultimate parent undertakings to report in 2029 in respect of the 2028 financial year.</p> <p>In addition to the sustainability reporting requirements set out in the CSRD, the reporting obligations introduced by the Taxonomy Regulation, the SFDR, the CRR and the BMR are also relevant to Irish entities.</p> <p>Those reporting under the NFRD also need to comply with the disclosure obligations under Article 8 of the Taxonomy Regulation. These obligations will kick in for other organisations in scope of the CSRD at the same time as the reporting requirements under the CSRD.</p> <p>The SFDR, as amended by the Taxonomy Regulation, also places disclosure obligations on financial market participants (FMPs) in respect of certain financial products they make available as well as on financial advisers. The level of disclosure required depends on a number of factors including the manner in which sustainability risks are integrated into the FMP's investment decisions; whether the relevant financial products promote environmental and/or social characteristics or have sustainable investment as their objective.</p> <p>Certain financial institutions are also required to disclose information on their ESG risks as part of their Pillar 3 reporting under the CRR. In addition, the BMR requires benchmark administrators to disclose ESG information in respect of each benchmark in their portfolios.</p>
4.	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b></p>	<p>The types of entities that fall within scope of the CSRD are set out above in response to question 3. With 'large' for the purposes of the CSRD, as amended, being an undertaking that meets at least two of the following criteria: (1) a balance sheet of more than €25m; (2) net turnover of more than €50m; and/or (3) an average of more than 250 employees during the financial year.</p> <p>For the purposes of the CSRD, an SME is an entity that meets at least two of the following criteria: (1) a balance sheet of between €450,000 and €25m; (2) net turnover of between €900,000 and €50m; and/or (3) an average of between 50 and 250 employees during the financial year.</p> <p>Non-EU ultimate parent undertakings will be required to report under the CSRD where they generate a net turnover of €150m or more for each of the last two consecutive financial years in the EU and have at least one subsidiary or branch in the EU in scope of the CSRD.</p> <p>See the response to question 3 for details of the types of entities that may be required to disclose ESG information in accordance with the Taxonomy Regulation, the SFDR, the CRR and the BMR.</p>
5.	<p><b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b></p>	<p>See response to questions 3 and 7.</p>
6.	<p><b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b></p>	<p>See the next answer.</p>

7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>This depends on the type of information being disclosed and what this information is in relation to. As regards the ESG disclosures mandated by the CSRD, in-scope businesses will have a legal obligation to report annually in a new section of the directors' report section of their annual report known as the sustainability statement. This disclosure will cover a broad range of environmental, social and governance topics, focusing on those considered to be material to the business.</p> <p>For those that fall within scope of the SFDR, different requirements and timelines apply. For example, the SFDR requires specific disclosures to be placed: (1) on websites; (2) in the pre-contractual disclosures (ie, a fund's prospectus); and (3) in periodic reports.</p>
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>The CSRD introduces mandatory sustainability reporting requirements for those entities set out in Q3. Certain organisations voluntarily report sustainability information using a variety of different frameworks and standards. It remains to be seen whether these organisations will continue to report against voluntary standards if they are required to report under the CSRD.</p> <p>For those organisations that do not fall within scope of the CSRD, there is an expectation that they will consider voluntarily reporting sustainability information. The European Financial Reporting Advisory Group (EFRAG), the organisation tasked with preparing the ESRS, has also prepared draft voluntary standards for SMEs that do not fall in scope of the CSRD to consider and it is expected that non-listed SMEs will report against these on a voluntary basis.</p>
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>The CSRD has yet to be transposed into Irish law and the competent authority that will be tasked with ensuring compliance with CSRD obligations has not yet been disclosed.</p> <p>The CSRD requires each EU Member State to provide for 'effective proportionate and dissuasive' penalties for non-compliant entities that include public statements of censure and punitive fines (and which may include criminal sanctions where Member States so decide).</p> <p>The Central Bank of Ireland (Central Bank) acts as the financial regulator and supervisory authority of regulated financial services providers and is the competent authority in Ireland to monitor the compliance of financial market participants and financial advisers with their reporting obligations. There has been a particular focus on SFDR disclosure requirements as a result of the Common Supervisory Action launched by the European Securities and Markets Authority (ESMA) on sustainability-related disclosures and the integration of sustainability risks which has required the Central Bank to engage with asset managers and others on this topic.</p>
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>Penalties for false or misleading ESG disclosures depend on the type of disclosure made. For example, if a false or misleading disclosure is made in marketing material, it may be subject to a complaint made to the Advertising Standards Authority of Ireland (ASAI). The ASAI Code of Standards for Advertising and Marketing Communications in Ireland (the ASAI Code) contains specific rules in relation to environmental claims. While the ASAI Code is not legally binding, the ASAI investigates and publishes decisions in response to complaints which are often reported on in the media.</p> <p>In the absence of specific binding legislation at present, the ASAI Code is a useful best practice guide to align with the specific rules that will apply under the forthcoming Green Claims Directive, and the specific provisions on environmental claims to be introduced into the Unfair Commercial Practices Directive 2005/29. The Green Claims Directive will build on sanctions in this area as EU Member States will be required to lay down a penalty framework which must be 'effective, proportionate and dissuasive'. Member states may designate the same regulator as for the Unfair Commercial Practices Directive (UCPD), which in Ireland is the Competition and Consumer Protection Commission (CCPC) to enforce the provisions of the Green Claims Directive.</p> <p>As discussed above, the CSRD also requires each EU Member State to provide for 'effective proportionate and dissuasive' penalties for non-compliant entities that include public statements of censure and punitive fines (and which may include criminal sanctions where member states so decide). Sanctions will be extended to include firms providing assurance in respect of the disclosures.</p> <p>In July 2023, the Department of Enterprise, Trade and Employment published its proposed policy response to the public consultation on Member State options in respect of the CSRD, which noted that slightly less than one-third of respondents submitted views on the option to allow Ireland to decide not to lay down rules for administrative sanctions for infringements which are already subject to national criminal law. One-third of these were in favour of adopting the Member State option, one-third was opposed to exercising the option, and the remaining third was seeking parity with the rules for financial reporting.</p>

		This proposed policy response reported that the system currently used for the oversight of statutory audit and infringement of financial reporting rules is extremely robust and serves Ireland well. This system comprises administrative sanctions set out in the Audit Directive which is augmented by the amendments under the CSRD. Separately further to the Accounting Directive, for breaches of financial reporting rules there are proportionate offences provided for in the Companies Act 2014, as amended. According to the proposed policy response, the existing framework will be used to guide the Department's work in developing the sanctions and offences system for the purposes of sustainability reporting and therefore, the option is not preferred.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	See above.  Ireland is required to transpose European legislation such as the Gender Balance on Boards Directive and the Pay Transparency Directive which introduce disclosure requirements relating to specific ESG matters and the reporting obligations set out in the proposal for a Corporate Sustainability Due Diligence Directive (CS3D) are also worth mentioning.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	While there are currently no Irish-specific ESG or benchmark certifications requirements, the EU requirements will apply to relevant Irish entities. For example, the obligations introduced under the Taxonomy Regulation, the BMR and the proposal to regulate providers of ESG ratings will also be relevant from an Irish perspective.
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	See above.
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	Under the CSRD, there is a specific standard within the ESRS on climate change which in-scope entities will need to report against if this topic is considered material to their business. It is also worth mentioning the Taxonomy Regulation, which establishes a classification system that enables the categorisation of economic activities/sectors that play key roles in climate change mitigation and adaptation. The Taxonomy established six environmental goals:  <ol style="list-style-type: none"> <li>1. climate change mitigation;</li> <li>2. climate change adaptation;</li> <li>3. the protection of water and marine resources;</li> <li>4. the transition to a circular economy;</li> <li>5. pollution prevention and control; and</li> <li>6. the protection and restoration of biodiversity and ecosystems.</li> </ol> Additionally, in its supervisory capacity, the Central Bank has set out clear supervisory expectations of regulated financial services providers regarding climate change in a 'Dear CEO' letter of 3 November 2021, on the basis that climate change risks are among the systemic risks to the financial system identified by the Central Bank. Accordingly, the Central Bank has set up a Climate Risk and Sustainable Finance Forum to build capacity and share best practices to advance the Irish financial sector's response to climate change.



		The Climate Action and Low Carbon Development (Amendment) Act 2021 (the CALC Act), also imposes a climate reporting obligation on the Minister for the Environment, Climate and Communications. The Minister must give regular accounts (at the written request of a joint committee of the Oireachtas, the national parliament of Ireland) on the latest climate action plan, whether there has been a reduction or increase in greenhouse gas (GHG) emissions, compliance with carbon budgets and the implementation of adaptation policies under the most recently approved national adaptation framework. A similar obligation is imposed on every government minister in relation to the sector for which they have responsibility. Additionally, agencies such as the Commission for the Regulation of Utilities and the Environment Protection Agency exercise oversight of firms operating in relevant industries.
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	The CSRD introduces specific European Sustainability Reporting Standards (ESRS) which in-scope entities will need to report against. The information included in the sustainability statements will need to be in line with these standards. This sustainability information is subject to third party assurance, initially on a limited assurance basis which will in time move to reasonable assurance.  Additionally, the SFDR and CRR require specific templates to be used in respect of the disclosures to be provided.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	Those in scope of the CSRD will for the first time be required to report on the full range of ESG issues relevant to their business in accordance with ESRS. The first set of ESRS was published in December 2023. There are 12 sector-agnostic standards, 11 of which set out disclosure requirements. There are five environmental, four social and one governance standard, each of which will need to be reported against if the topic is considered material to the reporting entity's business.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	As ESG is constantly evolving, it is very difficult to measure compliance as what might have previously not been considered an ESG matter now is. The measurement of goals is very difficult when goals may rapidly change as a result of, for example, geopolitical issues outside of the control of corporates.  The CSRD will not only enable in-scope entities to report on these ESG issues that are deemed material to their business, but it will also allow readers of the sustainable statement to identify the issues that a specific business is focused on from an ESG perspective and to compare this with its peers.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	The answer lies somewhere in the middle as there appears to be conflicting data on value creation. There is certainly a greater compliance burden placed on organisations. However, there are also opportunities for businesses to showcase the actions that they are taking on ESG matters.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	The CSRD is intended to create a more transparent ESG disclosure regime in Europe; while some clients will have already been reporting sustainability disclosures either mandatorily under NFRD or voluntarily under one of the sustainability reporting frameworks, the opportunity to have standardised reporting will be helpful both to organisations themselves and to the reviewers of their sustainability information.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	Interim reports have been prepared by the European Supervisory Authorities (ESAs) around greenwashing with final reports due by each of the three ESAs in June 2024. Although the reports do not require action to be taken by entities in the financial services sector, they provide guidance on how to prevent greenwashing at entity, product, service and financial instrument level.  In addition, the ASAI Code sets out rules on environmental claims from a marketing perspective. While not statutory in nature this may be relevant in terms of greenwashing. As mentioned above, the Green Claims Directive is intended to tackle unsubstantiated and misleading environmental claims and should be considered in this context.



21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	See above.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	No. See above.
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	<p>The CSRD requires sustainability information to be included in a separate section of the annual report known as the sustainability statement. The information contained within this statement is required to be assured, initially on a limited assurance basis. This will move to reasonable assurance over time. The CSRD provides for statutory auditors to undertake this assurance and also allows EU Member States optionality to provide for a new type of service provider, the independent assurance services provider, to provide this service.</p> <p>On 25 April 2024, a consultation in respect of the option to introduce independent assurance services providers was launched by the Department of Enterprise, Trade and Employment with views of stakeholders and interested parties sought by 19 July 2024.</p>
24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	<p>Under NFRD and its implementing regulations, certain in-scope entities are required to include a diversity report in their corporate governance statement which must include a description of the entity's diversity policy, and contain information on the age, educational background and gender of board members.</p> <p>There has been an increased focus by boards on ESG matters. While the reasons for this are varied, the focus on governance within the CSRD and the ESRS is likely a consideration for those required to prepare a sustainability statement under the CSRD. Governance is one of the four reporting areas in the ESRS and there are also specific disclosure obligations that require organisations in scope of the CSRD to report on, not only the composition of the board, but also the board's role and responsibilities with regard to sustainability matters.</p> <p>State bodies in Ireland have, since 2016, been required to comply with the Code of Practice for the Governance of State Bodies (the State Code). In 2016, the State Code was supplemented by the inclusion of an Annex on Gender Balance, Diversity and Inclusion which aims to achieve the long-standing objective of a minimum of 40 per cent representation of each gender on state boards. State bodies are now required to report on gender balance and to outline measures that will be taken to achieve the 40 per cent target, as well as an obligation to report annually on progress in promoting equality, diversity and inclusion within the organisation.</p> <p>Directive (EU) 2022/2381 known as the 'Gender Balance on Boards Directive' (the Directive) was published in the Official Journal of the EU on 7 December 2022 and entered into force on 27 December 2022. The Directive is a welcome development in the context of gender diversity, requiring EU-listed companies to ensure that at a minimum either 40 per cent of non-executive director positions or 33 per cent of all director positions are held by the 'underrepresented sex' by 30 June 2026, with 'effective, proportionate and dissuasive' penalties for non-compliant companies. EU Member States have two years from the Directive having come into force to implement the requirements of the Directive, meaning that Ireland will be required to introduce transposing legislation by 28 December 2024.</p>

25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<p>Companies in Ireland are currently focused on the first set of ESRS as these will be mandatory for companies in scope of the CSRD to report against in the coming years. In addition, developments around the adoption of the ISSB standards into national law in a growing number of jurisdictions are being monitored, in particular by companies with a presence in other countries.</p> <p>While companies in certain sectors such as the built environment and infrastructure have been focused on biodiversity for some time, it is increasingly becoming a topic of focus for businesses. This has resulted in increased awareness of the TNFD guidance.</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>This depends greatly on which disclosure requirements are being referenced. Taking the CSRD as an example, companies are at different stages in terms of their preparation for CSRD reporting. While for some project teams have been assembled, staff are being upskilled and the resources required have been identified, others are an earlier stage and have yet to consider that resources will be needed.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>No. However, Ireland is committed to achieving climate neutrality no later than 2050 with a 51 per cent reduction in GHG emissions by 2030. These legally binding objectives are set out in the Climate Action and Low Carbon Development (Amendment) Act 2021.</p> <p>In addition, the Climate Action Plan 2024 sets out pathways to delivering the required emissions reductions to comply with Ireland’s ambitious Carbon Budgets and Sectoral Emissions Ceilings, which place specific emissions limits on key sectors including Electricity, Industry, Built Environment, Transport and Agriculture.</p> <p>In terms of targets, the Climate Action Plan identifies specific targets for each sector mentioned above and businesses within those sectors will be involved in meeting those targets. For example, for the Industry Sector, the key targets for 2030 include reaching a 70–75 per cent share of carbon neutral heating and reducing fossil fuel demand by 10 per cent through energy efficient measures.</p>
28.	<p><b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b></p>	<p>Yes. A number of companies have set climate-related targets, some of which have set or committed to science-based targets developed in line with the criteria set by the Science Based Targets initiative (SBTi). There are currently over 100 Irish companies listed on the SBTi website as setting or having committed to setting science-based targets.</p>
29.	<p><b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b></p>	<p>It is anticipated that the introduction of mandatory sustainability reporting standards will result in a move away from companies reporting against a variety of voluntary frameworks and standards. Increased standardisation, comparability and greater availability of data are the intended results of companies reporting against mandatory sustainability reporting standards. However, familiarisation of companies with the ESRS disclosure requirements will take time. There will likely be an adjustment period initially as there was with the preparation of the templates and disclosures under the SFDR and the Taxonomy Regulation with the level and quality of ESG disclosures improving over time.</p>

30.	<p><b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b></p>	<p>Name(s) Keavy Ryan, Jill Shaw, Éamon Ó Cuív</p> <p>Firm name: A&amp;L Goodbody &amp; McCann FitzGerald</p> <p>Brief biography:</p> <p><b>Keavy Ryan, A&amp;L Goodbody</b></p> <p>Keavy Ryan specialises in M&amp;A, company law and corporate governance, and commercial and contractual arrangements. She advises leading Irish and international, public and private companies, equity funds and financial institutions, with significant operations in Ireland across a broad range of legal, regulatory, commercial and financial affairs.</p> <p>Keavy also manages the firm's equity benefits group. She advises on all aspects of share incentives, including the treatment of share incentives in M&amp;A transactions and corporate governance, regulatory and shareholder issues arising from the establishment and operation of share plans, and executive remuneration programmes.</p> <p><b>Jill Shaw, A&amp;L Goodbody</b></p> <p>Jill Shaw supports A&amp;L Goodbody's clients and practice groups on ESG and sustainability matters. She has a particular focus on sustainability reporting and disclosure requirements including the obligations introduced by the Corporate Sustainability Reporting Directive. Jill has extensive experience advising clients on legal and regulatory matters, principally in the asset management and investment funds sector. In addition, she has worked as a senior knowledge lawyer with a focus on compliance with the various European sustainability initiatives applicable to the asset management sector.</p> <p><b>Éamon Ó Cuív, McCann FitzGerald</b></p> <p>Éamon Ó Cuív advises clients on a wide range of finance matters including debt capital markets, structured finance, securitisation and corporate lending transactions for financial institutions, alternative lenders, non-financial corporates and state-owned entities. Éamon has also been a lead adviser on many of the key landmark green and sustainable finance initiatives in Ireland over the past few years, including the issuance of Ireland's first Green Bond in 2018 and a number of green and sustainability linked loans and private placements.</p>
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# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Italy

### Italy

1.	Which jurisdiction are you covering?	Italy
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>The Italian legal framework currently envisages certain mandatory ESG disclosure requirements. Such requirements apply either as a result of the direct application of EU law or following national transposition and implementation thereto.</p> <p>The major pieces of legislation that currently provide for mandatory ESG disclosures in Italy are: (1) Legislative Decree No 254/2016, which was implemented in the Non-Financial Reporting Directive (NFRD); and (2) the Sustainable Finance Disclosure Regulation (SFDR).</p> <p>It is noted, however, that the level of compulsoriness of NFRD (and, consequently, of the national implementing regulation) is not absolute as it adopts a 'comply or explain' approach, meaning that the non-disclosure of prescribed information is possible if this is made transparent and reasons are given, whereas the SFDR, which has a stricter approach, was only introduced recently and is thus at a rather early stage of implementation.</p> <p>In addition to the above, the Corporate Sustainability Reporting Directive (CSRD), starting from the Fiscal Year 2024 (with report due in 2025), shall apply to (1) large companies which are listed (<i>enti di interesse pubblico</i>), and (2) listed companies (<i>enti di interesse pubblico</i>) which are parent companies of large groups both having an average of more than 500 employees (that are currently already subject to NFRD), and subsequently to other entities. The goal pursued by such Directive, which modifies NFRD, is to (1) increase transparency on corporate performance in terms of sustainability, and (2) harmonise sustainability reporting across the EU.</p>
3.	If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?	According to the pieces of legislation currently in place, ESG disclosures are not mandatory for all types of entities. A distinction is usually made depending on the nature and size of entities.
4.	If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?	<p>For example, NFRD, as implemented in Italy by Legislative Decree No 254/2016, only applies to companies (including partnerships) that: (1) are EU public interest entities (PIEs), that is, traded companies on a regulated market, banking companies, authorised insurance companies or reinsurance companies; (2) have more than 500 employees (on average); and (3) have a balance sheet total of €20m or net turnover of €40m in a financial year (which will be, respectively, €25m and €50m pursuant to Directive (UE) 2775/2023). It also applies to PIEs that are parent companies of large groups. Entities that do not fall within the scope of the mandatory application of Legislative Decree No 254/2016 are allowed to comply with relevant disclosure requirements on a voluntary basis.</p> <p>The SFDR, which is directly applicable in Italy, has a broader scope of application. It applies to: (1) financial market participants, which are defined as investment firms, including asset managers that offer portfolio management services, pension providers and insurance-based investors, as well as qualifying venture capital and social entrepreneurship activities; and (2) financial advisers. However, under the SFDR,</p>

		<p>certain disclosure obligations (namely, those at entity level and relating to entities' principal adverse impacts) are mandatory only with respect to financial market participants with more than 500 employees. Those with less than 500 employees may decide not to consider their principal adverse impacts and just include a statement on why they do not do so.</p> <p>At the same time, the size and type of entities may also determine the term of applications of ESG disclosure requirements.</p> <p>The implementation of the CSRD undertakings will be phased in as follows:</p> <ol style="list-style-type: none"> <li>1. fiscal year 2024 (with report due in 2025): large companies which are listed (<i>enti di interesse pubblico</i>) and listed companies (<i>enti di interesse pubblico</i>) which are parent companies of large groups both having an average of more than 500 employees (that are currently already subject to the NFRD Directive);</li> <li>2. fiscal year 2025 (with report due in 2026): large companies and companies which are parent companies of large groups other than those above;</li> <li>3. fiscal year 2026 (with report due in 2027): listed SMEs (among others) and listed insurance and reinsurance undertakings as well as small and non-complex institutions that meet the large company requirements; and</li> <li>4. fiscal year 2028 (with report due in 2029): companies or branches whose parent company is outside the EU but whose group has a significant presence in the EU shall report on the entire group, including non-EU group companies.</li> </ol>
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	<p>Under the NFRD, as implemented by Legislative Decree No 254/2016, PIEs are required to draw up an annual, non-financial statement (the DNF) containing information regarding the entity's development, performance, and position, and the impact of the entity's operations on environmental, social, employment, human rights, anti-corruption and bribery matters relevant to the nature and operations of the entity.</p> <p>Under SFDR, disclosures are to be made on two different levels: entity level and product level. For entity-level disclosures, reporting is to be made on an annual basis, whereas product-level disclosure requires reporting to be made both on a periodic basis and in relation to each specific type of financial product by means of pre-contractual disclosures and periodic reports.</p> <p>The ESG disclosure undertakings which will be arising from the CSRD shall be reported on an annual basis.</p> <p>Companies shall provide, inter alia, information about: (1) whether and how their business model and strategy take into account the interests of stakeholders; (2) the sustainability goals set and (3) the role of the board and management with regard to sustainability matters.</p>
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>The non-financial statement under Legislative Decree No 254/2016 may be included as a specific section in the directors' management report of the annual financial statements or may be filed with the Companies' Register as a standalone report ancillary to the annual financial statements.</p> <p>Information to be disclosed under SFDR is usually embedded in a dedicated section on companies' websites, in prospectuses and in periodic reports without the requirement to draw up a separate ESG report.</p> <p>Sustainability reporting under CSRD shall be included in the directors' management report.</p>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>As mentioned, the non-financial statement pursuant to Legislative Decree No 254/2016 is published in the Companies' Register either as a standalone report ancillary to the annual financial statements of the company or as a specific section forming part of the annual financial statements.</p> <p>According to the SFDR, depending on the type of information to be disclosed, mandatory disclosures shall be made on company websites, in prospectuses and in periodic reports.</p> <p>The new CSRD reporting methods provide that the report shall be mandatorily placed in a clearly identifiable section of the directors' management report in summary and prospective form, thus becoming an integral part of the company's financial statements, in order to ensure greater integration between financial and non-financial information.</p>

8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	If entities are not mandatorily required to make ESG disclosures under current applicable laws and regulations, they decide to disclose information on their ESG performance on a voluntary basis only in limited cases. Disclosures are either made on the basis of EU non-binding guidelines or by complying on a voluntary basis with laws currently in force that require other types of entities to make ESG disclosures. This was shown, for instance, in the 2021 'call for evidence' CONSOB report on the non-financial reporting of Italian listed companies, which reported that only ten entities that could have benefitted from an exemption due to size or business continuity issues decided to publish, on a voluntary basis, a non-financial statement in accordance with Legislative Decree No 254/2016. Such report highlights internal and external benefits, especially in strengthening the relationship with stakeholders. On the other hand, 35 per cent of the respondents to the call for evidence considered that the greatest difficulty in drawing up the DNF is finding information to compile it, and 25 per cent linked the difficulty to the excessive costs involved in drawing it up.
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>The Commissione Nazionale per le Società e la Borsa (CONSOB), Italy's securities regulator, is responsible for investigating and sanctioning infringements of the non-financial disclosure regulation of corporates (financial and non-financial). For example, under Legislative Decree No 254/2016, the supervisory board and auditors may be fined, with penalties ranging from €20,000 to €100,000 if the non-financial statement: (1) is not filed; or (2) does not comply with the provisions of the decree.</p> <p>With regards to SFDR, at the moment, it does not incorporate any penalties for non-compliance with the prescribed disclosure requirements. Because it does not have a dedicated sanction regime, compliance is likely to be enforced through sectoral sanction regimes under specific EU financial legislation, as implemented by each Member State. Since, as mentioned, SFDR is still at an early stage of application, there are still no clear indicators in this respect to date in relation to Italy.</p> <p>In addition, the European Supervisory Authorities (ESAs) recently introduced sustainability as an integral part of their mandate to promote the integrity and stability of financial markets. EBA and EIOPA will be supported by national competent authorities (ie, the Bank of Italy for less significant institutions and the Istituto per la Vigilanza Sulle Assicurazioni (IVASS) for insurance companies) in overseeing ESG-related aspects.</p>
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>Under Legislative Decree No 254/2016, the supervisory board and auditors may be fined, with penalties ranging from €50,000 to €150,000 if the non-financial statement provides untrue or incomplete information (unless the conduct is criminally relevant).</p> <p>With respect to penalties for false or misleading disclosures under SFDR, please refer to the answer to question 9.</p>
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	<p>No tiered ESG disclosure system is envisaged in Italy to date, and existing provisions were introduced at different times and involve different obligations.</p> <p>As mentioned, ESG legislation applicable in Italy has been derived from the EU. This trend is expected to continue.</p> <p>Currently, there are certain initiatives in the pipeline at the EU level that aim at introducing further ESG disclosure requirements, as well as at broadening the scope of existing ones.</p> <p>For example, the European Commission proposed the adoption of a Corporate Sustainability Due Diligence Directive (CS3D), which would require companies — including those in financial services — to demonstrate what action they are taking to protect the environment and human rights. If adopted, this Directive will complement NFRD and CSRD by adding a substantive corporate duty for some companies to perform due diligence to identify, prevent, mitigate and account for external harm resulting from adverse human rights and environmental impacts in the company's own operations, its subsidiaries and in the value chain. The Directive would also mandate disclosure of plans of an undertaking to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement.</p> <p>Although, as mentioned, they are being discussed at the EU level, this will also have a direct impact on Italy once implemented.</p>

12.	<p><b>Is there a system of ESG certification or benchmarks that need to be met to have an ‘ESG Approved/Compliant’ status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b></p>	<p>There is no specific benchmark, but some clear indicators are given in the EU Taxonomy Regulation, which entered into force in July 2020 and is directly applicable in Italy, at least with respect to the environmental dimension of the ESG factors. In particular, the EU Taxonomy Regulation defines six environmental objectives, and defines economic activity as sustainable if such activity contributes at least to one of these objectives without, at the same time, doing significant harm to any of the other objectives.</p> <p>Furthermore, in June 2023, the European Commission approved a new set of EU taxonomy criteria for economic activities and adopted targeted amendments to the EU Taxonomy Climate Delegated Act, which applies as of 2024, which expands on economic activities contributing to climate change mitigation and adaptation not included so far – in particular in the manufacturing and transport sectors. The inclusion of more economic activities covering all six environmental objectives, and consequently more economic sectors and companies, has the objective to increase the usability and the potential of the EU Taxonomy in fostering sustainable investments in the EU.</p>
13.	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p>As mentioned above, the areas that the reports must cover under NFRD are: (1) environmental issues; (2) social issues; (3) treatment of employees; (4) human rights issues; (5) anti-corruption and bribery measures; and (6) board diversity. When reporting, PIEs should include information on their business models, ESG policies and due diligence processes, outcomes of their policies, ESG risks for the particular entities and their non-financial KPIs. As mentioned, the NFRD adopts a ‘comply or explain’ approach, meaning that PIEs that do not have or implement an ESG policy in relation to any of the aforementioned areas must clearly state the reasons for this in the report.</p> <p>Under SFDR, ESG disclosures are to be made on two different levels. Indeed, SFDR applies at the ‘entity level’ (ie, requiring financial firms to report on how the whole organisation deals with such risks) and on the ‘product level’ (ie, requiring firms to report on how their financial products are affected by such risks). SFDR contains few ‘comply or explain’ clauses (eg, smaller firms, with less than 500 employees and can opt out of reporting on due diligence processes). The regulation asks all entities that fall within the relevant scope of application to report on sustainability risks, even if they do not offer ESG-related products. If an entity offers ESG-related products, SFDR requires additional disclosures depending on how ‘green’ the product is considered to be.</p>
14.	<p><b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b></p>	<p>Although there is currently no specific and separate set of climate change-related disclosures to be mandatorily made by market participants in Italy, climate plays a central role in the existing ESG disclosure requirements. This is due to the increasing European focus on the reduction of net greenhouse gas emissions following, in particular, the adoption of the 2015 Paris Agreement. First, although they are not binding, Italian market participants may rely upon the EU guidelines on reporting climate-related information. In addition, climate change mitigation (together with climate change adaptation) is now one of the six environmental objectives provided for under the EU Taxonomy Regulation. As mentioned, this has an impact on disclosures that need to be made under NFRD and SFDR as they both go hand in hand with the EU Taxonomy Regulation. In fact, entities that fall within the scope of application of NFRD need to report against the environmental objectives set out in the EU Taxonomy Regulation, including climate mitigation, whereas, under SFDR, climate plays a central role in the entity-level disclosures of principal adverse impacts and product-level disclosures need to be aligned with the environmental objectives under the EU Taxonomy Regulation.</p>
15.	<p><b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b></p>	<p>Yes, CSRD, as complemented by Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023, introduced specific sustainability reporting standards, which define the specific information companies must report on, ensuring a standardised approach across the EU.</p> <p>In addition, with respect to SFDR, mandatory templates for disclosures have been developed by the European Commission in the regulatory technical standards (RTS) adopted with Commission Delegated Regulation (EU) 2022/1288. Such RTS are currently being reviewed by the Commission, which intends to provide clarifications and simplifications to the templates.</p>
16.	<p><b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b></p>	<p>There is no clear guidance or definition yet. While the environmental dimension of the ESG disclosures is now being progressively clarified thanks to the implementation of the EU Taxonomy Regulation, no clear and mandatory guidance currently exists in relation to the social and governance dimension of ESG factors. Consequently, there is less certainty as to the actual scope of social and governance-related disclosures.</p>



17.	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	<p>There is still some lack of coordination in this respect. Under current ESG regulations in force in Italy, entities need to disclose their policies and impacts with respect to both environmental and social aspects, but it is still not clear what the interaction between the different dimensions of the ESG factors is in practice when assessing the overall level of ESG compliance of a company.</p>
18.	<p><b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b></p>	<p>As mentioned, many ESG disclosures in Italy are still at an early stage of implementation and/or have, to date, only a limited degree of compulsoriness. Therefore, the concrete application of such requirements by companies, although increasing, is still not wide-reaching, and it is difficult to assess what the effects are in practice for both companies that are required to disclose and investors.</p> <p>We expect a better assessment in this respect to be possibly made in the very near future following the introduction of new ESG requirements and the consolidation and broadening of existing ones.</p> <p>However, our view is that the benefits of imposing mandatory ESG disclosure requirements far outweigh the potential downsides, both for investors and companies. Indeed, ESG reporting has been shown to give greater clarity to the opportunities and risks for investors and the working environment and company values for employees. At the same time, from the perspective of companies, more and better disclosure can lead to tangible capital market benefits, such as improved liquidity, lower cost of capital, higher asset prices (or firm value) and better corporate decisions.</p>
19.	<p><b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b></p>	<p>There is a wide demand for greater standardisation, transparency and verification, at least from certain categories of clients. This is both on the investors' side, who increasingly want to make informed investing decisions that are not only financially appealing but also aligned with the broader ESG agenda, and from the perspective of clients that, under applicable laws and regulations, are required to make disclosures, who indeed want greater clarity on what they need to report.</p>
20.	<p><b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b></p>	<p>To stop the so-called greenwashing phenomena the EU regulatory framework provides for (1) the Taxonomy Regulation (EU) 2020/852 – applied to market participants; and (2) SFDR – applied to financial markets participants and financial advisers.</p> <p>The taxonomy of environmentally sustainable economic activities establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable.</p> <p>SFDR requires the integration of sustainability risks during the processes and communication of information related to financial products. It imposes specific disclosure requirements for the products that promote environmental or social features and for the products whose objective is sustainable investment consequently strengthen investor protection to reduce greenwashing.</p>
21.	<p><b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b></p>	<p>By far, the most notable development has been the adoption by the EU of the Regulation (EU) 2023/2631 on European Green Bonds (the 'EuGB Regulation'), which will enter into force in December 2024.</p> <p>Under the EuGB Regulation, companies will be required to disclose information about how their EuGB-labelled bonds' proceeds will be used. This means that the bonds' net proceeds will have to be allocated before maturity to specific taxonomy-aligned activities in accordance with the criteria set out in the Taxonomy Regulation.</p> <p>To comply with the disclosure requirements, issuers will have to complete three reporting documents, whose templates are provided by the EuGB Regulation: (1) a pre-issuance factsheet, consisting of a framework of core components the bond must comply with; (2) an allocation report, to be completed on an annual basis up until full allocation of proceeds; and (3) an impact report, to be completed after full allocation of proceeds and at least once during the bond's lifetime. Significantly, while being mandatory for those wishing to label their bonds as European Green Bonds, template formats can also be used by companies issuing bonds which are not yet able to adhere to all the strict standards of the EuGB Regulation but still wish to signal their green aspirations.</p>



		<p>In order to avoid greenwashing, issuers will have to obtain a positive assessment of their reports from an external reviewer, which will have to be an independent entity registered with and supervised by the European Securities and Markets Authority (ESMA). The ultimate objective of the external reviewers' activity will be in fact to ensure that European Green Bonds are effectively being used for the sustainable activities claimed by issuers.</p> <p>In addition, the European Commission's proposal for a regulation on the transparency and integrity of ESG rating activities (COM 2023 – 0314) aims at further increasing investors' trust in sustainable financial products, strengthen the reliability and comparability of ESG ratings, and improve their transparency.</p>
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	<p>While we are not aware of any specific claims related to securities issues at the moment, greenwashing litigation is a growing area in Italy.</p> <p>In the financial sector, CONSOB can sanction companies that are obliged to publish the DNF and make false statements, under Legislative Decree No 254/2016, as well as companies which breach the information obligations established in the SFDR, under the Consolidated Law on Finance (TUF).</p> <p>Generally, the Italian Competition Authority (AGCM) would be competent to assess, prohibit and sanction (up to €5m) any unfair commercial practices (UCPs), including greenwashing activities, under the Consumer Code (Legislative Decree No 206 of 6 September 2005).</p>
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	<p>As for NFRD, Article 3, paragraph 10, of Legislative Decree No 254/2016 provides that the subject in charge of the statutory audit of the financial statements verifies that the directors prepared the DNF statement and expresses an opinion about the compliance of the information provided compared to those required by such Legislative Decree.</p> <p>The CSRD imposes an audit requirement also for the sustainability parts of the financial statements.</p> <p>In order to increase the reliability of sustainability reporting, companies within scope will be required to seek limited assurance over their reported sustainability information. To this end, the draft Decree implementing the CSRD Directive in Italy, which is still under public consultation, currently stipulates that companies in order to receive this statement may engage a statutory auditor or audit firm, which may be the same entity in charge for the audit of the company or a different one, although still registered with the register of auditors.</p>
24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	<p>The new regulatory framework (in force and ongoing) provides for extensive forms of accountability of the boards of directors' members in managing ESG issues. In this respect, NFRD and CSRD provide for specific undertakings for directors of companies addressed by the relevant obligations. By way of example, the increased accountability of the board of directors in preparing the sustainability report is granted by placing it in the management report; hence prepared in accordance with Article 2428 of the Civil Code.</p> <p>In fact, the last available Report on the Evolution of Corporate Governance of listed companies (2022) highlights an increasing trend among issuers to set up a sustainability committee.</p> <p>According to Consob 2022 Report on Corporate Governance of Italian listed companies: (1) more than 50 per cent of Italian issuers have set up a sustainability committee; and (2) sustainability committees continue to see the prevalence of independent directors (weighing more than 85 per cent) and women (more than 50 per cent), and a more diversified professional background, including a higher frequency of consultants and professionals (23.4 per cent).</p> <p>The sustainability committee supports the board of directors, with an adequate preliminary activity of a propositional and consultative nature, on sustainability matters, in order to promote the progressive integration of environmental, social and governance factors in corporate activities aimed at creating sustainable value for shareholders and other stakeholders in the medium-long term.</p> <p>There is an increasing awareness that ESG issues can be approached as an opportunity and not just as a risk to manage. For such reason, by way of example, many companies adopt compensation models that are linked to the achievement of ESG goals related, mostly, for the key employees.</p>

25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<p>As noted above, the biggest impact will likely be felt through CSRD with its associated ESRS, as this will be directly applicable in Italy. This new set of rules will require increased transparency from Italian companies, forcing them to report on a wider range of sustainability factors. While this might lead to initial costs for adapting reporting structures, the long-term benefit lies in improved stakeholder trust and potentially easier access to capital from environmentally and socially conscious investors.</p> <p>The global standards from ISSB and TNFD offer further benefits. The ISSB standards will create a common language for sustainability reporting, making Italian companies more comparable to international peers. The TNFD guidance, while not directly mandatory, might be valuable for companies in sectors reliant on natural resources, helping them identify and mitigate nature-related financial risks.</p> <p>The UK-specific TPT framework will not have a direct impact in Italy, however its focus on clear net-zero transition plans could serve as a benchmark for Italian companies setting their own sustainability goals.</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>Companies subject to ESG undertakings shall allocate sufficient funds and have the necessary capabilities, organisation and human resources with specific competencies in order to fulfil correctly such obligations.</p> <p>As of today, due to the fact that the main obligations are linked to listed companies and/or large companies and/or companies which are parent companies of large groups such a problem is not totally tangible.</p> <p>In any case, this issue will be evident when ESG obligations apply to companies with smaller scale, organisations, and budgets. We consider that such aspect shall be managed by the European and/or Italian Legislator.</p> <p>In this respect, by way of example, the Proposed Ecodesign Regulation (which is currently under evaluation by the EU Parliament) that has the goal to make sustainable products the norm in the EU, provides for financial support measures for micro and SME enterprises, as well as certain exemptions for micro and small enterprises and a transition period (ie, four years) for medium-sized companies.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>While not mandatory, CSRD encourages companies to set specific climate goals. These goals can show if they align with limiting global warming to 1.5°C, and companies must explain how they reached those targets. Importantly, the goals need to be clear reductions in emissions and set every five years between 2030 and 2050. This goes hand-in-hand with the proposed CS3D. In fact, if passed, the CS3D would require supervisors to make sure companies have proper plans (transition plans) to achieve their climate goals.</p>
28.	<p><b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b></p>	<p>There has been growing interest and adoption of voluntary climate-related targets, such as the Science Based Targets initiative among companies in Italy in recent years.</p> <p>Based on the data published online, as at today, around 300 Italian companies have committed to setting science-based emissions reduction targets through the SBTi. Major Italian companies that have set SBTi approved targets include Enel, Leonardo, Pirelli and Terna, among others.</p> <p>However, the overall percentage of Italian companies with approved SBTi targets is likely still relatively low compared to some other European countries that are leaders in this area.</p> <p>Therefore, while voluntary adoption of SBTi targets is becoming increasingly popular among larger Italian corporations, there is still significant potential for more widespread commitment.</p>

29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	We expect ESG disclosures to become central for market participants in Italy, with growing transparency and standardisation, and a broader scope of application of mandatory requirements. This is in line with the aforementioned upcoming developments at the EU level. At the same time, we also expect positive developments with respect to entities that are not yet mandatorily required to make ESG disclosures. Indeed, enhanced standardisation and increasing application of ESG disclosures are likely to encourage entities that would fall into the exemptions, or for which ESG disclosures are still not mandatory, to nonetheless align with existing ESG requirements in order to attract investors and increase their presence and credibility in the market.
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Japan

### Japan

1.	Which jurisdiction are you covering?	Japan
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Yes. Following the amendments to the Cabinet Office Order on Disclosure of Corporate Affairs of Japan and the Guideline for the Disclosure of Corporate Affairs of Japan which came into force in January 2023, statutory disclosures of certain sustainability-related information were newly introduced. As a result, certain ESG disclosures are now required to be made in the issuer's statutory disclosure documents covering the fiscal years ended on or after 31 March 2023.
3.	If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?	No.
4.	If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?	N/A
5.	What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?	Issuers who intend to make a public offering or who have an obligation to file an annual securities report pursuant to the Financial Instruments and Exchange Act of Japan need to make such ESG disclosures in the relevant statutory disclosure documents.
6.	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	No.
7.	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?	Statutory disclosure documents (eg, securities registration statements, annual securities reports, etc) disclosed on the EDINET, an electronic disclosure site managed and administered by the Financial Services Agency of Japan (the FSA).

8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	N/A
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	The regulator is the FSA. Like any other matters required to be disclosed in the statutory disclosure documents, if the issuer fails to include any material matters, (1) the issuer, (2) its management and (3) underwriters/selling shareholder who used such disclosure documents/prospectus (the 'non-compliant') may be subject to (1) civil liability (ie, damages incurred by investors) and (2) administrative monetary penalties. There are no grace periods.
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	In the case of 'false' disclosures (ie, misstatements) on material matters in the statutory disclosure documents, the non-compliant may be subject to (1) civil liability, (2) criminal liability and (3) administrative monetary penalties. In the case of 'misleading' disclosures on material matters in the statutory disclosure documents as well as other documents where ESG-related statements are voluntarily included, the non-compliant may be subject to civil liability only.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	According to the Exposure Drafts of Sustainability Disclosure Standards published by the Sustainability Standards Board of Japan (SSBJ) in March 2024, which were prepared based on the IFRS Sustainability Disclosure Standards (IFRS S1 and IFRS S2) published by the International Sustainability Standards Board (ISSB) in June 2023 and tailored for Japan, certain further ESG disclosures are expected to become mandatory for the fiscal years ending on or after 31 March 2025 at the earliest.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	There is not really a system, but companies that intend to raise funds from the capital markets tend to be evaluated and certified by certain third parties, such as MSCI, FTSE and CDP.
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	Mandatory ESG disclosures in Japan include disclosures of the issuer's policy and initiatives for sustainability (where 'sustainability' may include but not be limited to climate change (environment), society, employees, human rights, anti-corruption, anti-bribery, governance, cybersecurity, data security, etc), from a perspective of 'governance', 'risk management', 'strategy' and 'index and target'. Certain matters relating to human capital and diversity are also required to be disclosed.
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	Under Japanese law, statutory disclosure (ie, annual reporting and disclosure for a public offering) does not give a specific emphasis on climate change. However, the Corporate Governance Code in Japan adopts a 'comply or explain' approach with respect to climate change disclosures by companies whose shares are listed on the Prime Market of the Tokyo Stock Exchange.
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	As the mandatory ESG disclosure regime is still at an early stage after its implementation in March 2023, companies have latitude in terms of the extent/volume and manner of disclosures.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	There is no clear guidance or definition in the relevant laws and regulations, but the relevant guidelines provided by the FSA indicates that 'sustainability' may include but is not limited to climate change (environment), society, employees, human rights, anti-corruption, anti-bribery, governance, cybersecurity, data security, etc.

17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	There is no clear rule on measuring whether/to what extent the company is ESG compliant under the relevant laws and regulations. Investors need to seriously examine how compliant with ESG each company is because there exists ESG non-compliance in almost every company.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	The answer lies somewhere in the middle. The relevant laws and regulations maintain, or even create, investor value for listed companies, but it is unclear whether it will be cost-effective in the long term.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	Generally yes, as we have seen our corporate clients struggling to prepare specific disclosures for the reason that the existing disclosure requirements are too abstract. On the other hand, however, we are aware that our clients do not always welcome a detailed disclosure regime as it might deprive them of flexibility.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	No.
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	Development and implementation of the relevant guidelines issued by the government, such as the Green Bond and Sustainability-Linked Bond Guidelines issued by the Ministry of Environment of Japan (the MOE), the <i>Social Bond Guidelines</i> issued by the FSA, the <i>Basic Guidelines on Climate Transition Finance</i> issued by the FSA, the MOE and the Ministry of Economy, Trade and Industry of Japan, as well as the development of the Sustainability Disclosure Standards as mentioned in question 11 above, are expected to address the greenwashing issues.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	No.
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	There is no mandatory external certification or assurance requirement in connection with ESG disclosures in Japan. However, as mentioned in question 12 above, issuers of ESG-labelled bonds (eg, green bonds, social bonds, sustainability bonds, etc) tend to obtain external certification/assurance (eg, via second party opinions) from certain third party agencies, such as MSCI, FTSE and CDP.

24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>The board commitment to the ESG matters has been increasing in Japan in recent years in that eg, (1) companies tend to incorporate ESG elements into the company's new management philosophy and business strategy, (2) more companies consider ESG-related KPIs in determining directors' remuneration and (3) an increasing number of companies are adopting structures to oversee sustainability issues through the establishment of relevant corporate bodies, such as sustainability committees, sustainability advisory boards and chief sustainability officers. Also, as mentioned in questions 2 and 13 above, disclosure of the issuer's policy and initiatives for sustainability including regarding the governance of ESG matters has become mandatory in its annual reporting and disclosure for a public offering.</p>
25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p><b>The sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June</b></p> <p>As mentioned in Q11, the Japanese version of the sustainability disclosure standards are being developed by SSBJ based on the IFRS Sustainability Disclosure Standards and it is currently scheduled to be finalised by the end of March 2025.</p> <p><b>The first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD))</b></p> <p>Certain Japanese companies are subject to the reporting obligations under the CSRD and ESRS, and they are under preparation for the necessary disclosure.</p> <p><b>The final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September</b></p> <p>The publication of such guidance is expected to promote and encourage companies' disclosure of climate-related/nature related sustainability information.</p> <p><b>The final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></p> <p>The publication of such framework is expected to promote and encourage companies' establishment and disclosure of climate transition plans.</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>Although there are variations in the extent/volume and manner of disclosures, generally yes, with the aid of the relevant guidance/guidelines issued by the government, other regulatory bodies and/or the relevant associations.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>Not yet, but it is expected to be mandatory once the Sustainability Disclosure Standards come into force in the near future.</p>
28.	<p><b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b></p>	<p>The number of the companies making a voluntary commitment to climate-related targets, including science-based targets, is gradually increasing.</p>
29.	<p><b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b></p>	<p>We envisage that ESG disclosures in Japan will adopt stricter standards following some overseas trends, such as ISSB and SEC rules.</p>
30.	<p><b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b></p>	<p>Katsuyuki Tainaka/Yu Nimura Mori Hamada &amp; Matsumoto</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Mexico

### Mexico

1.	<b>Which jurisdiction are you covering?</b>	Mexico
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>Although there are existing efforts to create a disclosure framework, such as the Mexican Sustainability Taxonomy published in 2023 (further explained in question 11 below), Mexico does not currently have regulations on mandatory ESG disclosure requirements to market participants. Thus, the reporting disclosures have been considered as voluntary. This has gained traction in the past few years, and companies now volunteer this information in issuance documents such as prospectuses.</p> <p>Listed companies or companies issuing registered securities must publish annual reports disclosing environmental policies, certifications and climate change impacts. They must also address environmental risks and governance structures, including board composition.</p>
3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	N/A
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	Generally, it is limited to public listed companies. There are certain sectors required to report direct and indirect emissions of greenhouse gases where such emissions are greater than 25,000 tCO <sub>2</sub> e. Such sectors are energy, industrial, transport, agricultural, waste and service and commerce.
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	<p>For market participants, we considered both on a voluntarily basis. Listed companies publish them in their annual reports, disclosing environmental risk and governance structures.</p> <p>In addition to our response in question 4 above, from our experience certain private transactions in M&amp;A might be required to disclose certain ESG reports and information, both to understand the impact on ESG obligations and to identify any regulatory, litigation and reputational risks.</p>
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	N/A for listed companies.
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	Voluntary disclosures are located primarily in the annual report, placement prospectus or sustainability report, companies' website, and in internal policies, codes, and manuals with certain specifications.



8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>While there are no mandatory ESG disclosure requirements, there has been a growing trend of voluntary ESG disclosures by corporations due to increasing investor expectations and global sustainability trends.</p> <p>Furthermore, there may be indirect or extraterritorial disclosing obligations if a holding of affiliated entity may be required to make disclosures for their entire value chain and such entity has a Mexican subsidiary.</p>
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>There is no specific regulatory body monitoring ESG matters. However, there are several governmental entities that monitor specific ESG-related matters. The main regulatory bodies on ESG matters are the National Human Rights Commission (Comisión Nacional de Derechos Humanos), the Federal Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público), the Federal Labour Ministry (Secretaría del Trabajo y Previsión Social), the National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores), and the Environmental and Natural Resources Ministry (Secretaría de Medio Ambiente y Recursos Naturales).</p> <p>In addition, there are associations such as the Mexican Counsel for the Investigation and Development of Financial Information Norms, that has issued certain principles generally adopted by financial auditors for the preparation of financial statements, and which is currently in the process of implementing the Sustainability Information Norms, under which external auditors will require companies to provide sustainability information as part of their financial statements beginning in 2025.</p>
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>False or misleading disclosures may lead to monetary sanctions and penalties imposed by the National Banking and Securities Commission.</p> <p>False or misleading mandatory environmental disclosures may lead to sanctions and penalties around fines of five hundred to three thousand days of the general minimum wage in force, without prejudice to the immediate compliance with such obligation.</p>
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	<p>The Sustainable Taxonomy of Mexico (Taxonomía Sostenible de México or STM) was published on 16 March 2023, and introduced by the Ministry of Finance and Public Credit (SHCP) as a prudential, but not mandatory, tool to help companies develop ESG strategies, set objectives and implement initiatives. It serves as a guideline for measurement systems and information disclosure related to ESG topics. The STM targets various stakeholders in the financial sector, including institutional investors, who can use it to align their investments with socially and environmentally beneficial activities. This is expected to drive demand for sustainable assets and encourage issuers to commit to sustainability and disclose their alignment with the STM. Additionally, a recent amendment to the Mexican Securities Market Law grants SHCP the authority to issue provisions promoting sustainable development and gender equity, aiming to promote and evaluate best practices in these areas.</p>
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	<p>In Mexico, there is a distinctive recognition called ESR® Distinction (Socially Responsible Company) (<i>empresa socialmente responsable</i>) which is awarded annually by the Mexican Center for Philanthropy (Cemefi) and AliaRSE.</p> <p>The ESR® Distinction is a systematic process for measuring and comparing the level of development of good social responsibility practices through indicators in the ESG areas in companies. It is referenced by national legislation and international standards and involves the review of evidence to support the degree of social responsibility and sustainability compliance of private companies, to accredit them with a valuable icon that distinguishes and sets them apart from other companies operating in Mexico and Latin America.</p> <p>In addition, companies may obtain, among others, certifications from the Federal Department for Environmental Protection as Clean Companies and from local government for compliance with the NMX-R-025-SCFI-2015 which is a Mexican Official Norm for Labour Equality and Non-Discrimination practices.</p>

13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	<p>The STM includes sectors and investments that aim to align with its criteria, requiring consideration of specific metrics and disclosure requirements.</p> <p>Afores (<i>Administradoras de fondos para el retiro</i>) are financial institutions in Mexico responsible for managing workers' pension funds. Afores have a framework for evaluating potential recipients of funds and investments by means of a questionnaire focused on ESG that has the purpose to collect and unify, under the same criteria, information related to the progress in ESG matters of the issuers in which the Afores invest or could invest.</p> <p>For listing securities on Mexican stock exchanges, companies are being requested to adhere to certain codes of ethics and corporate governance principles. An example is the Code of Principles and Best Corporate Governance Practices (Código de Principios y Mejores Prácticas de Gobierno Corporativo), issued by the Corporate Coordinating Council (Consejo Coordinador Empresarial). This code is designed to help companies to improve transparency in operations, and ensure the proper disclosure of reliable information as well as facilitate access to favourable financing sources, and promote long-term sustainability for shareholders and third parties.</p> <p>While social and governance reporting is not mandatory for securities listings, public companies must include environmental and social disclosures in their annual reports.</p>
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	<p>The General Law on Climate Change and its Regulation aim to regulate greenhouse gas emissions and actions for mitigating and adapting to climate change, as well as promoting the transition to a sustainable and low-carbon economy. The goal is to achieve a 30 per cent reduction in emissions by 2030 and a 50 per cent reduction by 2050 compared to emissions levels documented in the year 2000. These targets align with Mexico's obligations under the Paris Agreement, demonstrating its commitment to global initiatives aimed at reducing greenhouse gas emissions.</p> <p>Furthermore, the Carbon Neutrality Guide aims to establish a framework for analysing, implementing, and disclosing a carbon neutrality process for companies listed on the Mexican Stock Exchange, as well as companies interested in reducing and/or offsetting greenhouse gas emissions.</p>
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	N/A
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	<p>The STM, as mentioned in question 11, provides clear guidance even though it is a prudential, non-mandatory, provision. Additionally, the Mexican stock exchanges have published various guidelines regarding requirements for those seeking to list new securities or recognise previously listed securities under the ESG Funds or Impact Funds category, carbon neutrality guidance, and sustainability guidance among others.</p> <p>Furthermore, our regulations are starting to incorporate ESG principles, with the purpose of making the law very clear regarding their application.</p>
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	<p>There is no applicable law when it comes to measuring ESG impact; however, there are certain criteria and metrics in the STM to measure the substantial contribution to the fulfilment of social objectives. Prior to the information disclosure process, alignment with the STM requires compliance with Technical Evaluation Criteria for a specific economic activity. The following points must be met: 1. Eligibility of activities included in the STM, 2. Alignment of eligible activities based on metrics and thresholds, 3. Compliance with Significant Harm criteria, and 4. Compliance with Minimum Safeguards.</p>
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	<p>Even though that Mexico has not strictly incorporated ESG disclosure regulation, we consider it has been beneficial for investors by providing them with valuable insights into companies' sustainability practices. It also helps investors make more informed decisions and encourages investment in socially and environmentally responsible businesses.</p> <p>However, smaller companies envisage additional compliance requirements and challenges.</p>

19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	Yes, in the past year we have seen that clients would like to see a stronger, more transparent and effective ESG disclosure regime in Mexico. They (and we) believe that a clearer and more comprehensive reporting would build trust with stakeholders and enable better-informed decision-making.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	No, not at this time. However, the STM is a tool that provides support to avoid deceptive practices in this regard.
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	Unfortunately, no. In Mexico, there are listed companies that still do not report any ESG disclosures, which enables the manipulation of reports and deceives investors. Although several companies listed in Mexico are part of the S&P/BMV Mexico Total ESG Index, which gathers the best ESG ratings, since they are not mandatory, we do not see any real progress.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	Not at this time.
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	In Mexico, companies are not required to regularly disclose ESG information like sustainability reports. However, if they do choose to disclose voluntarily, there are not specific requirements for external certification or assurance.  If companies decide to seek external verification, they can engage third-party assurance providers or certification bodies. These can include audit firms or specialised consultants who assess and verify the accuracy of the disclosed information.
24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	A reform project currently being discussed in the Chamber of Deputies proposes several key measures.  1. It aims to establish the commitment of the Ministry of Finance and Public Credit to sustainability and gender equality by issuing general provisions applicable to board members of participants in the securities market.  2. The proposed bill seeks to amend various provisions of the General Corporations Law, the General Cooperative Societies Law, the Securities Market Law and the Foreign Investment Law to promote competitiveness and gender diversity on boards of directors.  3. The purpose of these amendments is to increase the participation of women on boards of directors, thereby preventing the loss of talent and promoting a fairer and more inclusive society.

25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<ol style="list-style-type: none"> <li>1. The ISSB is expected to have an impact in Mexican companies by providing guidelines for reporting on sustainability matters for investors on a global scale. Companies may need to adjust their reporting practices to meet these standards, which could involve gathering more data and providing more information about their ESG performance.</li> <li>2. The ESRS may help Mexican companies to connect to the European market to update their reporting practices and to comply with these standards. This might involve integrating additional ESG metrics into their reporting and ensuring transparency and consistency in their disclosures.</li> <li>3. The TNFD may encourage companies in Mexico to enhance their disclosure of nature-related risks, impacts and opportunities.</li> <li>4. The TPT may influence companies in Mexico with business interests in the UK to align their reporting with the framework’s recommendations to cut greenhouse gas emissions and create a climate-resilient economy.</li> </ol>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>In our opinion, large companies and those with robust sustainability practices usually have dedicated teams and resources to handle ESG reporting effectively. However, for smaller companies or those with fewer resources, complying with these requirements can be challenging. They may lack the expertise, technology, human or financial resources needed to fulfill their disclosure obligations. As a result, while some companies are well-equipped, others may need support or guidance to navigate these requirements successfully.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>Please refer to question 14 above.</p>
28.	<p><b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b></p>	<p>Many companies in Mexico are embracing the idea of voluntarily committing to climate-related targets like science-based targets as a proactive way to address climate change. By setting these goals, companies are begging to demonstrate their commitment to reducing greenhouse gas emissions and aligning with global efforts to combat climate change.</p>
29.	<p><b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b></p>	<p>As we are a month away from presidential elections, we anticipate that new regulations will be created in the following years to govern ESG principles and disclosure requirements.</p> <p>Additionally, we expect companies to provide more detailed information about their ESG practices, including carbon emissions, water usage, greenwashing, diversity initiatives, and board diversity.</p> <p>Furthermore, we anticipate a greater focus on providing clear and accessible information about ESG performance, driven by investor demand and regulatory requirements. This is because investors are increasingly considering ESG performance when making investment decisions, putting pressure on companies to improve their ESG performance and disclose relevant information.</p>
30.	<p><b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b></p>	<p>Pedro Said Nader, Basham Ringe y Correa</p> <p>Brief Biography: Partner of the firm in the Banking, Finance, Capital Markets and Corporate areas in the Mexico City office. Pedro has developed his practice for over 17 years, focusing on national and international transactions, including structuring and reorganising debt, securitisations, factoring, financial leasing, financing, guarantees, and security interests, as well as in capital markets, fintech, mergers and acquisitions, incorporations, and other finance and corporate transactions.</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for the Netherlands

### The Netherlands

1.	Which jurisdiction are you covering?	<p>The Netherlands</p> <p>This contribution covers the Netherlands. For disclosure regulations in the Netherlands, EU law is particularly relevant. An important and significant development is the EU Corporate Sustainability Reporting Directive (CSRD), which forms part of the Directive on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings ('Accounting Directive'). The CSRD is accompanied by a delegated act containing the sector-agnostic European Sustainability Reporting Standards (ESRS). As of financial year 2024, the CSRD replaces the Non-Financial Reporting Directive (NFRD).</p> <p>Other relevant regulations include the regulation on sustainability-related disclosures in the financial services sector (SFDR), the Taxonomy Regulation for Sustainable Activities (the 'Taxonomy Regulation'), the EU Green Bond Regulation and the Prospectus Regulation. The recently adopted Corporate Sustainability Due Diligence Directive (CS3D) also contains disclosure requirements; companies that are subject to the CSRD do not have additional disclosure requirements under the CS3D. We have not included all disclosure requirements following from financial markets regulations.</p> <p>The CSRD will be implemented in the Netherlands by: (1) an act covering the rules on assurance of CSRD reports and the CSRD's applicability to listed companies, and (2) a decree on disclosure requirements for in-scope companies, rules on the assurance statement and the audit committee, and implementation timelines. The public consultation processes for this draft bill and the draft decree have been completed, which means that they are now subject to parliamentary consultation. The draft decree was published on 12 June 2024. The bill is not yet published. Other relevant national instruments include the Decree on the content of the management report (Besluit inhoud bestuursverslag), that includes requirements for certain companies to report on diversity and on the Corporate Governance Code that as of 2022 ('Code 2022') includes more emphasis on sustainability. The Child Labour Due Diligence Act (Wet Zorgplicht Kinderarbeid) and the bill on Responsible and Sustainable International Business Conduct (Wetsvoorstel Verantwoord en Duurzaam Internationaal Ondernemen) are excluded from our response as these initiatives are not currently in force and it remains uncertain if, and when, these will be enacted.</p> <p>Apart from the initiatives that mostly focus on disclosures in the annual report, we see new initiatives focusing on greenwashing (also in advertisement).</p> <p>The above is not an exhaustive list.</p>
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Sustainability disclosures are mandatory for market participants in the Netherlands under certain conditions (see our answer to question 3 for more details).

<p>3.</p>	<p><b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b></p>	<p>The current legislative instruments that include sustainability disclosure obligations distinguish between the type and nature of entities that need to make sustainability disclosures.</p> <ul style="list-style-type: none"> <li>• Generally, the companies in scope of the CSRD are: <ul style="list-style-type: none"> <li>– public and private limited liability companies (Dutch NVs and BVs and European equivalents) with a listing in the EU;</li> <li>– large public and private limited liability companies (Dutch NVs and BVs and European equivalents) without a listing in the EU;</li> <li>– non-EU companies with a listing in the EU; and</li> <li>– non-EU companies without a listing in the EU, but complying with the ‘EU turnover test’, so having (1) an annual net turnover in the EU exceeding €150m, and (2) having either an EU subsidiary (which is either a large EU company, or an EU company listed on an EU regulated market) or an EU branch that generated an annual net turnover of more than €40m.</li> </ul> </li> </ul> <p>Large companies are companies that comply with at least two of the following three criteria: (1) more than 250 employees, (2) a balance sheet total of more than €25m, or (3) net turnover of more than €50m for two consecutive financial years.</p> <p>The CSRD significantly expands the scope as compared to the NFRD: that is, only applicable to large public-interest entities (PIEs) being (1) listed companies, (2) certain banks, (3) certain insurers, and (4) other designated public interest organisations, having more than 500 employees and meeting either the thresholds for large companies regarding the balance sheet total, the net turnover, or both. The NFRD is only applicable until the financial year 2023.</p> <p>The scope of the CSRD and the scope of the CS3D are not aligned. The CS3D will become applicable to: (1) EU (parent) companies with, on average, more than 1,000 employees and more than €450m global net turnover; and (2) non-EU (parent) companies with more than €450m net turnover in the EU. For parent companies, the consolidated amounts should be considered.</p> <ul style="list-style-type: none"> <li>• The SFDR applies to financial advisers and ‘Financial Market Participants’ within the meaning of Article 2 sub 1 SFDR. Financial advisers employing fewer than three people are exempted (Article 17 SFDR).</li> <li>• The EU Green Bond Regulation applies to issuers of debt instruments with ESG characteristics, such as EU Green Bonds and other green and sustainability-linked bonds.</li> </ul> <p>Companies that fall within the scope of the CSRD and SFDR are companies that also have disclosure obligations under the Taxonomy Regulation.</p> <ul style="list-style-type: none"> <li>• Last, the Decree on the content of the management report contains several different provisions on scope. The disclosure requirements related to diversity are applicable to large companies. The Code 2022 disclosure obligations apply to companies whose securities are admitted to trading on a regulated market as referred to in Article 1:1 of the Dutch Financial Supervision Act (Wet op het financieel toezicht).</li> </ul>
<p>4.</p>	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b></p>	<p>As stated under question 3, the CSRD disclosure obligations apply to a broad range of companies.</p> <p>Generally, the companies in scope of the CSRD are:</p> <ul style="list-style-type: none"> <li>• public and private limited liability companies (Dutch NVs and BVs and European equivalents) with a listing in the EU;</li> <li>• large public and private limited liability companies (Dutch NVs and BVs and European equivalents) without a listing in the EU;</li> <li>• non-EU companies with a listing in the EU; and</li> <li>• non-EU companies without a listing in the EU, but complying with the ‘EU turnover test’, so having (1) an annual net turnover in the EU exceeding €150m, and (2) having either an EU subsidiary (which is either a large EU company, or an EU company listed on an EU regulated market) or an EU branch that generated an annual net turnover of more than €40m.</li> </ul>

		<p>Large companies are companies that comply with at least two of the following three criteria: (1) more than 250 employees, (2) a balance sheet total of more than €25m, or (3) net turnover of more than €50m for two consecutive financial years.</p> <p>The CSRD contains the principle of double materiality; a company is required to report on sustainability matters that are material from an impact or financial perspective. Furthermore, if an in-scope company cannot disclose the information prescribed by the disclosure requirement on a material topic, because it has not adopted the respective policies, implemented the respective actions or set the respective targets, the company must disclose this to be the case and it may report a timeframe in which it aims to have these in place (ESRS 1). Companies are not required to disclose classified or sensitive information (ESRS 1). The CSRD will also provide for sustainability reporting standards proportionate and relevant to the capacities and the characteristics of small and medium-sized listed companies and to the scale and complexity of their activities. The NFRD is only applicable to large PIEs and, as mentioned, will be replaced by the CSRD as of financial year 2024.</p> <p>The SFDR distinguishes between entity-related and product-related sustainability disclosure rules. For example, Article 4 of SFDR requires Financial Market Participants to disclose more information on their websites as compared to financial advisers. Moreover, some sustainability disclosures on the company website are made on a comply-or-explain basis but are compulsory for large financial market participants with more than 500 employees.</p>
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	<p>In general, sustainability disclosures in the Netherlands are required on a continuous annual reporting basis.</p> <p>The SFDR also requires sustainability disclosures prior to investments and on a more continuous basis. Article 3 of SFDR requires entities to disclose on their website written policies on the integration of sustainability risks in their investment decision-making process or their investment or insurance advice. According to Articles 4 and 10 of SFDR, entities must also publish on their website whether adverse impacts on any sustainability indicators have been considered (including due diligence policies), and report on financial products that promote ESG. According to Articles 6 to 9 of SFDR pre-contractual sustainability disclosures must be made. These disclosures concern financial products offered or manufactured (such as alternative investment funds or managed portfolios). Finally, Article 11 of SFDR and Articles 4, 5, 6 and 7 of the Taxonomy Regulation require sustainability disclosures to be made in periodic reports.</p> <p>The EU Green Bond Regulation provides for pre- and post-issuance and prospectus requirements in relation to EU Green Bonds and other green and sustainability-linked bonds.</p>
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>In general, sustainability disclosures, including the NFRD disclosures for the financial year 2023, and the CSRD disclosures as of financial year 2024, must – except for certain SFDR disclosures – be included in the management report (<i>bestuursverslag</i>) in the annual report. The NFRD gives Member States the option to exempt entities from the obligation to prepare a non-financial statement if the entity prepares a separate report that covers the information required for the non-financial statement. The Dutch legislator did not make use of this option. Therefore, for Dutch companies it is not possible under the CSRD or the NFRD to submit a separate report. In the event that an entity publishes a consolidated management report, sustainability disclosures must also be presented in consolidated form.</p> <p>SFDR disclosures are – depending on the activity and period in time – required on institutions’ websites as pre-contractual disclosure and in the form of periodic reports.</p>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	See our answer to question 6. Sustainability disclosures can be found in annual or periodic reports and on (financial) company websites.
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>To fulfil their NFRD requirements, companies often refer to the standards of the Global Reporting Initiative (GRI) and the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD) on their websites and in other official platforms, and report on their operations and policies. Of course, these standards can also be applied voluntarily. With the publication of the first sustainability reporting standards of the International Sustainability Standards Board (ISSB) in 2023, the work of the TCFD is now complete following which the TCFD has been disbanded.</p> <p>We also note that voluntary sustainability disclosures may in part be incentivised by (shareholder) activism and public scrutiny. For example, activist shareholders – such as Follow This – compel companies to report on ESG aspects, and Climate Action 100+ urges companies to strengthen their climate-related financial disclosures.</p>



9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>Regulators that monitor compliance with sustainability disclosures are the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten, or AFM), as a supervisory authority on accounting law, and on financial markets, the Dutch Central Bank (De Nederlandsche Bank or DNB), and the public prosecutor.</p> <p>The AFM is the principal enforcement agency for sustainability disclosures. It monitors the timely and complete publication of the annual report, including the ESG information that must be disclosed pursuant to the legal instruments discussed in the previous paragraphs. The AFM may impose an administrative penalty (<i>bestuurlijke boete</i>) if the financial statement is submitted too late, in violation of the Dutch Financial Supervision Act. Furthermore, the AFM may – at its discretion – start annual accounts proceedings (<i>jaarrekeningprocedure</i>), under which the compliance of the annual accounts with applicable legislation can be assessed by a Dutch court. The AFM also enforces SFDR obligations. It is currently not clear which regulator(s) will be designated to supervise CS3D compliance in the Netherlands. It is expected that the Netherlands Authority for Consumer and Markets (ACM) will be the competent supervisory authority.</p>
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>For false or misleading mandatory sustainability disclosures, administrative penalties can be imposed. False or misleading sustainability disclosures – also if not-mandatory – could ultimately be subject to criminal enforcement, insofar as additional requirements are met for such criminal enforcement.</p> <p>In addition, ‘greenwashing’ may result in a civil claim based on tort under Article 6:162 DCC, an intervention by the Dutch Advertising Committee (Reclame Code Commissie), or penalties by the Netherlands ACM (Articles 6:139g and 6:193i DCC in conjunction with Article 2.15 of the Dutch Consumer Protection Enforcement Act).</p>
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	<p>The largest part of sustainability disclosure requirements follow from EU legislation. Now that the CSRD has come into effect, all large companies and all listed companies will be required to report on sustainability matters in the management report on the basis of the ESRS. A company qualifies as ‘large’ when it meets two out of the three following criteria for two consecutive financial years: (1) a balance sheet total of more than €25m; (2) net sales of more than €50m and (3) an average number of employees of more than 250 for its most recent financial year. The thresholds for determining the size category of companies have been amended to account for the impact of inflation.</p> <p>Large PIEs that were required to prepare a non-financial information statement under the NFRD must apply the ESRS as of financial years beginning on or after 1 January 2024. Other large companies have to comply with this obligation from financial years beginning on or after 1 January 2025. For small and medium-sized listed companies, the obligation will take effect from financial years beginning on or after 1 January 2026.</p>
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an ‘ESG Approved/Compliant’ status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	<p><b>Green Taxonomy</b></p> <p>The Taxonomy Regulation is a classification system establishing a list of environmentally sustainable economic activities. Alongside the SFDR, the NFRD and the CSRD, the Taxonomy Regulation complements the sustainable finance regulatory regime. The Taxonomy Regulation entered into force on 12 July 2020.</p> <p>The Taxonomy Regulation applies to:</p> <ul style="list-style-type: none"> <li>• companies which are subject to the obligation to include sustainability information in the management report or the consolidated management report pursuant to Article 19a or Article 29a of the Accounting Directive respectively. Article 19a and Article 29a of the Accounting Directive have been amended by the CSRD. Consequently, all companies subject to the CSRD are by extension subject to the Taxonomy Regulation;</li> <li>• Financial Market Participants that make available financial products, including a manufacturer of a pension product to which a Member State has decided to apply the SFDR (Article 2 Taxonomy Regulation and Article 16 SFDR); and</li> <li>• the EU and its Member States when setting out requirements for Financial Market Participants or issuers in respect of financial products or corporate bonds that are made available as environmentally sustainable (Article 1(2) Taxonomy Regulation).</li> </ul> <p>At the core of the Taxonomy Regulation is the definition of a sustainable economic activity. This definition is based on three criteria (Article 3, Article 9, Articles 10-16 Taxonomy Regulation). A sustainable economic activity:</p>



	<p>1. contributes substantially to at least one of six environmental objectives listed in the EU Taxonomy: (1) climate change adaptation; (2) climate change mitigation; (3) the sustainable use and protection of water and marine resources; (4) the transition to a circular economy; (5) pollution prevention and control; and (6) the protection and restoration of biodiversity and ecosystems (Article 3, Article 9, Articles 10–16 Taxonomy Regulation). Under the Taxonomy Regulation, the European Commission had to come up with the actual list of environmentally sustainable activities by defining technical screening criteria for each environmental objective through delegated acts (Article 3 (d) Taxonomy Regulation).</p> <p>Two delegated acts on sustainable activities for climate change mitigation and adaptation objectives of the EU Taxonomy have been published in the Official Journal of the EU. On 9 December 2021, the first delegated act on sustainable activities for climate change mitigation and adaptation objectives of the EU Taxonomy was published in the Official Journal of the EU ('Climate Delegated Act'). The Climate Delegated Act is applicable from 1 January 2022. On 15 July 2022, a second delegated act was published in the Official Journal of the EU. This delegated act including, under strict conditions, specific nuclear and gas energy activities in the list of economic activities covered by the EU Taxonomy entered into force and applies as of 1 January 2023 ('Complementary Climate Delegated Act'). A third delegated act on the other four environmental objectives of the EU Taxonomy was published in the Official Journal of the EU on 21 November 2023 ('Environmental Delegated Act') and applies as of 1 January 2024;</p> <p>2. does not significantly harm any of the other environmental objectives (Article 3 (b), Article 9, Article 17 Taxonomy Regulation);</p> <p>3. is carried out in compliance with minimum safeguards, such as respecting human rights and labour standards (Article 18 Taxonomy Regulation) (see also question 17); and</p> <p>4. complies with technical screening criteria that have been established by the Commission for each environmental objective through delegated acts (Article 3(d) and Article 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) Taxonomy Regulation).</p> <p>On 10 December 2021 a delegated regulation supplementing Article 8 of the Taxonomy Regulation was published in the Official Journal of the EU ('Disclosures Delegated Act'). The Disclosures Delegated Act is applicable as of 1 January 2022 and has been amended several times to clarify the disclosure obligations. The delegated act specifies the content and presentation of information to be disclosed by companies subject to Article 19a or 29a of the Accounting Directive.</p> <p><b>Social Taxonomy</b></p> <p>In February 2022, the Platform on Sustainable Finance (PSF, a permanent independent expert group of the Commission that has been established under Article 20 of the Taxonomy Regulation, assisting the Commission in developing its sustainable finance policies, notably the further development of the EU taxonomy) published its Final Report on a Social Taxonomy. In the Report, the PSF proposes a structure for a social taxonomy within the present EU legislative framework on sustainable finance and sustainable governance. The PSF is a permanent expert group of the Commission that has been established under Article 20 of the Taxonomy Regulation. The PSF will assist the Commission in developing its sustainable finance policies, notably the further development of the EU Taxonomy. The final report will be analysed by the Commission, but it does not bind the Commission in any decision on the matter. Although not formally confirmed, the Social Taxonomy is reported to have been 'shelved' by the Commission.</p> <p><b>The EU Benchmarks Regulation</b></p> <p>The EU Benchmarks Regulation EU 2016/2011 (amended by the EU Low Carbon Benchmark Regulation (EU) 2019/2089) requires EU benchmark administrators to disclose how ESG-factors are reflected in the benchmark's methodology and benchmark statements.</p> <p>Three delegated acts supplement the EU Benchmarks Regulation. Commission Delegated Regulation (EU) 2020/1816 sets out the information that needs to be included in the disclosure on how ESG factors are reflected in each benchmark which is provided and published. In addition, Commission Delegated Regulation (EU) 2020/1817 elaborates the minimum content administrators must provide in relation to the explanation on how ESG factors are reflected in the benchmark methodology. Moreover, Commission Delegated Regulation (EU) 2020/1818 describes the minimum standards for the EU Climate Transition Benchmark and the EU Paris-Aligned Benchmark. (The EU Low Carbon Benchmark Regulation introduced these two types of benchmark classifications.)</p>
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		<p><b>The EU Green Bond Regulation</b></p> <p>Issuers wishing to issue EU Green Bonds must meet the requirements of the EU Green Bond Regulation, which will become effective in December 2024. The EU Green Bond Regulation also includes voluntary requirements for other green and sustainability-linked bonds.</p>
13.	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p>The CSRD must be implemented in national legislation by 6 July 2024 (although the implementation of the CSRD in Dutch legislation will not be finalised before this date). Companies that are subject to the CSRD must include information necessary to understand the companies' impacts on sustainability matters in a clearly identifiable, dedicated section in their management report. In addition, they must include information necessary to understand how sustainability matters affect the companies' development, performance and position. The sustainability information to be included in the management report must not only contain information about the companies' own operations, but also about its value chain, including its products and services, its business relationships and its supply chain.</p> <p>The ESRS specify the sustainability information to be reported by company to comply with the CSRD requirements, as well as, where relevant, the structure to be used to present such information. This information pertains to a broad range of ESG topics. Companies are only required to include information that is necessary to understand the company's impact on sustainability matters and the effect of sustainability matters on the companies' development, performance and position (double materiality).</p> <p>Pursuant to Article 8 of the Taxonomy Regulation, all companies subject to the CSRD must include, in their management report, information on how and to what extent their activities are associated with economic activities that qualify as environmentally sustainable. In particular, entities must disclose the proportion of their turnover derived from environmentally sustainable economic activities and the proportion of their assets associated with environmentally sustainable economic activities. As of 1 January 2022, disclosures must also be made on activities related to climate change mitigation and climate change adaptation. As of 1 January 2024, companies must also report on the remaining four topics: water; circular economy; pollution; and biodiversity.</p> <p>Moreover, Dutch legislation contains additional reporting requirements on ESG subjects such as diversity. The DCC includes provisions regarding appointment quota and target ratios: annually, the number of men and women on the board of directors and the supervisory board must be reported to the Social Economic Council. In addition, large companies must include information on the male–female ratio in their management reports. The DCC also requires the management report to include a statement on diversity policies, or if no policy is provided, an explanation why such policy has been excluded from the statement (Article 3a sub d of the Decree on the content of the management report).</p> <p>Moreover, the Code 2022 includes some reporting requirements, especially with regard to remuneration. For example, listed companies must include information on the pay ratio of the CEO's total annual compensation to the average annual compensation of employees. This can be classified as a 'Social' Disclosure.</p>
14.	<p><b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b></p>	<p>The ESRS contain a specific section on environmental disclosures, including specific climate change disclosures. The disclosure requirements in this specific section (ESRS E1), cover topics such as GHG emissions, the transition plans for climate mitigation and targets of the company relating to climate change mitigation and adaptation.</p> <p>Companies are only required to report on climate change matters if such matters are deemed material to the company. If a company concludes that all disclosure requirements as set out in ESRS E1 on Climate Change are not material, it must explain how it has come to that conclusion.</p>
15.	<p><b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b></p>	<p>With regard to annual sustainability reporting, compared to the NFRD, the CSRD significantly expands the scope of the sustainability information to be provided in the management report. The ESRS contain very detailed disclosure requirements which companies must adhere to once a sustainability matter is deemed 'material'. Some disclosure requirements are voluntary, which is indicated by the phrase 'may disclose'. However, a large part of the disclosure requirements included in the ESRS are mandatory, leaving little room for latitude.</p> <p>Regarding the manner of disclosure, companies must include the sustainability information in a clearly identifiable, dedicated section in their management report. Provided that certain conditions are met, the ESRS allow for incorporation by reference. Consequently, some latitude exists regarding the manner of disclosure, as companies may incorporate sustainability information in the sustainability statement by reference to a limited number of other documents, such as the remuneration report or the financial statements.</p>

		<p>The ESG disclosure requirements following from Dutch legislation regarding the male–female ratios as set out in the answer on question 13 are standardised; deviation is not allowed.</p> <p>Compliance with the Code 2022 is based on the ‘comply or explain’ principle. Consequently, the Code 2022 offers flexibility and provides room to depart from the principles and best practice provisions, including the disclosure requirements as set out in the Code 2022.</p>
16.	<p><b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b></p>	<p>The ESRS are classified based on the term ESG by subdividing the ESRS by ESG theme, denoted by the letters ‘E’, ‘S’ and ‘G’ respectively. Each section contains topics that are considered to pertain to the corresponding ESG theme. Still, the CSRD or ESRS do not include one definition for the scope of ‘environmental, social and governance’. Because these are overarching terms, we expect that the definition will remain open to interpretation.</p>
17.	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	<p>Article 18 of the Taxonomy Regulation prevents investments or economic activities from being labelled and regarded as ‘sustainable’ when they involve negative impacts on human rights, including labour rights, corrupt practices, or are linked to non-compliance with the letter or spirit of tax laws or anti-competitive practices. As a result, Article 3 of the Taxonomy Regulation specifies as one of three criteria for environmentally sustainable economic activities that they are to be ‘carried out in compliance with the minimum safeguards’. In addition, Recital 35 of the Taxonomy Regulation clarifies that minimum safeguards ‘are without prejudice to the application of more stringent requirements related to the environment, health, safety, and social sustainability set out in Union law, where applicable’.</p> <p>Practically, this means that companies whose economic activities are to be considered as Taxonomy-aligned have to align with the standards for responsible business conduct mentioned in:</p> <ul style="list-style-type: none"> <li>• the OECD Guidelines for Multinational Enterprises (‘OECD MNE Guidelines’);</li> <li>• the UN Guiding Principles on Business and Human Right (UNGPs), including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organization on Fundamental Principles and Rights at Work; and</li> <li>• the International Bill of Human Rights.</li> </ul> <p>Certain documents clarifying the Taxonomy Regulation, including Article 18, have been published. For example, in October 2022, the PSF published their final report on the application of minimum safeguards set out in Article 18 of the Taxonomy Regulation. The report gives advice on how companies could ensure compliance with Article 18. In addition, the EU Commission has published several Commission Notices on the interpretation and implementation of certain disclosure requirements under the Taxonomy Regulation, including the DNSH criteria. On 16 June 2023, the European Commission published an FAQ document in which it provides clarification on, among other things, the application of minimum safeguards within the meaning of Article 18 of the Taxonomy Regulation.</p> <p>Another requirement for an activity to be considered environmentally sustainable (ie, ‘taxonomy-aligned’), is the principle of ‘do no significant harm’ (DNSH), which is also considered an important concept in the sustainable finance framework. DNSH entails that the activity does not significantly harm any of the six environmental objectives contained in the Taxonomy Regulation (see our answer to question 12 for the environmental objectives). This can be determined using the technical screening criteria contained in the delegated acts accompanying the Taxonomy Regulation.</p> <p>The ESRS (ESRS 1) also provide for specific reporting rules in this situation. The companies’ materiality assessment may lead to the identification of situations where their actions to manage certain impacts or risks, or to take advantage of certain opportunities, in relation to one sustainability matter could have material adverse impacts on, or cause material risks to, one or more other sustainability matters. The ESRS provide for certain examples, including that an action plan to decarbonise production that involves abandoning certain products might have material negative impacts on the companies’ own workforce and result in material risks due to redundancy payments. When this is the case, the company must (1) disclose the existence of material negative impacts or material risks together with the actions that generate them, with a cross-reference to the topic to which the impacts or risks relate; and (2) provide a description of how the material negative impacts or material risks are addressed under the topic to which they relate.</p>

18.	<p><b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b></p>	<p>It is increasingly important for companies to report on sustainability topics, eg, to attract funding and to finance a sustainable transition. There is hence a business rationale to make sound and proper sustainability disclosures. In turn, the CSRD and related ESRS are an extra incentive for companies to adopt more responsible sustainability policies and targets and abide by them. We expect the implementation of the CSRD to create value as reporting under the ESRS by a large number of companies on a predetermined set of datapoints is likely to increase comparability. This may also enable investors to make better informed decisions on their investments and the ESG risks and opportunities associated with it. This, coupled with further regulation on, for eg, consumer protection, green claims, and the CS3D will likely create value or at least enable market participants to value ESG components of a business better than before.</p> <p>The introduction of the CSRD and ESRS do already and will in the future require considerable efforts and investments from companies in scope. This may very well create a compliance burden. However, the sustainability disclosures may at the same time again create value for businesses and help attract funding against favourable terms or otherwise aide companies in their commercial endeavours. The positive effects, hence, do not exclude the negative effects and vice versa.</p>
19.	<p><b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b></p>	<p>We believe that the CSRD and the accompanying ESRS, although very detailed and comprehensive, will provide companies with a clearer disclosure regime. The first CSRD-disclosures over the 2024 financial year will show whether the sustainability reports will actually be more 'transparent and effective'. We further note that eg, the ESRS require companies to report with a significant level of detail on material sustainability matters. Materiality is no longer presumed, as was the case for the previously proposed ESRS. We expect proper reporting and compliance to be enhanced if companies are not considered to be required to report on subjects that are not material to them.</p> <p>We observe, however, that our clients would benefit from clarity in terms of harmonised sustainability standards. It is questionable whether the current global developments in the field of sustainability reporting, such as the adoption by the SEC of the heavily criticised Climate-Related Disclosure Rule in March 2024, will result in this. A non-harmonised system creates undue vulnerabilities, especially when companies operate globally and are subject to several – and possibly diverging – sustainability disclosure obligations. We note that the Sustainability Reporting Standards published by the ISSB in June 2023 are largely aligned with the ESRS to overcome the hurdles that come with diverging sustainability reporting standards. In May 2024, the European Financial Reporting Advisory Group (EFRAG) and the IFRS Foundation have published guidance on the alignment between the ISSB Sustainability Disclosure Standards and ESRS, and on how a company can apply both sets of standards.</p>
20.	<p><b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b></p>	<p>At a European level, the European Securities and Markets Authority (ESMA) has published its expectations as to application of prospectus requirements in the context of ESG disclosures in prospectuses for equity and debt prospectuses. In addition, the EU Green Bond Regulation, which comes into effect in December 2024, includes mandatory requirements for EU Green Bonds and voluntary requirements for other green bonds and sustainability-linked bonds. Also, the forthcoming EU Listing Act is expected to include ESG disclosure requirements for prospectuses.</p> <p>ESMA published a statement on 11 July 2023 that specifically addresses ESG-related disclosures in prospectuses for both debt and equity, in which it underlines the relevant prospectus requirements as they apply in relation to ESG. ESMA reiterates that a prospectus must contain the necessary information that is material to an investor in making an informed assessment, and reminds issuers and their advisers to consider ESG-related matters when preparing prospectuses, to the extent that the effects of those matters are considered material. This also includes any sustainability information that the issuer is already required to report on in accordance with the CSRD. Whether the ESG-related information that issuers report on under CSRD should also be included in a prospectus comes down to the question whether such information is material for an investor. ESMA points out that, even if the detailed annexes containing the prospectus content requirements do not mention ESG-related topics, the information should be included if it is considered material.</p> <p>With respect to the substance of the disclosures, ESMA recommends that in disclosing ESG-related information, issuers should consider (1) the basis for statements on their sustainability profile or that of the securities they issue, such as (a) specific market standards or labels; (b) underlying data and assumptions; and (c) research or analyses conducted by third parties; (2) to be providing a balanced view, so that both positive and negative aspects are presented; (3) not to include sustainability-related disclaimers to excuse non-performance of factors over which the issuer exercises control; and (4) provide clear definitions and formulas for sustainability-related terms.</p>

		<p>ESMA also reminds issuers that where ESG-related information is included in the annual financial statements, management reports and sustainability statements, this information, to the extent material under the prospectus standard, should also be included in a prospectus. In that context, ESMA states that its recommendations set out in its common enforcement policies for annual financial reports should also be considered when ESG-related information is included in prospectuses.</p> <p>The EU Green Bond Regulation sets out not only requirements for EU Green Bonds, but also expectations for other green bonds and sustainability-linked bonds. Under the EU Green Bonds Regulation full transparency is required on how the bond proceeds are allocated through detailed reporting requirements, including disclosure in the applicable prospectus and disclosure in the form of a pre-issuance European Green Bond factsheet and post-issuance allocation and impact reports. Public disclosure templates should be established, which issuers of such bonds can choose to complete and publish alongside their other disclosure documentation. The EU Green Bond Regulation also includes voluntary disclosure requirements for other environmentally sustainable bonds and sustainability-linked bonds issued in the EU.</p> <p>The proposals for an EU Listing Act address ESG disclosure in prospectuses in relation to the inclusion of non-financial information in prospectuses, as well as disclosure obligations for debt securities with ESG considerations.</p>
21.	<p><b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b></p>	<p>In reviewing prospectuses, the AFM will consider the ESMA expectations, the EU Green Bond Regulation when it comes into effect in December 2024 and the EU Listing Act if and when it comes into effect (all as set out at question 20), as well as its own policy towards ESG. The AFM has identified sustainability of the financial markets as a strategic priority, which receives extra attention in its supervision. We understand that the AFM is also assessing the applicability of current legal frameworks on ESG disclosures, such as the question whether ESG information may constitute price sensitive information under the Market Abuse Regulation.</p> <p>Against the background of Article 6 of the Prospectus Regulation, and given that many of the applicable regulations are not applicable yet, the AFM has formulated ten expectations on disclosures regarding sustainability that should be included in a prospectus for green or sustainability-linked bonds. This includes the expectations that such prospectus, among others, encompasses (1) the basis for 'green' claims, (2) details on the use of proceeds, (3) information on whether the transaction or issue aligns with one or more ESG market standards, and (4) a description of how the bond contributes to the issuer's transition plans or fits within its general green bond framework (if applicable). Moreover, the AFM expects that information regarding sustainability claims, in particular in relation to net zero commitments, is sufficiently specific and comprehensible, includes progress up to date, and outlines as much as possible how it forms part of the business and strategy (including KPIs). When reporting on emissions, the AFM expects that a clear definition is maintained of reported scopes (Scope 1, 2, and 3).</p> <p>According to the AFM, these expectations may also be relevant for other prospectuses that contain information related to sustainability. In our practice, we observe increased scrutiny on sustainability disclosures by the AFM during the review process, including on KPIs.</p>
22.	<p><b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b></p>	<p>Climate litigation is a hot topic in the Netherlands generally and climate action groups in particular take litigation action against the Dutch government (as in the <i>Urgenda</i> case) and large corporates (such as <i>Milieudefensie</i>, against Shell, as well as the greenwashing case brought by <i>Fossielvrij</i> against airline KLM). Also, financial institutions are on a published list of targets for climate litigation of such groups, and Milieudefensie has indicated that it will initiate proceedings against ING Bank in the Netherlands. The claims in such litigation are based mostly on human rights and tort law.</p> <p>Also, the Dutch consumer protection and advertisement authorities have issued decisions against corporates for misleading ESG claims in advertising in general. In June 2024, the European Supervisory Authorities (ESAs) published final reports with their findings as to (alleged) greenwashing by the financial sector in relation to financial products. The reports set out supervisory expectations and is expected to form the basis for regulatory and legislative developments going forward.</p> <p>We are not aware of litigation brought by investors or financial markets authorities for violations of securities law disclosures in relation to ESG in the Netherlands.</p>

23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	<p>The CSRD requires the sustainability reports to be subject to an assurance review, and assumes that the external auditor that carries out the audit of the financial statements will provide the assurance statement on the sustainability report.</p> <p>The CSRD does give Member States the option for another party to provide the assurance statement on the sustainability report, namely (1) an independent assurance service provider (IASP); or (2) an audit firm or external auditor other than the firm or auditor auditing the financial statements.</p> <p>The Dutch draft implementation bill follows the premise of the CSRD that the assurance review is conducted by the same external auditor that carries out the audit of the financial statements. The draft bill also allows that another auditor than the external auditor provide the assurance. The option for Member States to allow IASPs to provide assurance on the sustainability reporting has not been adopted and is still under consideration, because the Dutch legislature does not find it realistic to introduce an equivalent system for these service providers within the short implementation period. For the time being, the assurance can only be provided by auditors.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>We highlight a selection of issues that underscore the increased scrutiny and expectations placed on boards in relation to sustainability matters.</p> <ol style="list-style-type: none"> <li><b>(Emerging) technologies:</b> AI and cybersecurity are topics that increasingly require board attention. This is also prompted by the Code 2022, which stipulates that the sustainable long-term value creation for which boards are responsible, requires them to be aware of and anticipate the development of new technologies and changes in business models and the associated risks, including cybersecurity, data protection and the ethical application of new technologies (eg, 'responsible AI').</li> <li><b>Proxy advisers:</b> Proxy advisers are increasingly focusing on ESG matters within listed companies. These advisers progressively focus on ESG expertise within boards, suggesting that boards need to develop or integrate such expertise to meet investor demands.</li> <li><b>CSRD reporting responsibilities and risks:</b> Sustainability reporting forms a part of the management report (<i>bestuursverslag</i>). The management board is responsible for the management report. This leads to several responsibilities and risk of liability for board members. For example, directors may be held personally liable by third parties that incurred damages as a result of a misleading management report, and deficiencies in the sustainability reporting may also qualify as or contribute to improper management by managing directors or improper supervision by supervisory directors.</li> <li><b>Risk and control and ESG officers:</b> Looking forward, the emphasis will be on sustainability reporting, sustainability due diligence and climate transition plan requirements. Boards will need to develop robust mechanisms to ensure that their companies not only comply with the reporting standards but are also proactively focusing on their sustainability due diligence and climate transition plan requirements and related risks. Companies must ensure to integrate these risks in their <i>risk management and control systems</i>. Boards are also including or appointing executives with specific ESG responsibilities.</li> <li><b>Climate transition planning:</b> The board is increasingly confronted with questions on climate transition, from a mitigation as well as an adaptation perspective. The Code 2022 requirements on control and risk management already require boards to focus on the adaption of climate risks. With the CS3D, boards will be required to adopt and implement a climate transition plan for climate change mitigation, which aims to ensure, through best efforts, that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the Paris Agreement.</li> </ol>



<p>25.</p>	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p>As mentioned in several responses, the CSRD together with the related ESRS will be the relevant disclosure framework for sustainability reporting in the Netherlands from financial year 2024. The CSRD and the related ESRS will impose extensive and detailed disclosure requirements on in-scope companies. These disclosure requirements are far more comprehensive and detailed than the current rules under the NFRD, which will be replaced by the CSRD. The scope of the CSRD covers a significantly larger group of companies than the NFRD (see our answer to question 3 for the difference). Implementation of the CSRD will be phased in, with the largest companies (also companies currently in scope of the NFRD) to comply with the CSRD as of financial year 2024. The EU companies not currently reporting under the NFRD will have to report from the 2025 financial year.</p> <p>The largest companies are required to report in line with the CSRD and the related ESRS as of financial year 2024. We see that most of these companies are already well underway with their materiality assessment and related reporting. Companies that need to report as of financial year 2025 already started with the overall assessment of the scope of the CSRD and their double materiality assessment.</p> <p>As the CSRD and related ESRS are mandatory in the Dutch context, the ISSB standards are less relevant for Dutch companies. The ISSB standards could of course be relevant, for example, in a situation in which group companies of a Dutch holding company are in a jurisdiction that has implemented these standards, or large multinationals with multiple listings in several jurisdictions.</p> <p>The TNFD guidance and the TPT Disclosure Framework could provide companies with tools to fulfil their reporting obligations and help report in line with the concrete disclosure standards under the CSRD.</p>
<p>26.</p>	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>As the CSRD requires in-depth and comprehensive disclosures on sustainability issues, it places high demands on companies. However, companies subject to disclosure requirements often vary significantly in terms of their capabilities and resources to meet these obligations. Several factors that influence whether they can effectively comply are:</p> <ol style="list-style-type: none"> <li>1. size and scale. Larger companies and the companies already currently in scope of sustainability reporting requirements typically have the resources, including financial and human capital, to make the required disclosures and assess the sustainability matters. In contrast, smaller companies for which these requirements are relatively new may be less advanced; and</li> <li>2. technical infrastructure. The companies' processes to collect, process, and report data, also in the value chain, is critical for compliance with the sustainability reporting requirements. Again, companies that are familiar with sustainability reporting will already have certain processes in place to collect data.</li> </ol>
<p>27.</p>	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>No, the CSRD requires companies to disclose any targets they may have. The CSRD, however, is not norm setting. There is currently no statutory basis to impose climate-related targets on individual companies other than EU regulation aimed at, eg, specific operators of installations under EU ETS. The CS3D contains an obligation for companies in scope to adopt a climate transition plan. As part of this obligation, the CS3D provides that companies will, where appropriate, set emission reduction targets for significant categories.</p>
<p>28.</p>	<p><b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b></p>	<p>To answer this question, we have analysed the annual reports of the 25 AEX companies currently listed on Euronext Amsterdam. Of these companies, 24 refer to climate-related targets.</p> <p><b>Science Based Targets Initiative (SBTi)</b></p> <p>11 of the 25 AEX-companies (44 per cent) have SBTi-validated climate-related targets, meaning that their targets align with the SBTi framework. An additional three companies are in the process of getting their climate-related targets SBTi-validated. After approval, more than half of the AEX-companies will have SBTi-validated targets. One company plans to become SBTi-validated but is currently not yet in the process to do so.</p> <p>Seven of these companies have no climate-related targets that are SBTi-validated, although two of these companies take inspiration from the SBTi. Two companies have been marked as having their commitment to SBTi removed, mainly because of a revised policy of SBTi that companies and financial institutions have 24 months from committing to set science-based targets to submit targets and these companies have failed to do so. One company exited the SBTi, and has criticism on the initiative.</p>

		<p>In conclusion, SBTi is moderately popular among the largest listed companies in the Netherlands.</p> <p><b>Carbon Disclosure Project (CDP)</b></p> <p>CDP supports organisations in making their environmental impact transparent to stakeholders, better understanding how they can reduce their impact, and acting to become environmental leaders. Of the 25 AEX-companies, only three companies do not report under the CDP.</p>
29.	<p><b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b></p>	<p>We envisage that the CSRD and its further implementation will have a significant impact on sustainability reporting in the Netherlands, both in terms of scope and in terms of nature. The introduction of the ESRS on a European level and the sustainability standards by the ISSB on a global level will further enhance sustainability reporting. Although EFRAG and the ISSB have published guidance on the interoperability of the ESRS and ISSB standards, we believe it could be challenging for companies to implement such interoperability in practice.</p> <p>We also envisage that further clarifications will be needed on, eg, assurances by accountants with respect to sustainability disclosures and other technicalities around the role of accountants.</p> <p>Another future trend we observe is increased monitoring of prospectus and other financial product disclosure by regulators, supervisory authorities and consumer protection authorities. It remains to be seen whether supervisory authorities will be sufficiently equipped to carry out supervision properly and coherently. As discussed under question 9, we observe that the AFM is increasing its focus on sustainability disclosures. We also see already that regulators have intensified their focus on greenwashing. We expect this to increase in the future, also in light of recent court decisions and regulations on EU level and in light of reports on greenwashing in the financial sector by the main three EU supervisory authorities ESMA, EBA and EIOPA.</p> <p>Finally, ESG disclosure in prospectuses and otherwise will remain a focus of industry associations, such as the International Capital Markets Association, which will continue to develop principles and guidelines as to ESG disclosure that will have impact on ESG disclosures in the Netherlands as well.</p>
30.	<p><b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b></p>	<p>Contributors: Pieter Schütte, Eline Glazener, Loes van Dijk, Ingrid van der Klooster &amp; Marieke Driessen (Stibbe) and Davine Roessingh, Annabel van Schaik &amp; Lisanne Baks (De Brauw Blackstone Westbroek)</p>



# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for New Zealand

### New Zealand

1.	<b>Which jurisdiction are you covering?</b>	New Zealand
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>Broadly, there are two categories of ESG disclosures made in New Zealand, being climate-related disclosure and other ESG.</p> <p><b>Climate-related disclosure</b></p> <p>ESG disclosures are mandatory in relation to climate-related disclosures (CRD) under the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021, applying to certain climate reporting entities (CREs) for financial years commencing on or after 1 January 2023. New Zealand was the first country to make Task Force on Climate-Related Financial Disclosures (TCFD) reporting mandatory. CREs must prepare climate statements for their accounting periods. Climate statements must comply with the CRD framework, which consists of several climate standards. Please see our response to question 3 for information on entities required to report.</p> <p><b>Other ESG</b></p> <p>The NZX Corporate Governance Code (the 'Code') provides recommendations that all issuers listed on the New Zealand Stock Exchange (NZX) must report against as part of a 'comply or explain' regime. The Code was amended in 2023 to include bespoke recommendations that an 'issuer should provide non-financial disclosure at least annually, including consideration of ESG factors and practices. It should explain how operational or non-financial targets are measured'. If an issuer does not adopt this recommendation, it must explain why it has not done so (eg, due to the issuer's size and strategy) and disclose the alternative measures it has in place. The commentary encourages issuers to report the process by which it has ensured ESG disclosures are materially accurate and provide an appropriate level of information for investors, where an external auditor has not reviewed or audited such disclosures. In 2023, NZX published a guidance note for issuers that are considering ESG disclosures under the Code.</p> <p>The Financial Markets Authority (FMA) has also published guidance under the Disclosure Framework for Integrated Financial Products (Disclosure Framework) that sets out its expectations from issuers of financial products that incorporate non-financial features (such as 'ESG' and 'sustainable'), known as integrated financial products. While not strictly mandatory, the Disclosure Framework provides guidance on how the FMA will interpret relevant provisions of the FMCA and is therefore treated as mandatory.</p>

3.	<p><b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b></p>	<p>Yes – the CRD regime under Part 7A of the Financial Markets Conduct Act 2013 (FMCA) applies only to CREs. Broadly, CREs include:</p> <ul style="list-style-type: none"> <li>• all listed issuers that are ‘large’ (has either quoted equity securities or quoted debt securities with a market capitalisation exceeding NZ\$60m);</li> <li>• all licensed insurers that are ‘large’ (total assets under management exceeding \$1 billion or annual premium income exceeding NZ\$250m);</li> <li>• all registered banks, credit unions and building societies that are ‘large’ (total assets exceeding \$1 billion); and</li> <li>• all managers of registered managed investment schemes that are ‘large’ (total assets under management exceeding NZ\$1bn).</li> </ul> <p>The above thresholds for each entity are calculated as at the balance date of their two preceding accounting periods. If an entity is incorporated outside New Zealand, the same test will apply to the overseas person’s New Zealand business. Currently, the CRD regime applies to around 200 organisations in New Zealand.</p> <p>Please refer to the categories referenced in question 2 which describes the other ESG reporting that applies to NZX listed issuers generally.</p>
4.	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b></p>	<p>The categories of entities subject to CRD are set out in response to question 3. Managers of registered investment schemes (other than restricted schemes) must make disclosures for each scheme. Large issuers that have securities quoted only on growth markets or no quoted securities are excluded from the CRD regime. Large, privately held organisations are also not included.</p> <p>The FMA has granted a five-year class exemption (ending April 2029) for each CRE which has a primary listing on a recognised foreign exchange (currently these are the Australian Securities Exchange, Hong Kong Exchanges and Clearing Limited, London Stock Exchange Group, NASDAQ, Singapore Exchange and Toronto Stock Exchange); is a large listed issuer (market capitalisation exceeding NZ\$60m); and has a secondary listing on the NZX; provided the entity is not incorporated in NZ.</p> <p>Full relief is provided to those issuers that do not have a ‘large presence’ in NZ (total assets not exceeding NZ\$1bn and annual gross income not exceeding NZ\$250m). This means they do not need to comply with climate reporting, assurance and record-keeping duties under the FMCA. Where the issuer does have large presence in NZ, partial relief is granted to ensure the entity is only required to comply with the CRD regime for its New Zealand business or New Zealand-based investment assets. Conditions of the exemption require alternative disclosure and reporting, including that the issuer complies with the CRD requirements in its home jurisdiction and provides access to any climate statements published to this effect. The FMA has also, on application by CREs, granted individual exemptions that provide full and partial relief from compliance obligations.</p>
5.	<p><b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b></p>	<p>Under Part 7A of the FMCA, CRD is triggered based on the legal status of the entity (whether they are a CRE), and CREs are required to:</p> <ul style="list-style-type: none"> <li>• prepare an annual climate statement that discloses information about the effects of climate change on their business or managed fund, in accordance with reporting standards;</li> <li>• obtain independent assurance if those statements relate to greenhouse gas (GHG) emissions for reporting years beginning on or after 27 October 2024;</li> <li>• lodge those statements with the Companies Office, so they are publicly available; and</li> <li>• keep proper records in relation to CRD for at least 7 years.</li> </ul> <p>CRD is applicable based on entity size and type under New Zealand laws.</p>

6.	<p><b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b></p>	<p><b>Climate-related disclosure</b></p> <p>CREs must lodge climate statements, and any report produced from an assurance engagement in relation to GHG emissions, on the Climate-related Disclosures Register within four months after its balance date. A CRE that is required to prepare an annual report must also include a copy of its climate statement, or a link to where those statements can be accessed, in their annual report, along with a statement that the entity is a CRE. The FMA has granted a two-year exemption to CRE-listed issuers and registered banks from this requirement due to external regulations, provided the entity specifies in its annual report where and when the climate statements will be made available, and subsequently makes them available as specified.</p> <p><b>Other ESG</b></p> <p>The NZX Listing Rules require issuers to provide NZX with a statement on their corporate governance reporting. This statement must disclose the degree to which the issuer has followed the recommendations set by NZX during the reporting period, including on ESG reporting, and what policies and procedures it has in place to apply the recommendation. The disclosure of an issuer's compliance with the Code is intended to be flexible. Disclosure on ESG reporting can either be in an issuer's annual report, on its website, or a combination of both. Please see our response to question 2 regarding the comply or explain regime.</p>
7.	<p><b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b></p>	<p><b>Climate-related disclosure</b></p> <p>CRDs are filed on the Climate-related Disclosures Register, administered by the Companies Office through their website.</p> <p><b>Other ESG</b></p> <p>For NZX-listed issuers, ESG disclosure is generally included in the Corporate Governance section of the annual report and filed with NZX.</p>
8.	<p><b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b></p>	<p>Yes. While the CRD regime applies only to entities of a certain type and size, several non-CRE entities have voluntarily adopted the TCFD criteria into their annual reporting. This has increased since 2019 after the NZ Government endorsed the recommendations of TCFD, which underpin New Zealand's CRD regime.</p> <p>As indicated in response to question 7, it is relatively common for NZX-listed issuers to include ESG disclosures in their annual report in response to increasing investor demand, and integrated financial products are also frequently issued with ESG-related disclosures.</p>
9.	<p><b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b></p>	<p>The New Zealand External Reporting Board (XRB) is responsible for developing the climate standards for New Zealand. The FMA is tasked with the independent monitoring and enforcement of the CRD regime, which introduces a significant range of enforcement tools. Penalties include:</p> <ul style="list-style-type: none"> <li>• infringement fines not exceeding NZ\$50,000 for certain low-level breaches, including failures to lodge climate statements within four months from balance date;</li> <li>• civil penalties not exceeding NZ\$1m for an individual or NZ\$5m in any other case for failing to keep proper records, prepare or lodge climate statements, or failing to satisfy relevant assurance requirements; and</li> <li>• criminal penalties for each director of a CRE up to NZ\$500,000 and/or five years' imprisonment who knowingly fails to comply with an applicable climate standard (and up to \$2.5m for a CRE).</li> </ul> <p>The FMA is initially taking a broadly educative and supportive approach to the new regime, reserving enforcement action for serious misconduct, such as failing to produce a climate statement, or where information is false or misleading. However, a stricter approach is expected in future years.</p>

10.	<p><b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b></p>	<p>All ESG claims, including climate statements made under the CRD regime, are subject to fair dealing rules under Part 2 of the FMCA and cannot be false, misleading or unsubstantiated. Contravening these provisions may give rise to civil liability, including a penalty set at the greatest of:</p> <ul style="list-style-type: none"> <li>• the consideration for the contravening transaction; or</li> <li>• three times the amount of the gain made or loss avoided; or</li> <li>• NZ\$1m for individuals or NZ\$5m in any other case.</li> </ul> <p>Where disclosures incorporate non-financial factors (such as terms like ‘ethical’ and ‘sustainable’), issuers must fully explain those aspects to avoid greenwashing. The Commerce Commission and Advertising Standards Authority also investigate greenwashing claims. The Commerce Commission can take a company or individual responsible for alleged greenwashing claims to court for a breach of the Fair Trading Act 1986, with a penalty of up to \$600,000 for a company and \$200,000 for an individual. Regulators treat an entity’s decision to opt-in by voluntary disclosure as equivalent to being mandated to disclose information, and penalties are the same.</p>
11.	<p><b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b></p>	<p>There is no tiered disclosure system in New Zealand. The same CRD regime applies to all entities that meet the relevant thresholds to become a CRE, triggering the climate reporting and record-keeping obligations.</p> <p>Regarding further ESG disclosure requirements, in July 2023, the outgoing Labour government announced plans to introduce a public register to require transparency over organisations’ supply chains through Modern Slavery legislation, largely based on the Australian regime. However, the New Zealand proposal would apply to much smaller organisations and require mandatory reporting of actions taken to address the risk of exploitation in operations and supply chains, for entities with annual revenue over NZ\$20m. Given the National party’s previous support for this legislation, we expect the proposal will continue to progress in some form under the current National-led Government, which is yet to make decisions on whether and how to progress the proposal.</p> <p>The outgoing Labour Government included a recommendation action in the National Adaptation Plan in 2022 to develop definition tools for green finance, and subsequently committed to trans-Tasman alignment on sustainable finance taxonomies in June 2023. The Ministry for Environment collaborated with the sustainable finance industry (via the Centre for Sustainable Finance) on the initial stages of a taxonomy throughout 2023. However, it is not clear what any resulting regulatory model may look like, if one emerges.</p>
12.	<p><b>Is there a system of ESG certification or benchmarks that need to be met to have an ‘ESG Approved/Compliant’ status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b></p>	<p>There is currently no system of certification or benchmarks that must be met for an entity to be ‘ESG compliant’ in New Zealand. However, there are guidelines for different sectors that provide rules and processes that must be complied with.</p> <p><b>Climate-related disclosure</b></p> <p>The XRB has issued three Aotearoa New Zealand Climate Standards (NZ CS) that apply to CREs when preparing climate statements, which include:</p> <ul style="list-style-type: none"> <li>• <b>NZ CS 1:</b> the main disclosure standard specifying the CRD that must be made in climate statements regarding Governance, Strategy, Risk Management and Metrics and Targets, and the assurance requirements for GHG emissions. The Strategy section requires disclosure of a CRE’s scenario analysis under 1.5°C, 3°C or greater, and a third climate-related scenario;</li> <li>• <b>NZ CS 2:</b> a restricted number of exemptions for CREs from CRD requirements during the first three reporting periods; and</li> <li>• <b>NZ CS 3:</b> the general requirements and principles for CRD, including a strong focus on disclosure of all material information about a CRE’s climate-related risks and opportunities.</li> </ul> <p><b>Other ESG</b></p> <p>While it is a voluntary scheme, Toitū net carbon zero certification is increasingly popular among New Zealand organisations to show independent verification of their commitment to sustainability, particularly in the goal to achieve net carbon zero by 2050. An organisation’s emissions are measured annually, and inventory is independently verified.</p>

		The government has recently introduced the Organic Products and Production Act 2023 to regulate organic claims. Businesses who label their products as organic must comply with a national organic standard and hold official third-party certification under the new standardised system.
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	Please refer to question 2 for an overview of the nature and extent of ESG disclosures required to be made in New Zealand.
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	Yes – as described above, the CRD regime under the FMCA is mandatory for all entities who meet the legal status of a CRE.
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	Aside from the CRD regime, there is no standardised approach in New Zealand to ESG disclosures. Companies have latitude to determine the extent and manner of their disclosures. The NZX ESG Guidance Note encourages issuers to adopt a recognised global reporting framework for ESG reporting and clearly outline the selected framework. However, issuers may choose to adopt alternative global ESG reporting frameworks, or parts thereof. The NZX has shortlisted three leading global ESG frameworks, being the Global Reporting Initiative (GRI), the Integrated Reporting Framework (IRF) and B Corp Certification.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	<p>The relevant guidance and definitions are forthcoming. The NZX ESG Guidance Note sets out what NZX considers to be good ESG practices and defines the three elements of ESG as:</p> <ul style="list-style-type: none"> <li>• environmental criteria (looks at how a company performs as a steward of the natural environment);</li> <li>• social criteria (considers how a company manages its relationships with stakeholders, ie, employees, impact on the broader community and/or suppliers); and</li> <li>• governance (includes a company's leadership, executive pay and shareholder rights amongst other matters).</li> </ul> <p>It also outlines ESG-related content that issuers may consider reporting, such as the material ESG risks faced by the business and the relevance of ESG factors to their business models.</p>
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	There is no legal hierarchy for ESG goals in New Zealand. However, there is a clear focus on climate-related information (via the CRD regime) and general environmental claims, monitored by the FMA and Commerce Commission.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	<p>As the CRD regime has only recently taken effect, and is the only mandatory ESG-related disclosure in New Zealand, it is too soon to conclude whether regulation has aided investor value creation in New Zealand. However, we expect these disclosures will be informative for investors seeking to understand an issuer's ESG practices, risks and opportunities. The FMA's class exemption for certain foreign listed issuers also helps to reduce unnecessary compliance costs that may discourage those issuers from participating in New Zealand capital markets.</p> <p>It should be noted though, that many issuers have expressed concerns about the costs of CRD compliance in relation to their size or stage of development, particularly if they appear to have a small carbon footprint.</p>

19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	<p>With CRD reporting being in its first mandatory year, we are still to see significant feedback on the effectiveness and transparency of what is disclosed.</p> <p>In terms of other ESG disclosure which is not mandatory, the position is maturing and there are conventions for disclosure around diversity goals, gender pay gaps, net zero carbon positions, etc. The most rigorous demands for ESG disclosure are coming from clients who require this as part of their supply chain procurement practices, where eligibility criteria or weight is applied to achievement or commitment to ESG goals.</p> <p>Concerns tend to focus on greenwashing and misleading claims, given most of the disclosure is voluntary.</p>
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	<p>There are no specific laws or regulations dealing with greenwashing in connection with securities issues. However, the Disclosure Framework notes that the fair dealing provisions under the FMCA apply broadly and the FMA will consider whether conduct or disclosure is likely to mislead or confuse the investor. In addition to general disclosure content for financial products, the Disclosure Framework also focuses on outlining what the integrated financial product claims to offer beyond a standard financial product, how performance against ESG factors is measured and evidenced and any auditing or assurance provided, amongst other areas.</p>
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	<p><b>Climate-related disclosure</b></p> <p>As indicated in response to question 9, the FMA has expressed that it will take enforcement action against CREs for serious misconduct, including where information is false or misleading.</p> <p><b>Other ESG</b></p> <p>There is a growing need for market standards surrounding ethical investing. Currently, there are no defined standards for terms such as 'sustainable', 'responsible' and 'green' – it is up to individual fund managers to define these. However, the government has partnered with the Centre for Sustainable Finance and the Climate Bonds Initiative to begin preparing a sustainable finance taxonomy, being a system to classify ESG activities and assist the allocation of capital to them.</p> <p>The FMA is generally sharpening its focus in monitoring and responding to instances of greenwashing regarding financial products, particularly after its 2022 review of ethical investing claims in managed funds revealed a vague and inconsistent approach to disclosure. It is apparent that the FMA's heightened focus is influenced by its regulatory role under the new CRD regime and the risk of greenwashing claims against companies is likely to increase as the CRD regime takes effect.</p>
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	<p>While the FMA has published regulatory guidance regarding greenwashing, there are few examples of legal claims relating to securities issues for greenwashing in New Zealand. However, in March 2023, the FMA issued a formal warning to Vanguard Investments Australia Limited for failing to disclose details within the required time for infringement notices filed against it in Australia for alleged greenwashing. Vanguard was issued three infringement notices by the Australian Securities and Investment Commission (ASIC) regarding disclosures it included in the offer documents of three funds.</p>
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	<p>As indicated in response to questions 5 and 12, from October 2024, the GHG disclosures (including gross emissions in metric tonnes and any methods or estimation of uncertainty) made by CREs in their climate statements must have independent assurance. NZ CS 1 requires 'limited assurance' over GHG disclosures, at a minimum. The XRD has developed the NZ SAE 1 standard to provide for ethical, quality management and reporting requirements for assurance practitioners undertaking such engagement. The standard permits all competent and independent assurance practitioners to apply either the ISAE (NZ) 3410 or ISO 14064-3:2019 Greenhouse gases – Part 3 when undertaking engagements. The NZ SAE 1 is temporary while the scope of the assurance engagement is under consultation – an occupational licensing regime is being considered. There are no additional requirements for external certification or assurance under the CRD regime. CREs may voluntarily seek assurance over other parts of the climate statement. However, there is no mandated assurance standards for such engagement.</p>

24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	Governance of ESG-related matters was a key focus for boards in 2023 with the introduction of the CRD regime and a revised Code and ESG Guidance Note released. We expect this to continue in 2024 as entities develop climate change transition plans and it will be important to establish clear governance frameworks under the new regime.
25.	<b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	NZX and the XRB have acknowledged the need to enable NZ entities to report in a globally consistent manner. However, as indicated in response to question 15, companies have latitude to determine the extent and manner of their disclosures. While international alignment was a key focus for the XRD in developing the NZ CS, differences with overseas regimes remain and organisations operating in international markets should pay close attention to these as reporting evolves. The XRB has not adopted the ISSB standards for New Zealand. However, it is due to start a post-implementation review of the NZ CS in December 2025 to consider alignment with international approaches.
26.	<b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b>	<p>Key challenges that CREs are facing with the CRD regime include:</p> <ul style="list-style-type: none"> <li>• <b>quantifying and pricing climate risk:</b> the tools and mechanisms to help entities transition into the new regime are not yet well developed and, in many cases, unavailable. We expect to see important developments in this area over the next six to twelve months;</li> <li>• <b>organisational issues:</b> the board may not fully understand what role it should play in oversight of climate change risk. There is often a misalignment between the board’s objectives and the understanding of the executives in responding to those; and</li> <li>• <b>identifying opportunities to the CRE:</b> the CRD regime is set up to ensure financial stability during the transitional period, and several opportunities will arise for CREs across the economy as information users are exposed to CRD.</li> </ul>
27.	<b>Is it mandatory for companies to set climate-related targets?</b>	<p>There is no mandatory requirement for companies to set climate-related targets, nor have any transition plan. However, each CRE must, in its climate statement, include:</p> <ul style="list-style-type: none"> <li>• the transition plan aspects of its strategy, including how its business model and strategy may change to address climate-related risks and opportunities;</li> <li>• information on the metrics and targets used to measure and manage climate-related risks and opportunities (such as the timeframe, associated interim targets and performance against the targets); and</li> <li>• the degree to which the transition plan aspects of its strategy are aligned with its internal capital allocation.</li> </ul> <p>The XRD has published guidance on these requirements under NZ CS 1.</p>

28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	<p>There is growing evidence of a voluntary commitment by companies to climate-related targets, including those aligned to the Science Based Target initiative. For example, in November 2023, Fonterra Co-operative Group Limited (New Zealand's largest company) announced to the Science Based Target initiative its submission of GHG emissions targets to achieve by 2030 for validation.</p> <p>A significant number of organisations (whether listed or non-listed) have also announced net-zero carbon goals that have either been achieved or are to be achieved by a certain time.</p>
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>There is a lot happening in the ESG space in New Zealand and the CRD regime is still developing. We expect a greater focus on quality reporting and action against greenwashing.</p>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>David Raudkivi, Corporate Advisory Partner, Russell McVeagh</p> <p>Cici Davie, Law Clerk (pending admission), Russell McVeagh</p>



# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Nigeria

### Nigeria

1.	Which jurisdiction are you covering?	Nigeria
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Yes. Regulated entities are mandated to report their progress in implementing ESG principles and require organisations they supervise to make appropriate disclosures on ESG.
3.	If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?	<p>No. Currently, there is no distinction between the type and nature of entities that are required to make ESG disclosures in Nigeria.</p> <p>Although Nigeria adopted the IFRS sustainability disclosure standards, specifically IFRS S1 and S2 in 2023, mandatory adoption for all entities to start making these disclosures will not commence until 1 January 2028.</p> <p>By 2028, public interest entities (PIEs), which encompass governments, listed entities, regulated non-listed entities, public limited companies and entities with significant annual turnovers, will be mandated to report under the IFRS sustainability disclosure standards. However, small and medium-sized entities (SMEs) may not be required to disclose ESG information unless they meet specific criteria such as having significant public accountability, being regulated, or surpassing certain turnover thresholds.</p> <p>However, until 2028, regulated entities can adopt the standards earlier as early/voluntary adopters.</p>
4.	If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?	<p>N/A</p> <p>However, once mandatory adoption of IFRS sustainability disclosure standards begins on 1 January 2028, different types of entities will have varied ESG disclosure requirements:</p> <ol style="list-style-type: none"> <li>1. PIEs: These include government entities, listed companies, regulated non-listed entities, public limited companies, and others with substantial turnovers. They must make comprehensive ESG disclosures covering environmental, social, and governance aspects;</li> <li>2. SMEs: SMEs are generally exempt from mandatory ESG disclosures unless they meet specific criteria such as significant public accountability, regulatory status, or surpassing turnover thresholds set by the regulatory bodies; and</li> <li>3. Private unlisted companies: Their disclosure obligations depend on exceeding certain thresholds related to turnover, asset value, or other criteria set by regulatory authorities.</li> </ol>

5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	In Nigeria, companies are mandated to report ESG issues annually either on a standalone basis or as an integral part of their annual reports to stakeholders. The timing of the reporting should be the same as the financial performance report of the organisation.
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	Reports can be done in the form of a separate report or as part of the annual report to stakeholders.
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	According to the Securities and Exchange Commission (SEC) guidelines on sustainable finance principles for the capital market, the location of the ESG disclosure can be in a standalone report or in the annual report to stakeholders.
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	It is mandatory for companies to report ESG issues annually; therefore, it is not voluntary, it is a legal requirement that companies operating in this jurisdiction must comply with.
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>There are different regulators that monitor ESG disclosure compliance, which include the Nigerian Exchange Group (NGX), SEC, CBN, Nigerian Upstream Petroleum Regulatory Commission (NURPC), Nigerian Midstream and Downstream Petroleum Regulatory Commission (NMDPRA), Financial Reporting Council (FRC), Corporate Affairs Commission (CAC), National Environmental Standards and Regulations Enforcement Agency (NESREA) and the National Council on Climate Change (NatCCC).</p> <p>Companies that fail to integrate ESG factors into their business operations risk non-compliance with regulatory requirements, exposing themselves to penalties such as fines, suspension, or even withdrawal of operational licences or striking of a company's name from CAC's register of companies. These consequences not only threaten the sustainability of the business but also lead to potential reputational and financial losses.</p> <p>Also, the 2021 Climate Change Act, a private entity that fails to meet its obligations regarding climate change mitigation and adaptation may face fines and charges, which are paid into the Climate Change Fund. Additionally, the National Climate Change Council has the authority to mandate such private entities to prepare reports detailing their past, present, and future actions aimed at fulfilling their climate change obligations.</p>
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p><b>Mandatory ESG disclosure</b></p> <p>Companies that provide false or misleading information in mandatory ESG disclosures may face stringent penalties. These penalties are typically enforced by regulatory bodies such as the SEC or the FRC.</p> <p>Penalties can include fines, sanctions, suspension of trading, or even delisting from stock exchanges. The severity of penalties may escalate if the misinformation is deemed to have significantly impacted stakeholders or the public trust in financial markets. Additionally, company executives or directors responsible for the false disclosures may be personally liable under Nigerian corporate governance laws.</p> <p><b>Voluntary ESG disclosure</b></p> <p>Although voluntary ESG disclosures are not mandated by Nigerian law, companies are still expected to ensure the accuracy and truthfulness of the information provided.</p> <p>Penalties for false or misleading voluntary ESG disclosures may not be as severe as those for mandatory disclosures. However, companies could still face legal action from investors, stakeholders, or regulatory bodies if the misinformation results in financial losses or damages.</p>

11.	<p><b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b></p>	<p>There is no tiered disclosure system in Nigeria, and at the moment, there are no further ESG disclosure requirements expected. However, Nigeria will implement a tiered approach under the IFRS sustainability standards from 1 January 2028.</p> <p><b>Expected future developments:</b></p> <ul style="list-style-type: none"> <li>• Nigeria is anticipated to introduce further ESG disclosure requirements in line with international standards and evolving regulatory frameworks by 2028.</li> <li>• Future developments may include more specific guidelines on climate-related disclosures, social impact metrics, diversity reporting, and governance practices.</li> <li>• Regulatory bodies such as the FRC are likely to play a pivotal role in shaping these developments and ensuring compliance across different tiers of entities.</li> </ul>
12.	<p><b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b></p>	<p>There are guidelines and laws for different sectors that contain rules and procedures that must be complied with regarding ESG disclosures.</p> <p>For example, The Environmental Impact Assessment Act ('EIA Act') mandates that an EIA must be conducted for any project or activity that is likely to significantly affect the environment. The EIA report is required to be submitted to NESREA for approval and a certificate will be issued.</p> <p>Additionally, to ensure that commercial and industrial activities are carried out in an environmentally safe manner, NESREA created different broad categories of environmental permits, such as air quality permit; waste and toxic substances permit, used electrical and electronic equipment permit; biodiversity conservation permit; eco-guard certification; and environmental import clearance. Nigerian companies carrying on operations/activities within the scope of any of the required permits must apply for and obtain relevant permits from NESREA.</p>
13.	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p>In Nigeria, the nature and extent of ESG disclosures required are governed by various regulatory frameworks and guidelines. Here's an overview based on the relevant laws and regulations.</p> <ol style="list-style-type: none"> <li>1. <b>Environmental Impact Assessment (EIA) Act:</b> Projects or activities likely to significantly affect the environment must undergo an EIA, with reports submitted to NESREA for approval.</li> <li>2. <b>NESREA Environmental Permits:</b> NESREA issues various permits including air quality, waste management, biodiversity conservation, and eco-guard certifications for activities impacting the environment.</li> <li>3. <b>Harmful Waste Act:</b> Criminalises activities related to harmful wastes and imposes civil liability for damages caused.</li> <li>4. <b>Water Resources Act (WRA) and Water Use Regulations:</b> Regulate activities affecting water sources, requiring licences from the Minister of Water Resources.</li> <li>5. <b>Factories Act (FA) and Employees Compensation Act (ECA):</b> Mandate safe working conditions and provide compensation for work-related injuries, diseases, or disabilities.</li> <li>6. <b>National Housing Fund Act (NHFA):</b> Requires employers to deduct contributions from employees for affordable housing, managed by the Federal Mortgage Bank.</li> <li>7. <b>National Health Insurance Scheme Act (NHISA):</b> Requires employers and employees to participate in the NHIS, contributing to a health insurance pool.</li> <li>8. <b>Pension Reform Act (PRA):</b> Establishes a contributory pension scheme mandating employers to contribute to employees' retirement savings.</li> <li>9. <b>National Code of Corporate Governance (NCCG):</b> Requires public companies and regulated entities to pay attention to sustainability issues including ESG factors in their operations. Boards must monitor and report on these issues.</li> </ol>

		<p><b>10. NGX Sustainability Disclosure Guidelines:</b> Listed public companies must adopt sustainability reporting, covering economic, environmental, social, and governance aspects to complement the existing requirements of the NCCG and the SEC Guidelines on Corporate Governance. In addition, a sustainability policy report must be filed by public companies to provide necessary disclosure on ESG and related issues in line with best practices.</p> <p>The Sustainability Disclosure Guidelines of the NGX (the 'SDGN') also provide reporting requirements to include the following:</p> <ol style="list-style-type: none"> <li>1. the reporting period should be in alignment with the same financial period;</li> <li>2. the report should contain a comprehensive description of the listed company's management overview of economic, ESG risks and opportunities; and</li> <li>3. the NGX also encourages reporting companies to consider getting their reports independently verified against international standards.</li> </ol> <p>The reporting themes cover the following:</p> <ol style="list-style-type: none"> <li>1. economic-suppliers relations management, and ethics/responsible products and services;</li> <li>2. social diversity in the workplace, labour practices, occupational health and safety, human rights and society;</li> <li>3. governance: anti-corruption; and</li> <li>4. environmental: product and service responsibility.</li> </ol>
<p><b>14.</b></p>	<p><b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b></p>	<p>In Nigeria, the Climate Change Act mandates specific climate change-related disclosures within the broader ESG reporting framework.</p> <p><b>Private entities</b></p> <p>Companies with over 50 employees must implement measures to reduce annual carbon emissions as per the National Climate Change Action Plan.</p> <p>They must appoint a climate change officer and submit annual reports on emission reduction and adaptation efforts to the NatCCC.</p> <p>Non-compliance may lead to fines and required reports on corrective actions.</p> <p><b>Ministries, departments, and agencies (MDAs)</b></p> <p>MDAs must establish climate change desks to integrate climate activities into their mandates. They must budget for climate programs and adhere to emission reduction targets. Unsatisfactory performance may result in investigations and sanctions.</p> <p><b>Specific disclosures</b></p> <p>Entities are obligated to disclose efforts in reducing carbon emissions, implementing climate adaptation strategies, and meeting government-set targets. These disclosures are part of broader ESG reporting to ensure transparency and accountability.</p>
<p><b>15.</b></p>	<p><b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b></p>	<p>The regulatory authorities have reporting templates available on their websites. For instance, SEC has a reporting template that capital market participants are encouraged to use when making their ESG disclosures. The SDGN also prescribes a standard reporting procedure. However, the SDGN provides that companies are at liberty to refer to existing internationally accepted sustainability reporting guidance, such as the GRI standards for its relevant industry or sector.</p>

16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	The Constitution of the Federal Republic of Nigeria 1999 makes provision for the ESG directive principles in relation to government officials exercising legislative, executive and judicial powers. In addition to the Constitution, there are several other laws and guidelines on ESG, such as the 2018 NCCG; CAA 2021; EIA 1992; The Securities & Exchange Commission Nigerian Sustainable Finance Principles, 2021; The Nigerian Stock Exchange Sustainable Disclosure Guidelines, 2018; The Nigerian Sustainable Banking Principles, 2012; Petroleum Industry Act 2021; Companies and Allied Matters Act 2020; and Federal Competition and Consumer Protection Act 2018.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	In Nigeria, regulatory frameworks and guidelines emphasise that ESG compliance involves evaluating a company's performance across all three ESG pillars. Therefore, while an aspect, such as gender diversity policy contributes positively to the company's social goals, it must be considered alongside environmental impacts (such as carbon emissions and ecological footprint) and governance practices (like transparency and board diversity) for the purpose of measuring ESG compliance.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	Yes. In Nigeria, ESG disclosure regulation has aided investor value creation.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	Yes. Our clients would certainly like to see a greater, more transparent, clear and effective ESG disclosure regime especially as Nigeria's ESG regulations progress towards the implementation of the IFRS sustainability standards by 2028.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	No, Nigeria currently lacks specific mandatory ESG disclosure requirements targeting greenwashing in connection with securities issues. While SEC and NGX mandates some ESG disclosures for listed companies, there are no specific regulations focused on preventing greenwashing in Nigeria. Instead, the Nigerian Legal system still relies on existing legal principles related to misrepresentation, fraud, consumer protection, and false advertising to address such issues.
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	Yes, there have been recent strides in ESG disclosures concerning securities issues and regulatory oversight in Nigeria, particularly in addressing greenwashing. While Nigeria currently lacks specific laws targeting greenwashing, regulatory bodies like the Federal Competition and Consumer Protection Commission (FCCPC) have guidelines addressing false advertising, including greenwashing. Furthermore, the SEC is also actively enhancing its guidelines to ensure greater transparency in corporate reporting by listed companies. There is growing recognition in Nigeria of the need for more robust regulatory frameworks aligning with international standards and practices. It is expected that, when the sustainability standards are fully adopted in 2028, Nigeria will have more comprehensive regulations and mandatory disclosures that will provide clearer guidelines to prevent greenwashing.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	Specifically, no greenwashing claims have been adjudicated by either a Nigerian court or administrative tribunal. Furthermore, there is no evidence of any administrative actions taken by the relevant agencies or ministries in the country. It is opined that the lack of reported greenwashing cases may be attributed to inadequate awareness among regulatory bodies, a lack of political will to enforce existing laws, and the failure of the legislature to enact appropriate greenwashing regulations.

23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	<p>In Nigeria, regular ESG disclosure requirements are subject to mandatory external certification to validate the accuracy and reliability of their disclosures. Nigerian companies disclosing ESG information in their annual report seek assurance from independent third-party auditors or assurance providers for the purpose of reviewing the company's processes, data collection methods, and the accuracy of reported ESG metrics to provide investors with confidence in the reliability of the disclosed information. The party performing assurance or certification should be professional auditing firms or specialised sustainability assurance providers recognised for their expertise in evaluating ESG disclosures who must be independent and qualified to assess the company's adherence to ESG reporting standards and criteria.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>There are recent developments in board oversight and governance of ESG matters in Nigerian companies. Boards are beginning to delegate ESG oversight to various committees rather than establishing dedicated ones. The integration of ESG responsibilities involves multiple board committees, including audit, risk management, and human resources, necessitating better coordination and information flow. There is a growing emphasis on ensuring that committees have the expertise to effectively oversee the ESG issues assigned to them.</p>
25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p>In June 2023, Nigeria adopted IFRS S1 and IFRS S2, which are expected to have a significant impact on Nigerian companies. These standards pave the way for mandatory sustainability reporting, requiring comprehensive disclosure of climate-related risks and opportunities. This initiative aligns with Nigeria's commitment to transparent and responsible business practices. Although mandatory compliance with sustainability reporting is set to begin in 2028, some companies are already preparing for its implementation by conducting gap assessments and developing strategic plans. Early adoption is also recommended for those needing ample time to navigate the complexities of implementation. However, it's important to note that as of now, the TNFD guidance has not been officially adopted in Nigeria. Furthermore, no Nigerian organisations have committed to aligning their corporate reporting with the TNFD Recommendations. Similarly, Nigeria has not adopted the final disclosure framework published by the UK.</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>The capability of Nigerian companies to meet upcoming sustainability disclosure requirements varies widely. Larger firms and those in high-impact sectors may be better equipped due to existing resources and frameworks. This is evident in the IFRS S1 and IFRS S2's early adopters' preparation through gap assessments and strategic planning. SMEs who lack resources to collect expensive ESG data, and/or lack awareness about the benefits of ESG reporting or lack guidance due to the unavailability of an ESG reporting framework in Nigeria may struggle without external support on the reporting procedures and requirement. However, it is accepted that the mandatory compliance with IFRS S1 and IFRS S2 by 2028 will assist in providing regulatory guidance and alignment with international standards that will be crucial in ensuring widespread compliance and transparent business practices in the country.</p>

27.	<b>Is it mandatory for companies to set climate-related targets?</b>	While setting climate-related targets is not explicitly mandatory, under current Nigerian law, the CCA 2021, Nigerian private companies with over fifty employees are required to implement measures aimed at achieving annual carbon emission reduction targets aligned with the National Climate Change Action Plans. These plans, developed in five-year cycles, guide efforts for climate adaptation and mitigation to meet national carbon budget goals. The CCA 2021 mandates the designation of climate change officers or environmental sustainability officers within these entities to oversee compliance. It also established reporting obligations and penalties for non-compliance, with fines to be paid to the Climate Change Fund. Furthermore, the introduction of the IFRS S2 provides a mandatory framework for identifying, measuring, and disclosing climate-related risks and opportunities from 1 January 2028.
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	N/A. However, with the increasing global emphasis on climate action and sustainability, coupled with the introduction of frameworks like IFRS S2 that encourage comprehensive climate-related disclosures, there could be a growing interest among Nigerian companies in adopting voluntary climate targets such as SBTs in the future.
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>In the future, we foresee:</p> <ol style="list-style-type: none"> <li>1. an increase in companies paying more attention to ESG disclosure matters in order to be at par with international best practices, as well as keeping up with the demands of various stakeholders, such as investors, regulators, employees, lenders, rating agencies and customers on ESG concerns;</li> <li>2. FRC's standardisation efforts will likely lead to the adoption of uniform ESG reporting frameworks to improve clarity and comparability across all Nigerian companies;</li> <li>3. ESG factors may be integrated into financial reporting thereby aligning sustainability metrics with traditional financial statements;</li> <li>4. regulations that will impose stricter ESG disclosure requirements, aiming to align with global standards such as IFRS sustainability guidelines in 2028;</li> <li>5. technological advancements are expected to facilitate more efficient and transparent ESG reporting processes as companies will leverage technological tools for data collection, analysis, and dissemination;</li> <li>6. there may be a heightened focus on measuring the impact of ESG initiatives, with companies seeking to quantify the ESG outcomes of their actions; and</li> <li>7. sector-specific ESG disclosures are likely to become more prevalent, tailored to address unique risks and opportunities faced by different industries.</li> </ol> <p>Capacity building efforts aimed at improving ESG disclosure practices, awareness, and capabilities among businesses operating in our jurisdiction will likely increase before 2028.</p>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	Patrick Osu, Ajumogobia & Okeke. Patrick Osu is a corporate commercial lawyer and Partner at Ajumogobia & Okeke. He handles various corporate transactions in varied sectors viz oil & gas, banking & finance, private equity, aviation, merger & acquisition, etc. He also has vast experience in litigation and arbitration, having practised in those capacities in various courts in Nigeria over the years. Contact Posu@ajumogobiaokeke.com or at www.ajumogobiaokeke.com

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Norway

### Norway

1.	<b>Which jurisdiction are you covering?</b>	Norway
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>Much of the ESG regulation applicable in Norway is influenced by the EU, as Norway is part of the European Economic Area (EEA). This means that Norway often aligns its regulations with those of the EU's. Mandatory regulations in relation to ESG disclosure issues, applicable in Norway, include the EU's Sustainable Finance Disclosure Regulation (EU) 2019/2088 (SFDR), Taxonomy Regulation (EU) 2020/852, and the Non-Financial Reporting Directive 2014/95/EU (NFRD).</p> <p>It is important to note that the NFRD is proposed to be replaced by the Corporate Sustainability Reporting Directive (EU) 2022/2464 (CSRD) during 2024, which is expected to further impact ESG disclosure requirements in Norway.</p>
3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	<p>The NFRD, which amends the Accounting Directive 2013/34/EU, has been implemented into Norwegian law through the Norwegian Accounting Act (Regnskapsloven). Under section 3-3 c of the Norwegian Accounting Act, all large companies are required to prepare a statement on corporate social responsibility that should at least include: environment, social conditions, working environment, equality and non-discrimination, respect for human rights, and anti-corruption and bribery measures. This implementation took effect from the financial year starting on or after 1 July 2021.</p> <p>The statement on corporate social responsibility must be included either in the annual report or another publicly available document.</p> <p>Please note that the definition of 'large companies' is somewhat different to the EU definition as Norway has not fully harmonised the implementation of the Accounting Directive. The definition of large companies does not have any provisions related to the extent (size) of the business conducted, as compared to the definitions in the NFRD. As such, the definition of 'large companies' are far broader than the EU definition, covering all public limited liability companies (<i>Allmennaksjeselskaper</i>), various issuers of securities listed on a regulated market (EEA/EU defined) as well as certain financial undertakings such as banks, credit institutions and financial undertakings (public-interest entities).</p> <p>SFDR was adopted in March 2021 for the EU Member States and in Norway on 1 January 2023. SFDR applies to financial market participants and financial advisers, which encompasses investment firms, banks, fund managers and several other financial institutions when they act in the capacity of asset managers or provide investment advice. The regulation imposes sustainability-related disclosure requirements at entity level, and on the financial products managed by the institutions. Entity-level disclosures focus on how the entity as a whole takes into account sustainability risk and principal adverse impact of investment decisions, while product-level disclosures require the entities to provide investors with information on how such risks can affect the specific product, and how 'green' the product is. Some disclosures are mandatory, while others are voluntary.</p>



		<p>The Taxonomy Regulation was adopted in June 2020 for the EU Member States and in Norway on 1 January 2023. The Taxonomy Regulation establishes a classification system for environmentally sustainable economic activities. It imposes, in accordance with the definitions in the NFRD, disclosure requirements on certain types of entities, specifically financial market participants and large public interest entities, including companies listed on a regulated market, banks, credit institutions and insurance undertakings. These entities are required to disclose the extent to which their activities align with the Taxonomy's environmental objectives.</p> <p>Other companies than those listed above are not required to disclose information according to the Taxonomy Regulation. Thus, the type and nature of the entity play a significant role in determining the ESG disclosure requirements.</p>
<p><b>4.</b></p>	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b></p>	<p>In Norway, the thresholds for mandatory ESG disclosures pursuant to the implementation of the NFRD, are set out in the Norwegian Accounting Act. The disclosure obligations that apply to 'large companies' as defined in section 15 of the Norwegian Accounting Act are:</p> <ul style="list-style-type: none"> <li>• public limited liability companies;</li> <li>• issuers with shares, units, equity certificates or bonds listed on a stock exchange, authorised marketplace or equivalent regulated market abroad; and</li> <li>• banks, credit institutions and financial undertakings.</li> </ul> <p>These 'large companies' are required, to prepare a report on social responsibility pursuant to section 3-3 c of the Norwegian Accounting Act. Entities that do not meet these criteria are not required to prepare such a report.</p> <p>In Norway, the disclosure requirements pursuant to SFDR applies to financial market participants and financial advisers, regardless of their size. However, entity level disclosures concerning whether the entity considers principal adverse impacts of investment decisions on sustainability factors, which are voluntary for smaller entities, are mandatory for larger entities (ie, financial market participants which have an average of 500 employees or is the parent undertaking of a large group which has an average of 500 employees).</p> <p>On product-level, the SFDR disclosures will vary depending on the characteristics of the product. The product must be classified as either Article 6, 8 or 9:</p> <ul style="list-style-type: none"> <li>• Article 6: products without a sustainability scope;</li> <li>• Article 8: products that promote environmental or social characteristics; and</li> <li>• Article 9: products with sustainable investment as their objective.</li> </ul> <p>The product category will determine the type of disclosures the financial market participant is required to make, and the frequency of such disclosures.</p> <p>The Taxonomy Regulation itself does not establish specific thresholds that trigger mandatory disclosure requirements. Instead, it provides a classification system for environmentally sustainable economic activities.</p> <p>The disclosure requirements related to the Taxonomy Regulation are primarily outlined in other pieces of legislation, such as the SFDR and the NFRD. These regulations specify the entities that are required to make disclosures, which typically include financial market participants and large public-interest entities.</p> <p>In other words, the Taxonomy Regulation defines what can be considered environmentally sustainable, but other regulations like the SFDR and NFRD determine who needs to disclose this information and under what circumstances.</p>

5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	<p>Under the NFRD, as implemented in Norwegian law through the Norwegian Accounting Act, companies that are subject to the rules are required to disclose non-financial and diversity information on an annual basis. This is typically done in the annual report. The disclosures cover areas such as environmental, social and employee matters, respect for human rights and anti-corruption and bribery issues.</p> <p>The SFDR mandates financial market participants and financial advisers to make pre-contractual and periodic disclosures on how they integrate ESG risks and opportunities into their investment decisions and advisory processes. These disclosures are required both at the entity level and at the product level, meaning they apply to the financial products or services they offer. The SFDR requires both ongoing and periodic disclosures.</p> <p>In summary, ESG disclosures in Norway are typically required on a continuous annual reporting basis under the NFRD and on both a continuous and transactional basis under the SFDR.</p>
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>Under NFRD, as implemented in Norwegian law through the Norwegian Accounting Act, the mandatory disclosure of non-financial and diversity information is typically included as part of a company's annual report. However, according to section 3-3 c of the Norwegian Accounting Act, the report on social responsibility can be provided in the annual report or in another publicly available document. If the report is provided in another document, and the company is required to deliver an annual report, it must be stated in the annual report where the document is publicly available. The report must be provided no later than when the annual report is delivered.</p> <p>Under SFDR, disclosures are not explicitly required to be in the form of separate ESG reports. However, the regulation does mandate that certain ESG-related information be disclosed in specific ways.</p> <p>For all financial market participants, Article 6 of the SFDR requires product-level disclosures on how sustainability risks are integrated into their investment decisions or advice. These disclosures are typically incorporated into existing reporting structures, such as the firm's website or other periodic reports.</p> <p>For funds that promote environmental or social characteristics (Article 8) or have sustainable investment as their objective (Article 9), additional disclosure requirements apply. These funds must provide information on how they meet the environmental or social characteristics or sustainable objectives they promote. This information is provided in pre-contractual and periodic documents for the financial products or services they offer. Mandatory templates have been prepared for these disclosures to ensure transparency and comparability.</p> <p>While the SFDR does not explicitly require separate ESG reports, the disclosures must be clear, transparent, and not misleading. Depending on the fund's classification under the SFDR and the nature of its activities, this could result in the disclosures being made in a separate section on the entity's website or as an appendix to pre-contractual and periodic documents.</p> <p>So, while the disclosures do not necessarily have to be in the form of separate ESG reports, they can be if the company chooses to do so.</p>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>According to section 3-3 c of the Norwegian Accounting Act, the report on social responsibility can be included in the annual report or in another publicly available document. If the report is provided in another document, it must be stated in the annual report where the document is publicly available (usually the company's website).</p> <p>In summary, the location of the ESG disclosure could be in the company's annual report, or it could be in another publicly available document, such as a sustainability report or a section of the company's website.</p> <p>Under SFDR, ESG disclosures made by financial market participants and financial advisers are required to be made available on the entity's website and in precontractual and periodic documents for the financial products or services they offer.</p> <p>For website disclosures, the information should be in a separate section dedicated to sustainability-related disclosures. Pre-contractual disclosures should be provided as an appendix to the relevant information and periodic disclosures should be included in periodic reports for the financial products or services they offer.</p> <p>In conclusion, the location of the ESG disclosure under the SFDR could be on the entity's website, in precontractual documents, or in periodic reports.</p>

8.	<p><b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b></p>	<p>The Norwegian Ministry of Finance has encouraged Norwegian non-financial undertakings to voluntarily include Key Performance Indicators (KPIs) for 2022 in their reporting for 2023 where possible. In line with this encouragement, we have observed that several large corporations in Norway began to voluntarily report on the Taxonomy ahead of the implementation of the mandatory requirements. This proactive approach was likely driven by increasing investor expectations around ESG performance and transparency.</p> <p>With respect to SFDR, the Regulation was adopted in Norway approximately two years after it was adopted in the EU. The Norwegian Financial Supervisory Authority (NFSA) encouraged entities which would become subject to the Regulation to disclose information in accordance with the Regulation on a voluntary basis before it entered into force in Norway. Many financial market participants, particularly fund managers, were required to start disclosing information at the same time as the EU because they marketed funds and portfolio management on a cross-border basis to EU Member States. However, several financial market participants and financial advisers which only provided their services in Norway also began disclosing information on a voluntary basis long before SFDR was adopted in Norway, partly to meet investor expectations, but also because they from a business perspective saw the value in collecting sustainability-related information about their investments.</p> <p>Further, with respect to product categorisation, we have seen a wave of reclassifications from Article 8 to Article 6 and from Article 9 to Article 8. The main reported reason for such reclassifications has been the vagueness in framework on what is required for a product to be classified as Article 8 or Article 9, which has made several financial market participants fear accusations of greenwashing.</p>
9.	<p><b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b></p>	<p>Pursuant to section 19-1, second paragraph, of the Securities Trading Act, the NFSA only supervises issuers of securities that are, or are sought to be, admitted to trading on a regulated market in the EEA, and whose home state is Norway.</p> <p>In regard to the reporting requirements pursuant to the implementation of the NFRD, the NFSA also only supervises the sustainability reporting pursuant to section 3-3 c of the Accounting Act for companies listed on a regulated market, and whose home state is Norway.</p> <p>The adoption of CSRD will entail an expansion of the reporting requirements in the current section 3-3 c of the Norwegian Accounting Act. There will be a requirement for sustainability information to be provided in the annual report, that information must be certified and it must be digitally labelled in the same way as in the European Single Electronic Format (ESEF).</p> <p>The NFSA will monitor listed companies' sustainability reporting in accordance with CSRD/ESRS when this regulation is adopted into Norwegian law.</p> <p>The taxonomy reporting shall be part of the report on corporate social responsibility reporting as of the 2023 reporting year, and the NFSA will review taxonomy reporting for listed companies from the corresponding year.</p> <p>The NFSA may impose a penalty on the undertaking if a listed company's financial reporting (including ESG disclosure) does not comply with the law or regulations.</p> <p>The NFSA also acts as supervisory authority for entities subject to SFDR and will monitor the entities' compliance with the regulation. Under the Financial Supervision Act, the NFSA has, among other things, the right to demand information and issue orders for correction and orders to cease operations to entities under supervision. Furthermore, officials in entities that are under supervision from the NFSA and who intentionally or negligently violate orders given under the law, can be punished with fines or imprisonment for up to one year or both.</p>
10.	<p><b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b></p>	<p>If a company provides false or misleading information in its annual report or in other mandatory disclosures under the Norwegian Accounting Act, it could face penalties under Norwegian law. This would also apply to mandatory ESG disclosures.</p> <p>For voluntary ESG disclosures, while there may not be specific regulations governing them, providing false or misleading information could still potentially lead to legal consequences, such as liability under general fraud, consumer protection, or unfair trade practices laws.</p> <p>In regard to companies listed on a regulated market, and whose home state is Norway, the NFSA has indicated a significant focus on climate-related risks and ESG factors in its future regulatory and supervisory activities. The forthcoming regulations (CSRD), which the NFSA will oversee, aim to ensure that supervised institutions adequately manage climate-related risk. This will be a key element in both macroprudential and prudential supervision of financial institutions, on a par with other risks they need to manage.</p> <p>Furthermore, the NFSA is also the supervisory authority for the auditors that will review the sustainability reporting.</p>

<p>11.</p>	<p><b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b></p>	<p>Under the SFDR, there is indeed a tiered system for ESG disclosures. The SFDR classifies funds under Articles 6, 8, or 9, each with varying degrees of ESG focus and corresponding disclosure requirements.</p> <p>Article 6 applies to all financial market participants and requires them to disclose at the entity level how they integrate sustainability risks into their investment decisions or advice, and the potential impact of sustainability risks on returns.</p> <p>Articles 8 and 9 apply to financial products that promote environmental or social characteristics (Article 8) or have sustainable investment as their objective (Article 9). Funds that classify themselves under these articles are subject to additional disclosure requirements. They must provide information on how they meet the environmental or social characteristics or sustainable objectives they promote.</p> <p><b>Future ESG disclosure requirements</b></p> <p>The environmental objectives in Article 9 (c)-(f) of the Taxonomy Regulation was not incorporated in the EEA Agreement under 2023 and Norwegian companies are not obliged to report in 2024 on their activities related to environmental objectives (c)-(f) for the 2023 financial year.</p> <p>The CSRD entered into force in the EU on 5 January 2023. The purpose of the directive is to facilitate a transition to a sustainable economy in line with the European Green Deal.</p> <p>The Ministry of Finance has stated that the aim is to implement the CSRD in Norway at the same time as in the EU, with implementation expected during the first half of 2024. With CSRD, sustainability reporting will be more detailed, and the information will have to be included in the annual report.</p> <p>In terms of content, CSRD is based on the principle of double materiality. Double materiality means that on the one hand the impact the company has on sustainability issues must be reported, and on the other hand how sustainability issues affect the company and its ability to create long-term value. Sustainability reporting will be more detailed, and the information will be included in the annual report. It is also proposed that the sustainability reporting should be certified by an auditor or an independent third party, with the aim of ensuring that there is as much confidence in the sustainability reporting as in the financial reporting.</p> <p>A phased introduction of the new requirements is planned.</p> <ul style="list-style-type: none"> <li>• From and including the financial year 2024 with reporting in 2025: Large undertakings of public interest with more than 500 employees and that fulfil one of the two criteria in points (1) and (2) in the next bullet point. Examples of large undertakings of public interest are banks, credit institutions, insurance companies and companies listed on a regulated market.</li> <li>• From and including the financial year 2025 with reporting in 2026: Other large companies that fulfil two of the following three criteria: (1) balance sheet total <math>\geq</math>NOK 290m, (2) sales revenue <math>\geq</math>NOK 580m, and (3) <math>\geq</math> 250 employees.</li> <li>• From and including the financial year 2026 with reporting in 2027: Small and medium-sized companies listed on a regulated market that fulfil two of the following three criteria: (1) balance sheet total NOK 84&lt; – &gt;NOK 290m, (2) sales revenue NOK 168–NOK 580m and (3) 50–250 employees.</li> </ul> <p>As part of a comprehensive assessment of the framework to assess potential shortcomings, the EU Commission launched both an open and a targeted consultation on the implementation of SFDR in September 2023. The consultations were focusing on legal certainty, the useability of the regulation and its ability to play its part in tackling greenwashing. The consultation period ended on 22 December 2023. It is expected that the EU Commission will suggest revisions in the framework based on the input from the consultations and their own experience with the framework over the past three years, but at this time it is not clear what these revisions will entail.</p>
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12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	Norway does not have a specific national system of ESG certification or benchmarks that need to be met to attain an 'ESG Approved/Compliant' status.
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	<p>Under section 15 of the Norwegian Accounting Act, 'large enterprises' are defined as public limited companies, entities with shares, units, equity certificates or bonds listed on a stock exchange, authorised marketplace or equivalent regulated market abroad.</p> <p>These 'large enterprises' are required, as per section 3-3 c of the Norwegian Accounting Act, to prepare a report on social responsibility, which includes information on environmental, social and employee matters, respect for human rights, and anti-corruption and bribery issues. This report should be prepared on an annual basis as part of the company's management report.</p> <p>The SFDR requires financial market participants and financial advisers to make pre-contractual and periodic disclosures on how they integrate ESG risks and opportunities into their investment decisions and advisory processes. These disclosures are required both at the entity level and at the product level, meaning they apply to the financial products or services they offer.</p> <p>Financial products under the SFDR are categorised as per Articles 6, 8, or 9, each with varying degrees of ESG focus and corresponding disclosure requirements. Article 6 applies to financial products without a sustainability focus, Article 8 applies to financial products that promote environmental or social characteristics, and Article 9 applies to financial products that have sustainable investment as their objective.</p> <p>The Taxonomy Regulation provides a classification system for environmentally sustainable economic activities. While the Taxonomy Regulation itself does not establish specific disclosure requirements, it influences the disclosures made under the SFDR and the Accounting Act/NFRD by defining what can be considered environmentally sustainable.</p> <p>In summary, ESG disclosures in Norway are typically required on a continuous annual reporting basis under the Norwegian Accounting Act and on both a continuous and transactional basis under the SFDR. The Taxonomy Regulation provides the framework for determining the environmental sustainability of these disclosures.</p>
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	<p>Under the SFDR, financial market participants and financial advisers are required to disclose how they integrate environmental, social, and governance (ESG) risks and opportunities into their investment decisions and advisory processes. For financial products that have sustainable investment as their objective (Article 9), including those with a reduction in carbon emissions as their objective, the pre-contractual disclosures must include information on how the product contributes to achieving the long-term global warming objectives of the Paris Agreement.</p> <p>The Taxonomy Regulation provides a classification system for environmentally sustainable economic activities. To be classified as environmentally sustainable under the Taxonomy Regulation, an economic activity must make a substantial contribution to one or more of six environmental objectives, not cause significant harm to any of the other objectives and meet certain minimum sustainability requirements. The environmental objectives include climate change mitigation and climate change adaptation, among others.</p> <p>These requirements apply to certain financial market participants, financial advisers and companies that are required to prepare a sustainability report as part of their annual report under the Norwegian Accounting Act and the NFRD.</p>

15.	<p><b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b></p>	<p>Under the Norwegian Accounting Act and the NFRD, disclosures are somewhat standardised in terms of the topics they must cover, including environmental, social, and employee matters, respect for human rights, and anti-corruption and bribery issues. However, companies have some latitude in how they present this information, as long as they meet the minimum requirements.</p> <p>The SFDR requires financial market participants and financial advisers to make pre-contractual and periodic disclosures on how they integrate ESG risks and opportunities into their investment decisions and advisory processes. These disclosures are required both at the entity level and at the product level, meaning they apply to the financial products or services they offer.</p> <p>Delegated regulations under SFDR do provide standardised templates for certain disclosures. These templates are intended to ensure consistency and comparability across different financial market participants and products.</p> <p>For example, the European Supervisory Authorities (ESAs) have proposed Regulatory Technical Standards (RTS) under the SFDR, which include standardised templates for pre-contractual and periodic disclosures for financial products. These templates outline the specific information that needs to be disclosed and the format in which it should be presented.</p> <p>It is important to note that while these templates provide a standardised format, they still allow for some flexibility in how entities describe their approach to integrating sustainability risks and their impact on investment returns.</p>
16.	<p><b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b></p>	<p>Norwegian legislation currently does not have a consolidated definition that encompasses the full scope of ESG. There are, however, numerous laws and regulations that pertain to environmental, social, and governance factors. Examples of such regulation are the EU Taxonomy, SFDR and section 3-3 c of the Norwegian Accounting Act, which are further detailed above.</p> <p>In line with the incorporation of the CSRD into Norwegian law, a legislative proposal was introduced in the spring of 2024, which will require amendments to the Norwegian Accounting Act and other Norwegian laws. This proposal includes a suggestion for a definition of ‘sustainability matters’ that mirrors the universally recognised elements of sustainability reporting covering all ESG factors.</p> <p>Since the Norwegian Transparency Act came into effect on 1 July 2022, there has been a notable increase in the focus on the social dimension of ESG in Norway. The Act, which is based on the UN’s Guiding Principles on Business and Human Rights and the OECD’s guidelines for multinational companies, aims to promote businesses’ respect for fundamental human rights and decent working conditions while ensuring public access to information. It imposes obligations on businesses, including the duty to provide information and carry out due diligence assessments that must be disclosed in an annual report.</p>
17.	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	<p>In Norway, the measurement of cross impacts between ESG goals is influenced by SFDR and the Taxonomy Regulation, both of which Norway has committed to implementing.</p> <p>The SFDR requires financial market participants and financial advisers to disclose how they integrate ESG risks and opportunities into their investment decisions and advisory processes. Further, financial market participants must consider the principal adverse impacts of their investment decisions on sustainability factors, or explain why they have chosen not to consider such impacts. If they consider principal adverse impacts, these disclosures include several mandatory sustainability factors covering environmental, social, and governance matters. With reference to the example of the coal mining company, this investment will not contribute to any adverse impact on sustainability factors relating to gender diversity, but it will likely contribute to adverse impact on one or more of the environmental sustainability factors. Thus, positive impact in one aspect will not compensate for negative impact in another.</p> <p>The Taxonomy Regulation provides a classification system for environmentally sustainable economic activities. To be classified as environmentally sustainable under the Taxonomy Regulation, an economic activity must make a substantial contribution to one or more of six environmental objectives, not cause significant harm to any of the other objectives and meet certain minimum social safeguards.</p> <p>In summary, while both environmental and social factors are considered in ESG disclosures under the SFDR and the Taxonomy Regulation, the emphasis is on ensuring that activities are environmentally sustainable and do not cause significant harm to other sustainability objectives.</p>

18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	Broadly speaking, ESG disclosure regulations aid investors in assessing companies' ESG performance and strategies, factors that have become increasingly important in investors' decision-making processes. Concurrently, it is evident that these new disclosure regulations will have significant implications for companies, requiring investments in areas like technology, administration, governance, and sustainability competencies to ensure proper implementation.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	A common sentiment is the need for unified regulation. The introduction of CSRD is widely seen as a positive step, as it is expected to lead to a more consistent and comparable ESG reporting system.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	Norway does not have specific mandatory ESG disclosure requirements in connection with securities issues beyond those related to financial reports and sustainability or similar reports.
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	Securities with a sustainability profile, such as green bonds and sustainability-linked bonds, have so far been regulated by private market initiatives such as ICMA's Green Bond Principles and Sustainability Linked Bond Principles. These have been based on voluntariness and have been flexible in terms of what can be defined as sustainable. Norway is in the process of implementing the EU's Green Bond Standard, which will link the use of proceeds to the EU taxonomy's definition of 'sustainable economic activities'. With this clarification and (voluntary) benchmark of what is considered green, it may become easier for authorities and stakeholders to address potential greenwashing issues in the future.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	N/A
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	<p>As mentioned above (eg, question 3 and question 6), large enterprises are required, under section 3-3 c of the Norwegian Accounting Act, to disclose a statement on corporate social responsibility that covers certain ESG matters. The statement should be provided in the annual report of the company or in another publicly available document. There is no requirement to have the social responsibility statement certified or verified by an independent party, however, if the information is included in the annual report of the company, the company's auditor is obligated to report deficiencies or inconsistencies between the financial statements and the information in the sustainability report if such are identified.</p> <p>In connection with the legislative proposal to implement the CSRD into Norwegian law, it has been proposed that sustainability reports should be certified to ensure the reliability of the reported information. The certification should be carried out by an independent auditor. The attestation statement should be given with moderate assurance, which represents a lower degree of assurance than what is required for the overall financial statements (adequate assurance).</p>



24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>The general ESG focus leads to increased focus on the board’s role in the companies’ ESG work. While the overarching responsibility for ESG factors currently rests with Norwegian boards in line with existing company law and internal control regulations, emerging ESG regulations are increasingly specifying and accentuating this responsibility. For instance, the CSRD is expected to heighten the expectations placed on the board’s role in sustainability matters and their competency to fulfil this role. There will also be requirements to disclose any incentive schemes related to sustainability issues for members of governing bodies. This trend is likely to intensify with the potential implementation of CS3D Norwegian law.</p> <p>This development is mainly driven by the introduction of new, stricter, and more detailed ESG regulations from both EU and Norway. These regulations identify the board as a central body responsible for ensuring ESG compliance.</p>
25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p><b>ISSB:</b> These standards are not mandatory for Norwegian companies, but some companies may choose to adopt these standards voluntarily to enhance their sustainability disclosures and align with international best practices.</p> <p><b>TNFD:</b> This guidance is not mandatory. Some Norwegian companies, particularly those in sectors with significant environmental impacts, may choose to use this guidance to enhance their disclosures.</p> <p><b>TPT:</b> As this is a UK initiative, it does not directly affect Norwegian companies. However, Norwegian companies with operations in the UK may need to consider this framework in their disclosures. Additionally, some companies may choose to adopt this framework voluntarily as a best practice.</p> <p><b>ESRS:</b> As a part of the EEA Agreement, Norway is expected to implement the CSRD, which encompasses the ESRS. This will significantly impact large Norwegian companies, which will be obliged to report according to these standards. As the ESRS introduces more extensive sustainability reporting requirements, companies will need to collect more sustainability information, including from their suppliers. This necessitates managing an increased volume of data collection and reporting. As such, we see our clients planning for this by enhancing their data collection processes and preparing for more comprehensive reporting.</p> <p>Since the ESRS builds upon existing reporting standards and initiatives, including the TCFD, these standards could indirectly affect Norwegian companies through the implementation of the CSRD. There are also overlaps between the ISSB and the ESRS.</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>In our experience, large public interest entities, which will be the initial subjects of the CSRD (from 2024 with reporting in 2025), have generally made substantial progress in preparing their reports. These companies, in our view, possess adequate resources to meet the forthcoming requirements, partly due to their adherence to similar voluntary standards in the past. However, the companies that will fall under the CSRD from 2025 and 2026, currently lack the necessary resources. Many of them will need to invest in resources, technology and processes to be able to comply with the reporting requirements.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>At present, Norwegian companies are not required to set climate-related targets. However, with the implementation of the CSRD, such targets will become a requirement for companies falling under its scope.</p>
28.	<p><b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b></p>	<p>It is not uncommon for Norwegian companies to make such voluntary commitments. Particularly, larger corporations in Norway have been known to make such commitments.</p>



29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>Expectations for ESG disclosures in Norway are on the rise, largely influenced by new EU regulations and a growing global emphasis on sustainable investments. This trend is anticipated to continue as regulations such as the CSRD are incorporated into Norwegian law, and as the CS3D is expected to follow, leading to more stringent reporting requirements and the need for holistic ESG due diligence assessments.</p> <p>An increase in legal cases related to greenwashing and information obligations, including climate lawsuits, is also expected. This trend could lead to a greater understanding of regulatory and compliance requirements as companies strive to mitigate risk.</p> <p>To adapt to ESG regulations and expectations in the market and society, businesses are increasingly viewing ESG requirements not just as a matter of compliance or risk management, but also as a strategic opportunity to fundamentally transform their business models.</p>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	Tone Østensen and Anne Katrine Sletbakk Ramstad, Advokatfirmaet Wiersholm.

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Pakistan

### Pakistan

1.	<b>Which jurisdiction are you covering?</b>	Pakistan
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>Pakistan has an extremely limited mandatory disclosure regime for ESG.</p> <p>The Listed Companies (Code of Corporate Governance) Regulations, 2019 ('Regulations') require listed companies to have at least one female director and this is also disclosed in the annual reports.</p> <p>Furthermore, the Securities and Exchange Commission of Pakistan (SECP) has issued the Stewardship Guidelines for Institutional Investors ('Stewardship Guidelines') to promote transparency in voting decisions. The Stewardship Guidelines are applicable to asset management companies, pension fund managers, private fund management companies, life insurers and employees' contributory funds managed by the investment advisers with equity holding in companies listed on the Pakistan Stock Exchange (PSX).</p> <p>According to the Stewardship Guidelines, institutional investors must produce a one-page compliance report annually, which should be published on their websites. This annual reporting is mandatory and follows a 'comply or explain' basis. Additionally, institutional investors should consider the effective application of the Listed Companies (Code of Corporate Governance) Regulations when applying the Stewardship Guidelines.</p>
3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	<p>Presently, mandatory requirements to disclose the number of female directors, as per the Regulations, are for listed companies only.</p> <p>The Stewardship Guidelines are applicable to Institutional Investors which are defined as 'asset management companies, pension fund managers, private fund management companies, life insurers and employees' contributory funds managed by the investment advisers with equity holding in companies listed on Pakistan Stock Exchange'.</p>
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	Please see response above.

5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	Please see response above.
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	Yes, as per the Stewardship Guidelines, Institutional Investors are mandated to disclose ESG-related policies in the form of an annual report on their websites.  However, mandatory disclosures for listed companies regarding female directors, as per the Regulations, are not to be made separately.
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	Annual reports under the Regulations are available with SECP and the annual reports under the Stewardship Guidelines are to be published on Institutional Investors' websites.
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	The Green Banking Guidelines issued by the State Bank of Pakistan, whose practical implementation is largely on a voluntary basis, encourage banks and development finance institutions to disclose their green banking activities and initiatives in their annual reports, in the 'Management Discussion and Analysis' section, as a separate point.  Nevertheless, leading corporates are voluntarily issuing ESG compliance reports and having ESG audits conducted to meet the requirements of their international suppliers and to garner investor confidence. The Pakistan Business Council is active in this regard in conducting ESG compliance audits for leading corporates.
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	SECP is the regulator for companies, and PSX is also the frontline regulator for listed companies. Since limited mandatory disclosure is required to be made in relation to the appointment of at least one female director on the board of listed companies, there is no separate penalty for failure to make ESG disclosure or separate ESG disclosure compliance. Late payment charges are applicable for late filing of annual returns. Additionally, there are no penalties or fines stipulated in the Stewardship Guidelines.
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	There are no penalties for false or misleading ESG disclosures specifically.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	No, Pakistan has an extremely limited mandatory ESG disclosure regime. It is expected that in the future Pakistani companies will be required to make ESG disclosures, as Pakistan is facing multiple climate change challenges. Notably, the SECP has published the Draft ESG Reporting Guidelines for Listed Companies in 2023 which will be voluntary in terms of compliance.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	No.
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	Please see response to question 2 above.

14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	No.
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	Not applicable.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	No.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	Not applicable given the rudimentary and basic disclosure regime.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	Given the rudimentary mandatory disclosure regime, there has been no investor value creation.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	Yes, international clients would like to see a greater, more transparent and effective disclosure regime. However, the domestic market is not focused on this yet. Nevertheless, as Pakistan faces multiple climate change challenges, it is expected that domestic clients will also wish to see this.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	Not applicable, given the rudimentary and basic disclosure regime.
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	There has been no guidance and no development on greenwashing given the rudimentary and basic disclosure regime. However, PSX's <i>Primer on ESG – Reporting Guidance for Listed Companies</i> , issued in April 2024, provides some insights into the future prospects of ESG compliance. Although this document mentions greenwashing, it does not offer any specific guidance on the matter.

22.	Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?	Not applicable given the rudimentary and basic disclosure regime.
23.	If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?	There are no mandatory external certification/assurance requirements in the law in connection with any sustainability report or in connection with any other ESG disclosures that are required to be made in Pakistan.
24.	What kind of developments have you seen in relation to board oversight and governance of ESG matters?	Besides the Stewardship Guidelines (as mentioned in our response to question 2), the PSX's <i>Primer on ESG – Reporting Guidance for Listed Companies</i> and the <i>Draft Guidelines on ESG Disclosures for Listed Companies, 2023</i> , there have been no other developments. Furthermore, the SECP also published the ESG Regulatory Roadmap for Capital Markets in Pakistan in 2022.
25.	<p>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<p><b>The sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June</b></p> <p>PSX's <i>Primer on ESG – Reporting Guidance for Listed Companies</i> suggests that ISSB standards will be largely taken into account.</p> <p>At COP 26 in November 2021, the International Sustainability Standards Board (ISSB) was established to develop global sustainability reporting standards akin to financial reporting standards. Within 18 months, the ISSB introduced two International Financial Reporting Standards (IFRS) Sustainability Disclosure Standards, endorsed by the International Organisation of Securities Commissions (IOSCO). IFAC advocated for these standards and expects jurisdictions to adopt them, with organisations such as the Institute of Chartered Accountants of Pakistan (ICAP) in Pakistan already working towards implementation.</p> <p>Therefore, a phased approach for the adoption of IFRS Sustainability Disclosure Standards has been recommended, which effectively begins the mandatory application to very large entities in Pakistan in the first year (beginning on or after 1 January 2025) covering both listed and unlisted companies, followed by large companies—also both listed and unlisted—in the second year (on or after January 2026), and subsequently the remaining listed companies, not covered in phases 1 and 2, in the third year (on or after 1 January 2027). Specific criteria for companies have been recommended to provide a distinction between the phase 1, 2 and 3 adoption stages. It is important to note that IFRS Sustainability Disclosure Standards are currently not mandatorily adopted by companies in Pakistan but will be in the future.</p> <p>Further, the requirement for mandatory external assurance on the sustainability reports is recommended from the second year of reporting by companies respectively falling in all phases.</p> <p><b>The first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD))</b></p> <p>There is no indication on this in Pakistan's context.</p> <p><b>The final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September</b></p> <p>There is no indication on this in Pakistan's context.</p> <p><b>The final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November</b></p> <p>There is no indication on this in Pakistan's context.</p>

26.	<b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b>	Since the mandatory disclosure requirements are only in the form of annual reports and apply to listed companies and institutional investors with equity in listed companies, we are of the view that these entities have the resources to fulfil the required disclosures.
27.	<b>Is it mandatory for companies to set climate-related targets?</b>	No.
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	No.
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	We expect that a proper code of ESG governance will be issued for listed companies to begin with which will involve more transparent and effective 'comply or explain' disclosures, and limited mandatory ESG-specific disclosures. Furthermore, companies will mandatorily have to adopt IFRS Sustainability Disclosure Standards in a phased approach as mentioned in our response to question 25.
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Rabel Z Akhund, Akhund Forbes. Founder and Managing Partner at Akhund Forbes, a corporate and commercial law firm in Pakistan. An Officer of the IBA Capital Markets Forum.</p> <p>Akhund Forbes is a top tier and leading corporate and commercial law firm in Pakistan that specialises in advising leading financial institutions, corporations and governments on their most challenging transactions and projects.</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Peru

### Peru

1.	Which jurisdiction are you covering?	Peru
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>Yes, but only for certain companies that are under the supervision of the Peruvian Securities Market Regulator (Superintendencia del Mercado de Valores or SMV) as explained in our answer to question 3 below. These companies must annually reveal to the market, as part of their disclosure obligations, the level of implementation of certain ESG standards. This disclosure is made through the 'Corporate Sustainability Report', which in turn is part of the annual report (<i>memoria annual</i>) that every company under the supervision of the SMV shall prepare and inform to the market through its filing with the SMV.</p> <p>The Corporate Sustainability Report contains a set of questions that shall be responded about the following aspects: (1) environment and climate change, which in turn includes environmental policy, solid waste, greenhouse gas emissions, water and energy, (2) social, which refers to stakeholders, labour rights, and human rights aspects; and (3) complementary information. Issuers shall respond if they comply or not with the topics mentioned in each of the questions, giving complementary explanations and providing evidence to support their answers.</p> <p>It is important to note that in Peru, the implementation of ESG standards is not mandatory. What is mandatory for the above-mentioned companies is to reveal to the market the extent to which they implement them.</p>
3.	If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?	Yes. The filing of the Corporate Sustainability Report is mandatory for issuers with securities registered in the Public Registry of the Securities Market (the PRSM) of the SMV as part of the general market segment. Therefore, it is not mandatory for issuers which only have securities registered in the PRSM but in other market segments such as the alternative securities market ( <i>mercado alternativo de valores</i> , created to facilitate the access to the securities market of companies whose annual revenues do not exceed PEN 350m or its equivalent in US dollars on average for the last five years).
4.	If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?	Please refer to answers to questions 2 and 3 above.

5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	As stated in our previous answers, issuers with securities registered in the PRSM of the SMV as part of the general market segment must file the Corporate Sustainability Report annually to the SMV as part of their annual reports.
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	Yes. ESG disclosure is made through the Corporate Sustainability Report, a new template for which was approved in 2020. The new template puts more emphasis on certain aspects of the disclosure of policies, actions and standards implemented by the supervised companies related to their governance and labour practices, as well as the impact of their operations on the environment and social development.
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	The Corporate Sustainability Report is filed annually with the SMV and can be found in the SMV's website. Furthermore, issuers are obliged to enable a link on its corporate website, through which the interested party is directed to the corresponding section of the Securities Market Portal where all the public information of the company is disclosed (eg, the Corporate Sustainability Report).
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	As mentioned before, the filing of the Corporate Sustainability Report is mandatory for issuers with securities registered in the PRSM as part of the general market segment. However, and in addition to the above, certain institutional investors such as private pension fund administrators, insurance companies and investment funds, inquire Peruvian issuers in which they plan to invest, about their ESG practices and policies as part of their investment eligibility analysis. Therefore, for these institutional investors to approve the investment as eligible, the issuer often needs to complete an ESG questionnaire prepared by the investor, which allows it to identify and assess the company's ESG standards, its level of implementation, and its commitment in connection with ESG matters.
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	The name of the regulator that monitors ESG disclosure compliance in Peru is Superintendencia del Mercado de Valores (Peruvian Securities Market Regulator). Failure to file the Corporate Sustainability Report is a 'serious' infraction, which may result in fines, suspension of securities trading, among other penalties. In the case of late filing, this constitutes a minor sanction, which results in a warning or a fine.
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	False or misleading ESG disclosures constitutes a 'very serious' infraction, which may lead to one of the following sanctions: fines or exclusion of a security from the registry.  The answer would not change if the issuer made the ESG disclosure voluntarily, since the applicable sanction is for the disclosure of false or inaccurate information to the market, regardless of whether it was made voluntarily or mandatorily.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	There is no tiered disclosure system in Peru. It is expected that the SMV will continue improving the content of the corporate sustainability report template in the coming years, as well as focusing its supervising role in order to assure that the information provided by the issuers through the Corporate Sustainability Report is transparent, complete, true and clear, so that it is a real comparison tool allowing investors to fully incorporate ESG parameters in their investment evaluations.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	As part of the Corporate Sustainability Report, the Peruvian regulator does not establish certifications or benchmarks to measure companies regarding the implementation of ESG standards. What we have observed is that the regulator, on the basis of the reports filed by the issuers, conducts a comprehensive study and prepares a consolidated annual report (the 'SMV Consolidated Annual Report') for the market, measuring, in general, the level of ESG standards implementation among issuers.  On other hand, on 8 November 2021, the Lima Stock Exchange (LSE) and S&P Dow Jones Indices launched a new ESG index (the S&P/BVL Peru General ESG Index), which includes ESG criteria, aiming to provide guidance to investors as to whether an investment qualifies as sustainable. This index provides local and international market participants with a new performance benchmark for listed companies that incorporates global ESG principles and scores.



		<p>The S&amp;P/BVL Peru General ESG Index has been designed to reflect the performance of companies that are listed on the S&amp;P/BVL Peru General index and which meet environmental, social and corporate governance criteria (defined by S&amp;P in its Corporate Sustainability Assessment). This index includes companies with ESG scores that are equal to or higher than the median of S&amp;P/BVL Peru General index, as well as current member companies that register an ESG score situated between the median and 25 per cent below the median score.</p> <p>As of May 2024, pursuant to the information provided in the Lima Stock Exchange webpage, shares of 14 companies are included in the S&amp;P/BVL Peru General ESG index.</p> <p>In addition, whenever an issuer seeks to place securities through a public offer which are to be marketed as sustainable or ESG linked, in order for those securities to be listed in the LSE with a specific code showing that quality, it is necessary, among other requirements, that the issuer complies with respect to the securities with the applicable guidelines approved by the LSE and file an expert report confirming the fulfilment of the conditions. Such report must be prepared by a third party affiliated to the Climate Bonds Initiative or who appears as an external review contributor to the <i>Guidelines for Green, Social and Sustainability Bonds External Reviews</i> in the International Capital Markets Association's web page. During the term of the securities, the issuer shall file an annual report prepared by an expert who complies with the above-mentioned qualifications, verifying that the securities keep complying with the applicable conditions.</p>
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	<p>As described in our answer to question 2 above, the Corporate Sustainability Report covers the following matters: environment and climate change, social, and complementary aspects.</p> <p>As part of the environment and climate change section of the report, there are questions regarding environmental policy, solid waste, greenhouse gas emissions, water and energy, such as: (1) Does the company measure its water consumption in all its activities? (2) Does the company have objectives or targets to reduce GHG emissions? (3) Does the company measure its energy consumption?</p> <p>In the social part of the report, some of the questions are: (1) Does the company have a labour policy? (2) Does the company have an internal and external management policy or system that includes a complaints channel to deal with impacts on human rights? (3) Does the company include ESG aspects in its criteria for purchasing and/or selecting suppliers of goods and/or services?</p> <p>Finally, in the complementary information part of the report, there are two questions where the issuers are requested to answer if they have any international certification on corporate sustainability, and if they prepare a sustainability report different from the Corporate Sustainability Report that they file with the SMV.</p>
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	<p>The Corporate Sustainability Report contains 12 questions regarding environment and climate change to measure the ESG standards of the company in this aspect. Some of the questions are:</p> <ol style="list-style-type: none"> <li>1. Does the company measure its water consumption in all its activities?</li> <li>2. Does the company have objectives or targets to reduce GHG emissions?</li> <li>3. Does the company measure its GHG emissions?</li> <li>4. Has the company been subject to any investigation, complaint, public controversy or had any corrective measure, precautionary measure, fine or other sanction involving violation of environmental regulations imposed?</li> <li>5. Does the company have an environmental policy or management system that includes environmental commitments?</li> <li>6. Does the company measure its energy consumption?</li> </ol>
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	<p>The disclosures made through the Corporate Sustainability Report are meant to be standardised.</p>

16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	Yes. In the case of the Corporate Sustainability Report, the questions that are part of the template are clear and direct as to their scope.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	Since neither the implementation nor a specific level of implementation of ESG standards is mandatory in Peru, there are no specific legal requirements referred to them that apply to investments. As explained in our previous answers, what is mandatory to certain companies is to disclose the level of ESG standards implementation. Such disclosure seeks to provide investors with an objective and comparison tool to measure and evaluate, according to their own internal policies and criteria, if a specific investment is convenient for them or not. In other words, investors are the ones who internally decide their own ESG goals in connection with their investments and how cross impacts between those goals are taken into account when analysing and taking their investment decisions.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	ESG standards are still a recent trend in Peru. Notwithstanding, in our view, the mandatory disclosure of information regarding ESG standards as part of the annual Corporate Sustainability Report, together with the additional disclosure requirements related to ESG standards made by some institutional investors within their investment assessment (see answer to question 8), is adding value to the market and investors. On one hand, such disclosure is helping investors to analyse the sustainability model of the companies they invest or plan to invest in and in that way, to take better investment decisions, and on the other hand, issuers interested in performing sustainable practices now have a tool that allows them to differentiate from others which do not follow those standards. It is true, however, that as of today, apart from being preferred by certain institutional investors to perform investments, there are no other tangible benefits that issuers see (such as better interest rates) on implementing ESG standards.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	As mentioned before, ESG standards are still a recent trend in Peru. Nevertheless, we have observed in our clients (eg, institutional investors) that they are interested in having more transparent and comprehensive ESG disclosure, that being the reason why this type of client has elaborated its own ESG questionnaire, as explained in question 8.  Among the issuers, however, some of them are still resistant to a more comprehensive disclosure on ESG compliance.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	Currently, the SMV has not established any mandatory disclosure requirements other than the Corporate Sustainability Report, referred in our answer to question 2, above. In addition, the SMV has broad powers to request evidence to prove the truthfulness of the answers included in the report. It is important to note that, as mentioned in question 10, false or misleading ESG disclosures constitute a 'very serious' infraction, which may lead to one of the following sanctions: fines or exclusion of a security from the registry. As such, supervised companies involved in greenwashing cases could be sanctioned by the SMV if the disclosure of the Corporate Sustainability Report is false and/or misleading. From our point of view, such sanctions would be a deterrence measure in order to avoid any greenwashing scenario.
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	We are not aware of any new regulatory draft bill with respect to new ESG disclosure obligations to issuers. Nevertheless, in a September 2022 interview, Jose Manuel Peschiera (former Superintendent of the Securities Market), mentioned that the SMV seeks to reach an ESG code (ie, a good corporate governance and sustainability in a single body and with a single report). As such it is expected that in the future, new ESG regulations and/or obligations would be implemented in the Peruvian Securities Market.  Notwithstanding the above, it is important to point out that in 2023 the National Institute for the Defense of Competition and the Protection of Intellectual Property (Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual or INDECOPI), the Peruvian entity that supervises, among others, the protection to consumers and defense of competition, published the Environmental Advertising Guide ( <i>Guía de Publicidad Ambiental</i> ).  The guide establishes principles to avoid misleading corporate advertising practices in the market regarding the impact of the products or services offered in relation to the environment (greenwashing). As mentioned in the Guide, INDECOPI will oversee supervising and sanctioning greenwashing practices (in respect to advertising activity) in Peru.

		Thus, in the general framework of the Peruvian regulations, companies are obliged to advertise their products correctly, without providing misleading information, as is the case with greenwashing. In this regard, it would be reasonable to expect that the SMV (as INDECOPi) would implement specific measures regarding greenwashing in the coming years, as part of their role as the Peruvian Governmental Authority that supervise the securities market.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	<p>We are not aware of any administrative sanctioning procedure or legal process against an issuer due to ESG disclosures.</p> <p>However, in the latest SMV Consolidated Annual Report, published in 2023, it was stated that 26 companies have been subject to investigation, complaints, public controversies or have been imposed with corrective measures, precautionary measures, fines, or other sanctions related to the violation of environmental regulations.</p> <p>Also, INDECOPi reported that, since 2020 up to the publication of the Environmental Advertising Guide referred to in question 21, more than 800 investigations have been initiated for alleged greenwashing practices.</p>
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	Please refer to our answer to question 12.
24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	<p>The implementation of ESG policies is progressively gaining ground among issuers.</p> <p>As such, boards of supervised companies are progressively approving the internal policies in respect to ESG matters. Indeed, according to the latest SMV Consolidated Annual Report published in 2023, the SMV stated that from the information obtained from the supervised companies, 78 out of 113 pointed out that their environmental policy was approved by their board; and, in respect to labour matters, only 101 companies out of 148 mentioned that such policy was approved by their board.</p>
25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p>As of this date, only the Corporate Sustainability Report template has been approved. In addition to that, please refer to the standards mentioned in the last paragraph of question 12 in connection with the qualification of a security as sustainable or linked to ESG for listing in the LSE.</p> <p>In a September 2022 interview, Jose Manuel Peschiera (former Superintendent of the Securities Market), mentioned that the SMV was waiting for the publication of the International Sustainability Standards Board (ISSB), in order to analyse how to implement them under the Peruvian regulations. However, as of to date, we are not aware of any express intention of the SMV related to the implementation of that or other standards.</p> <p>Nevertheless, as mentioned in our answer to question 11, it is expected that the SMV will continue improving the content of the corporate sustainability report template in the coming years.</p>

26.	<b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b>	<p>Yes. As explained before, Peruvian law only requires the disclosure of the answers to the Corporate Sustainability Report (related to the level on implementation of ESG standards) which, in our view, does not constitute a complicated report to fulfil, as the questions that are part of the template are clear and direct as to their scope.</p> <p>Moreover, the fulfilment of this regulatory obligation is only mandatory for certain issuers. Indeed, as stated in question 3, it is not mandatory for issuers registered in the alternative securities market, which are, in comparison, smaller companies than the ones obliged to fulfil the filing of the Corporate Sustainability Report.</p>
27.	<b>Is it mandatory for companies to set climate-related targets?</b>	<p>As mentioned in question 2 above, the implementation of ESG standards, including the setting of climate-related targets, is not mandatory for any company in Peru. What is mandatory for certain companies is to reveal the extent to which they implement them. In regard to the Corporate Sustainability Report, the template includes 12 questions, in respect to environment and climate change matters.</p>
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	<p>Based on the latest SMV Consolidated Annual Report published in 2023, a 47.2 per cent progress was reported in respect to the implementation of environmental and climate change standards and actions by the issuers.</p> <p>As explained in question 18, in our view, the mandatory disclosure of the annual Corporate Sustainability Report, together with the additional disclosure requirements related to ESG standards made by some institutional investors as part of their investment assessment (see question 8), is adding value to the market and investors. On one hand, such disclosure is helping investors to analyse the sustainability model of the companies they invest or plan to invest in and in that way, to take better investment decisions, and on the other hand, issuers interested in performing sustainable practices have now a tool that allows them to differentiate them from others which don't follow those standards.</p>
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>Please refer to question 11 above.</p>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Nydia Guevara Villavicencio is Partner of the Finance and M&amp;A department at Rodrigo, Elías &amp; Medrano Abogados. She specialises in the design, structuring and negotiation of multiple financing transactions including public and private offerings of securities, project finance, syndicated loans, trade finance and derivatives. Further, her practice is focused on structuring financing deals, local and cross-border, mainly through capital markets operations, from the side of Peruvian and international banks in their role as arrangers or lenders, and from the side of companies as obligors. She also assists different local and foreign entities such as banks, investment fund administrators, insurance companies, brokerage companies and clearing houses in regulatory matters.</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Poland

### Poland

1.	<b>Which jurisdiction are you covering?</b>	Poland
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>Yes. Various ESG-related disclosures must be made by market participants operating in Poland. These disclosure requirements mainly stem from the following EU or national (Polish) legal acts:</p> <ol style="list-style-type: none"> <li>1. regulations implementing the Non-Financial Reporting Directive (NFRD) to Polish law: the Accounting Act of 29 September 1994 (unified text: Journal of Laws of 2023, item 110, as further amended) (the 'Accounting Act') and the Regulation of the Minister of Finance of 29 March 2018 on current and periodic information provided by issuers of securities and conditions for recognising equivalent information required by the laws of a non-Member State (the 'Regulation');</li> <li>2. the EU Taxonomy Regulation;</li> <li>3. the Sustainable Finance Disclosure Regulation (SFDR);</li> <li>4. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176 27.6.2013, p 1) (the CRR);</li> <li>5. the Benchmarks Regulation (BMR); and</li> <li>6. Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347 28.12.2017, p 35) (the 'STS Regulation').</li> </ol> <p>On 16 December 2022 a Directive of the European Parliament and of the Council No 2022/2464 dated 14 December 2022 amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014 regarding the corporate sustainability reporting was published. The EU members should adopt respective national acts implementing the Corporate Sustainability Reporting Directive (CSRD) within 18 months of it coming into force (ie, by 6 July 2024). On 19 April 2024 the Polish Ministry of Finance published a draft act implementing the CSRD (ie, an act amending the Accounting Act, the act on statutory auditors, audit firms and public supervision and certain other acts).</p> <p>Certain additional disclosure obligations revolving around ESG matters have also been implemented in certain Polish legal acts, for example, management companies must disclose their engagement in listed companies, where they explain how they monitor these portfolio companies from the perspective of non-financial risks. These types of disclosure requirements stem from various legal acts (also at the EU level), which were not dedicated to ESG monitoring and, hence, will not be the subject of our further analysis below.</p>

<p>3.</p>	<p><b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b></p>	<p>Yes, the scope of application of the legal acts indicated in our answer to question 2 (and, consequently, of ESG reporting requirement) differs depending on the act in question.</p> <p>For example, under the draft act implementing the CSRD, sustainability disclosure obligations are supposed to be imposed on certain entities (eg, corporate entities, certain partnerships, insurance and reinsurance companies, as well as credit institutions within the meaning of the CRR), provided that they fall within the category of either large entity or medium-sized/small entity which are issuers of securities admitted to trading on one of the regulated markets of the European Economic Area:</p> <ul style="list-style-type: none"> <li>• small entity means an entity which in the reporting year and the year preceding that year, met at least two of the following three conditions: their total balance sheet assets were not greater than PLN 33m, their net revenue from sales of goods and products was not greater than PLN 66m, they employed not more than 50 staff;</li> <li>• medium-sized entity means an entity which in the reporting year and the year preceding that year, met at least two of the following three conditions: their total balance sheet assets were not greater than PLN 110m, their net revenue from sales of goods and products was not greater than PLN 220m, they employed not more than 250 staff; and</li> <li>• large entity means an entity which in the reporting year and the year preceding that year, met at least two of the following three conditions: their total balance sheet assets were greater than PLN 110m, their net revenue from sales of goods and products was greater than PLN 220m, they employed more than 250 staff.</li> </ul> <p>Sustainability disclosure obligations will apply also to entities which are a parent of a large capital group, as well as to subsidiaries and branches with their registered office in Poland that meet certain conditions and size criteria, whose ultimate parent entity or standalone entity, respectively, is subject to the law of a third country.</p> <p>The new provisions shall apply for the first time to sustainability reporting or sustainability reporting of a capital group prepared for the financial year beginning:</p> <ol style="list-style-type: none"> <li>1. after 31 December 2023 – in the case of the largest entities that already report non-financial information (under the Accounting Act implementing the NFRD);</li> <li>2. after 31 December 2024 – in the case of large entities and parent entities of a large group, other than those specified in question 1), and Bank Gospodarstwa Krajowego;</li> <li>3. after 31 December 2025 – in the case of: <ol style="list-style-type: none"> <li>a) medium-sized entities which are issuers of securities admitted to trading on one of the regulated markets of the European Economic Area,</li> <li>b) small entities which are issuers of securities admitted to trading on one of the regulated markets of the European Economic Area; and</li> </ol> </li> <li>4. after 31 December 2027 – in the case of subsidiaries or branches with their registered office in Poland that meet certain conditions and size criteria, whose ultimate parent entity or standalone entity, respectively, is subject to the law of a third country.</li> </ol> <p>At present, under the Accounting Act, which implements the NFRD in the Polish legal system, non-financial disclosure obligations are imposed on certain entities (eg, banks, insurers, issuers of securities seeking or planning to seek their admission to public trading, e-money institutions and payment institutions) provided they have the requisite legal form (eg, a corporation or limited joint-stock partnership) and which, in the reporting year and the year preceding that year, employed more than 500 staff and met one of the following conditions: their total balance sheet assets were greater than PLN 85m or their net revenue from sales of goods and products was greater than PLN 170m. Additionally, this same group of entities is also subject to Article 8 on disclosure obligations under the EU Taxonomy Regulation (ie, disclosures on how and to what extent an undertaking's activities are associated with economic activities that qualify as environmentally sustainable under the EU Taxonomy Regulation).</p> <p>In accordance with the Regulation, listed companies meeting two of the following three criteria:</p>
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		<p>1. average annual employment exceeding 250 employees;</p> <p>2. balance sheet size exceeding PLN 85m; and</p> <p>3. net turnover exceeding PLN 170m;</p> <p>are required to provide information on their company's diversity policy in relation to its administrative, management and supervisory bodies.</p> <p>In turn, under the SFDR, reporting requirements apply to two groups of entities: financial market participants offering financial products as defined in the SFDR and financial advisers providing insurance or investment advice. Some further details on the scope of information that should be disclosed by these entities under the SFDR are provided in the EU Taxonomy Regulation.</p> <p>Under the CRR, large institutions that have issued securities admitted to trading on a regulated market (as defined in MiFID II) of any Member State shall disclose information on ESG risks.</p> <p>On the other hand, ESG-related disclosure obligations under the BMR apply to benchmark administrators, whereas the STS Regulation requires the securitisation originator, sponsor and securitisation special purpose entity to publish certain ESG-related information in cases in which the underlying exposures of a given securitisation are residential loans, or auto loans or leases, such as environmental performance of the assets financed by such loans or leases.</p>
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	Please refer to our answer to question 3.
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	No general rule applies in all scenarios: certain ESG-related disclosures must be made periodically (eg, those under the Accounting Act, that is, stemming from the NFRD (the same rule would apply once the Accounting Act has been revised in order to implement the CSRD)). However, other disclosures are transaction-triggered (this is the case, eg, under the STS Regulation) or even have a one-off nature (with a duty to update published information in the case of changes, eg, the case of some SFDR disclosures).
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>Separate reports are not necessarily required. The format depends on the nature of the given disclosure and the legal act prescribing formal requirements as to such disclosures.</p> <p>According to the draft act implementing the CSRD, information necessary to understand the entity's impact on sustainability issues and the impact of sustainability issues on development, results and situation of the entity (sustainability reporting) is supposed to be presented in a separate part of their management report (which is a part of the annual report). The management report is submitted to the commercial register together with the entity's annual report and, additionally, published on its website.</p> <p>At present, entities subject to disclosure requirements under the Accounting Act (implementing the NFRD) are generally obligated (with certain exemptions, eg, for companies that are part of capital groups) to prepare, together with their annual reports, a statement on non-financial information that should comprise a part of this annual report. Such a statement, however, may be omitted if a company prepares, together with the annual report, a separate report on non-financial information and posts it on its website within six months of the balance sheet date.</p> <p>A company's annual report should also cover information about its diversity policy, as prescribed by the Regulation.</p>



		<p>In relation to SFDR-related disclosures, regulatory technical standards (RTS) adopted by the European Commission in April this year are scheduled to apply from 1 January 2023 (the Commission-delegated regulation adopting these RTS is subject to review by the Council of the EU and European Parliament, so the final application date may be still subject to change). Financial market participants subject to the SFDR will be required to follow these RTS when disclosing sustainability-related information under the SFDR (and are encouraged to also follow them during the interim period until the delegated regulation comes into force). The RTS include templates to be used by market participants when preparing their ESG disclosures under the SFDR, inter alia, templates of periodic disclosure documents or of principal adverse sustainability impact statements.</p> <p>Information to be disclosed pursuant to Article 8 of the EU Taxonomy Regulation (ie, on how and to what extent an undertaking's activities are associated with economic activities qualifying as environmentally sustainable under Articles 3 and 9 of the EU Taxonomy Regulation) generally must be published in an undertaking's non-financial statement or consolidated non-financial statement. Details on content, presentation and methodology of the information to be disclosed pursuant to Article 8 of the EU Taxonomy Regulation are included in Commission Delegated Regulation 2021/2178 which includes, among others, standardised templates to be used when presenting obligatory KPIs.</p> <p>For ESG risks disclosures under Article 449a of the CRR, such disclosures shall be prepared in accordance with the Commission Implementing Regulation (EU) 2021/637 of 15 March 2021 laying down implementing technical standards with regard to public disclosure by institutions of the information referred to in Titles II and III of Part Eight of the CRR Regulation. The Commission Implementing Regulation (EU) 2021/637 provides templates for Article 449a disclosures, which are aimed at ensuring comparability of data.</p> <p>Public consultations of the European Supervisory Authorities (ESAs) on the content, methodologies and presentation of information on sustainability indicators for simple, transparent and standardised (STS) securitisations were finalised at the start of July 2022 and resulted in submitting to the European Commission Draft RTS on the ESG impact disclosure for STS securitisations at the end of May 2023. These RTS are not intended to create a framework for 'sustainable' or 'green' securitisations but are aimed at enabling originators to disclose the principal adverse impact (the PAI) of STS securitisations using reporting which is broadly aligned with the SFDR. In March 2024, the European Commission adopted a delegated regulation (not yet in force) that will supplement the STS Regulation with the above-mentioned RTS where the underlying exposures are residential loans or auto loans or leases. The disclosure regime under the RTS will be voluntary – the originators will be able to choose whether to comply with their original disclosure requirements set out in Articles 22(4) and 26d(4) of the STS Regulation or the disclosure requirements set out in the RTS. If they choose the latter option, they will have to disclose the information related to PAIs on sustainability factors by using templates, definitions and formulas laid down in the annex to the delegated regulation.</p> <p>For ESG-related disclosures under the BMR, two delegated regulations (Commission Delegated Regulation (EU) 2020/1816 and Commission Delegated Regulation (EU) 2020/1817) set out templates that must be used by benchmark administrators when preparing their (1) benchmark statement in which they explain how ESG factors are reflected in each benchmark or family of benchmarks provided and published and (2) their explanation under Article 13(1)(d) of the BMR on how key elements of the benchmark methodology reflect ESG factors for each benchmark or family of benchmarks.</p>
7.	<p><b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b></p>	<p>Locations differ depending on the type of regulation (or even type of disclosure). For example, for the SFDR, depending on the specific disclosure obligation, required information may be:</p> <ol style="list-style-type: none"> <li>1. on the obliged entity's website;</li> <li>2. part of the pre-contractual information provided to the client on the basis of the relevant sectoral legislation; and</li> <li>3. part of information disclosed in periodic reports under relevant sectoral legislation.</li> </ol> <p>In case of the STS Regulation and the related delegated regulation, the securitisation originators will have to make the ESG disclosures available in a searchable electronic format, and as regards public transactions, they will also have to provide the disclosures via the securitisation repository.</p> <p>For the NFRD (the same rule would apply once the Accounting Act has been revised in order to implement the CSRD), EU Taxonomy Regulation and BMR disclosures, please see our answer to question 6.</p>



8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	N/A
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>The Polish Financial Supervision Authority (PFSA) (Komisja Nadzoru Finansowego) may be indicated as the supervisory authority with the broadest ESG-related supervisory powers, as it supervises the broadest group of entities obligated to disclose ESG factors (eg, securities issuers, banks, insurance companies and investment firms).</p> <p>PFSA powers and scope of penalties for non-compliance with mandatory ESG disclosures differ depending on the ESG disclosure requirement in question.</p> <p>For example, when the PFSA monitors the compliance of securities issuers with their information obligations (including those under the NFRD and Article 8 of the EU Taxonomy Regulation), it often issues recommendations to be implemented by a given supervised entity in the case of identified irregularities.</p> <p>The PFSA does not yet have instruments to penalise those market players who are not SFDR-compliant, but this is likely to change in the near future with the entry into force of an act that will vest the PFSA with powers in respect to SFDR compliance supervision. The PFSA will be granted authority to impose various penalties on those market players who breach their obligations under the SFDR:</p> <ol style="list-style-type: none"> <li>1. prohibit the person responsible for a breach from acting as a member of the management board or in a managerial capacity in entities that are financial market participants for a period of not less than one month and not more than one year;</li> <li>2. impose a financial penalty on a financial market participant not exceeding PLN 21,569,000 or 3 per cent of net revenue from the sale of goods and services and financial operations, or three times the amount of benefits gained or losses avoided as a result of the breach if possible to determine them; and</li> <li>3. impose a maximum pecuniary penalty of PLN 3,019,660 on the person responsible for a breach, who at that time acted as a member of the management board of a financial market participant.</li> </ol> <p>Non-compliance with ESG transparency requirements under the STS Regulation may also be subject to PFSA penalties: for example, the PFSA may prohibit the person responsible for a breach from acting as an officer or director of securitisation, special purpose entities, originators or sponsors, respectively, for a period of not less than one month and not more than one year, or may impose a pecuniary penalty (maximum of at least PLN 20,869,500 in the case of individuals and the same amount or ten per cent of total annual turnover, whichever is higher, in the case of legal entities). Those sanctions and measures should be effective, proportionate and dissuasive.</p> <p>Penalties for failure to comply with ESG disclosure requirements stemming from the BMR are similar and include pecuniary penalties (PLN 2,212,750 in the case of individuals and PLN 4,425,500 or 10 per cent of total annual revenue, whichever is higher, in the case of legal entities), a power to suspend the management board member responsible for an identified breach for a maximum period of 12 months or, in the case of serious and persistent breaches, order the dismissal of the management board member responsible for the uncovered breach.</p> <p>Supervisory measures available to the PFSA in the case of non-compliance of a given bank/investment firm with its obligations under the CRR are broad and include a right, inter alia, to demand that the chair of the bank's management board be dismissed, to impose a pecuniary penalty or to even withdraw the bank's/investment firm's authorisation.</p> <p>Non-compliance with certain disclosure obligations may also be subject to criminal liability, for example, disclosure obligations under the Accounting Act and the Regulation (fine, restriction of liberty or even imprisonment of up to two years depending on the infringement).</p>

10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	Please see our response to question 9.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	<p>Please refer to our answer to question 6.</p> <p>As to further ESG disclosure requirements, yes, such additional disclosures are expected in the future. The main developments will include the following:</p> <ol style="list-style-type: none"> <li>1. regulations implementing the CSRD to Polish law: please refer to our reply to question 2;</li> <li>2. changes to Article 449a of the CRR in the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 regarding requirements for credit risk, credit valuation adjustment risk, operational risk and market risk, as well as the output floor (published in October 2021), and which proposes the extension of Article 449a disclosure requirements to all institutions subject to the CRR (also those that are small and non-complex). According to the changes in Article 449a institutions shall disclose: <ol style="list-style-type: none"> <li>a) information on ESG risks, including physical risks and transition risks, and the total amount of exposures to fossil fuel sector entities as defined in Article 4, point (152a);</li> <li>b) climate targets and transition plans, including absolute carbon emission reduction targets, submitted in accordance with Article 76(2) of Directive 2013/36/EU, and the progress made towards implementing them;</li> <li>c) how the institution's business model and strategy take account of ESG risks faced by the undertaking;</li> </ol> </li> <li>3. regulations implementing the new Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (the CS3D) which was recently formally adopted by the European Parliament; it will require companies to identify and, where necessary, prevent, end or mitigate the adverse impacts of their activities on human rights, such as child labour and exploitation of workers, and on the environment, for example, pollution and biodiversity loss; companies not subject to the CSRD, but which will be subject to the CS3D, will be required to report on matters covered by the CS3D by publishing an annual statement on their website;</li> <li>4. certain ESG-related disclosure requirements will apply starting from 21 December 2024 in connection with the Regulation 2023/2631 of the European Parliament and of the Council on European green bonds (the 'EU GBS Regulation'). The Regulation introduces standard forms of disclosure and reporting for European Green Bond issues, requiring disclosure of methodologies and key assumptions used when preparing reports and external review of the information on the use of proceeds of the European Green Bond, in order to facilitate comparability of European Green Bond issues;</li> <li>5. prospective changes to the EU Taxonomy Regulation focusing on social objectives; and</li> <li>6. prospective changes to the STS Regulation: in March 2022 the EBA published a report on the development of a sustainable securitisation framework (under Article 45a of the STS Regulation). Although the EBA concluded that it would be premature to establish a separate sustainable securitisation framework at this stage, it also pointed out that the EU GBS Regulation, once adopted, should apply to securitisation. The EU GBS Regulation was eventually adopted in November 2023 (but applying from the end of December 2024) and takes into account the EBA's proposal. Moreover, in the report the EBA suggested extending voluntary PAI disclosures to non-STS securitisations as well.</li> </ol>

<p>12.</p>	<p><b>Is there a system of ESG certification or benchmarks that need to be met to have an ‘ESG Approved/Compliant’ status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b></p>	<p>In the EU, the EU Taxonomy Regulation sets out criteria that must be met for a business to be considered environmentally sustainable. For this to happen, it is to be ascertained that such a business:</p> <ol style="list-style-type: none"> <li>1. makes a significant contribution to one or more environmental goals: <ol style="list-style-type: none"> <li>a. climate change mitigation;</li> <li>b. adaptation to climate change;</li> <li>c. sustainable use and protection of water and marine resources;</li> <li>d. transition to a closed-loop economy;</li> <li>e. pollution prevention and control; and</li> <li>f. protection and restoration of ecosystem biodiversity;</li> </ol> </li> <li>2. does not cause serious harm to any environmental objective;</li> <li>3. provides a minimum of social and governance safeguards; and</li> <li>4. meets technical eligibility criteria.</li> </ol> <p>Further details on the above criteria are included in various delegated regulations under the EU Taxonomy Regulation.</p> <p>There is presently no separate system/authority responsible for ESG certification, although in February 2024 the European Council and Parliament reached a provisional agreement on a proposal for a regulation on environmental, social and governance (ESG) rating activities. The objective is to enhance investor confidence in sustainable products by improving transparency and reliability in ESG ratings.</p> <p>An EU Ecolabel for retail financial products is also being prepared at the EU level.</p>
<p>13.</p>	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p>We partially included our answer to this question in preceding responses (particularly in relation to the CRR, the BMR and the STS Regulation). Below, we elaborate on some additional details relating to the NFRD/the CSRD, the EU Taxonomy Regulation and the SFDR disclosures.</p> <p>According to the draft act implementing the CSRD, the sustainability reporting (which constitutes a separate part of the management report on the entity) is supposed to comprise:</p> <ul style="list-style-type: none"> <li>• a brief description of the undertaking’s business model and strategy, including:</li> <li>• the resilience of the undertaking’s business model and strategy in relation to risks related to sustainability matters;</li> <li>• the opportunities for the undertaking related to sustainability matters;</li> <li>• the plans of the undertaking, including implementing actions and related financial and investment plans, to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement under the United Nations Framework Convention on Climate Change adopted on 12 December 2015 (the ‘Paris Agreement’) and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119 of the European Parliament and of the Council, and, where relevant, the exposure of the undertaking to coal-, oil- and gas-related activities;</li> <li>• where relevant, the exposure of the undertaking to coal-, oil- and gas-related activities;</li> <li>• how the undertaking’s business model and strategy take account of the interests of the undertaking’s stakeholders and of the impacts of the undertaking on sustainability matters;</li> <li>• how the undertaking’s strategy has been implemented with regard to sustainability matters;</li> </ul>

	<ul style="list-style-type: none"> <li>• description of the time-bound targets related to sustainability matters set by the undertaking, including, where appropriate, absolute greenhouse gas emission reduction targets at least for 2030 and 2050, a description of the progress the undertaking has made towards achieving those targets, and a statement of whether the undertaking's targets related to environmental factors are based on conclusive scientific evidence;</li> <li>• description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, and of their expertise and skills in relation to fulfilling that role or the access such bodies have to such expertise and skills;</li> <li>• description of the undertaking's policies in relation to sustainability matters;</li> <li>• information about the existence of incentive schemes linked to sustainability matters which are offered to members of the administrative, management and supervisory bodies;</li> <li>• description of the due diligence process implemented by the undertaking with regard to sustainability matters, and, where applicable, in line with EU requirements on undertakings to conduct a due diligence process;</li> <li>• the principal actual or potential adverse impacts connected with the undertaking's own operations and with its value chain, including its products and services, its business relationships and its supply chain, actions taken to identify and monitor those impacts, and other adverse impacts which the undertaking is required to identify pursuant to other EU requirements to conduct a due diligence process;</li> <li>• undertaking a description of the principal risks to the undertaking related to sustainability matters, including the undertaking's principal dependencies on those matters, and how the undertaking manages those risks;</li> <li>• indicators relevant to the disclosures referred to above.</li> </ul> <p>Certain entities (ie, a small entity and a medium-sized entity which is an issuer of securities admitted to trading on one of the regulated markets of the EEA, a small and non-complex institution under the CRR, as well as an internal insurance company and a reinsurance company within the meaning of the Act of 11 September 2015 on insurance and reinsurance activities) are allowed to prepare sustainability reporting on simplified rules. Specific rules in respect of sustainability reporting regard capital groups.</p> <p>At present, in relation to NFRD-related disclosures (which pertain to a given entity's own business), the Accounting Act (implementing the NFRD) requires that an entity's statement on non-financial information should include at least:</p> <ol style="list-style-type: none"> <li>1. a brief description of the entity's business model;</li> <li>2. key non-financial performance indicators related to the entity's operations;</li> <li>3. a description of the entity's policies with respect to social, labour, environmental, human rights and anti-corruption issues, as well as a description of the results of applying these policies;</li> <li>4. a description of due diligence procedures if the entity applies them as part of the policies referred to in point (3); and</li> <li>5. a description of significant risks associated with the entity's activities that may adversely affect the issues referred to in point (3), including risks associated with the entity's products or its relationship with the external environment, including counterparties, and a description of the management of these risks.</li> </ol> <p>In relation to SFDR disclosures, it should be noted that these cover: (1) information about the entity's own financial products and services, but based on information about 'someone else's' activities that these products or services finance (product-level disclosures); and (2) information on the negative impact of the investment activities of a financial institution, for example, on the environment; however, data on the activities of the issuer/finance company also remain necessary in this respect (entity-level disclosures). In general, SFDR disclosures may be divided into three categories: (1) disclosures related to adverse impacts of investment decisions on sustainability factors; (2) disclosures relating to the consideration of sustainability (ESG) risk in investment processes; and (3) disclosures relating to sustainability information with respect to financial products. Further details on the content and format of SFDR disclosures will be included in the so-called SFDR level 2, that is, a European Commission-delegated regulation (adopted by the European Commission in April in 2022 and awaiting scrutiny by the European Parliament and Council of the EU).</p>
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		<p>As already mentioned in our preceding answers, under Article 8 of the EU Taxonomy Regulation, information on how and to what extent an undertaking's activities are associated with economic activities that qualify as environmentally sustainable under Articles 3 and 9 of the EU Taxonomy Regulation need to be disclosed. In particular, non-financial undertakings need to disclose the following in accordance with Article 8(2) of the EU Taxonomy Regulation:</p> <ol style="list-style-type: none"> <li>1. the proportion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable under Articles 3 and 9 of the EU Taxonomy Regulation; and</li> <li>2. the proportion of their capital expenditure (CapEx) and proportion of their operating expenditure (OpEx) related to assets or processes associated with economic activities that qualify as environmentally sustainable under Articles 3 and 9.</li> </ol> <p>Financial undertakings are also covered by Article 8 disclosures, but the EU Taxonomy Regulation itself does not provide for any KPIs in relation to them. Details on Article 8 disclosures are included in the Commission Delegated Regulation 2021/2178, which applies to both in-scope financial and non-financial undertakings. For example, banks have to disclose the green asset ratio (the so-called GAR ratio), which shows the percentage of a bank's assets financing or invested in environmentally sustainable business. Asset managers, on the other hand, have to disclose a so-called green investment ratio, that is, the proportion of environmentally sustainable investments managed by an asset manager from the value of all investments from both collective and individual portfolio management.</p>
14.	<p><b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b></p>	<p>We observe a great emphasis on the 'E' element in terms of obligatory ESG disclosures. In general, however, certain specific documents have been created with climate change-related disclosures in mind. An example is the European Commission's guidelines on non-financial reporting, which is a supplement on reporting climate-related information that was issued in connection with reporting obligations under the NFRD. These guidelines integrate the recommendations of the TCFD created by the Financial Stability Board and are not binding. As indicated in our reply to question 15, the sustainability reporting to be introduced to Polish legal system by way of implementing the CSRD, is to comprise, inter alia, climate-change related information. Specifically, ESRS E1 relates to climate change and presents specific information which should be reported by the undertaking to this end.</p> <p>We do not identify a particular emphasis on climate change-related disclosures per se in other regulations covered in our answers. We note, however, that climate change mitigation and adaptation to climate change are specifically environmental goals under the EU Taxonomy Regulation.</p>
15.	<p><b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b></p>	<p>The trend is for disclosures to become increasingly standardised for the sake of data comparability (please see our answer to question 6). However, at present certain ESG disclosures allow certain latitude in terms of the manner of making such disclosures.</p> <p>Namely, in the case of disclosures under Article 49b of the Accounting Act (NFRD-related), an entity may apply any rules, including its own rules; national, EU or international standards; norms; or guidelines when preparing a statement on non-financial information. In the statement, the entity shall include information on which rules, standards, norms or guidelines it applied. To make it easier for companies to disclose ESG information, the European Commission published Non-Binding Guidelines in the form of two documents to supplement the NFRD: <i>Guidelines on Reporting of Non-Financial Information</i> (2017) and a <i>Guidelines for Reporting Non-Financial Information supplement on the disclosure of information related to climate issues</i> (2019). Based on the above guidelines, the Polish Stock Exchange, in cooperation with the European Bank for Reconstruction and Development (EBRD), published the <i>Guidelines for ESG Reporting</i>, which is a guide for listed issuers on reporting ESG factors that systematises and organises recommendations in this area.</p> <p>In the case of disclosures to be made under new CSRD-related regulations, the sustainability reporting is to be performed in line with common European sustainability reporting standards (ESRS). The objective of ESRS is to specify the sustainability information that an undertaking shall disclose in accordance with the CSRD. Specifically, ESRS specify the information that an undertaking shall disclose about its material impacts, risks and opportunities in relation to environmental, social, and governance sustainability matter. The information disclosed in accordance with ESRS enables users of the sustainability statement to understand the undertaking's material impacts on people and environment and the material effects of sustainability matters on the undertaking's development, performance and position.</p> <p>The first ESRS were published in July 2023 in the form of an annex to the Commission Delegated Regulation 2023/2772, dated 31 July 2023:</p>

		<table border="1"> <tr> <td><b>ESRS 1</b></td> <td>General requirements</td> </tr> <tr> <td><b>ESRS 2</b></td> <td>General disclosures</td> </tr> <tr> <td><b>ESRS E1</b></td> <td>Climate change</td> </tr> <tr> <td><b>ESRS E2</b></td> <td>Pollution</td> </tr> <tr> <td><b>ESRS E3</b></td> <td>Water and marine resources</td> </tr> <tr> <td><b>ESRS E4</b></td> <td>Biodiversity and ecosystems</td> </tr> <tr> <td><b>ESRS E5</b></td> <td>Resource use and circular economy</td> </tr> <tr> <td><b>ESRS S1</b></td> <td>Own workforce</td> </tr> <tr> <td><b>ESRS S2</b></td> <td>Workers in the value chain</td> </tr> <tr> <td><b>ESRS S3</b></td> <td>Affected communities</td> </tr> <tr> <td><b>ESRS S4</b></td> <td>Consumers and end-users</td> </tr> <tr> <td><b>ESRS G1</b></td> <td>Business conduct</td> </tr> </table>	<b>ESRS 1</b>	General requirements	<b>ESRS 2</b>	General disclosures	<b>ESRS E1</b>	Climate change	<b>ESRS E2</b>	Pollution	<b>ESRS E3</b>	Water and marine resources	<b>ESRS E4</b>	Biodiversity and ecosystems	<b>ESRS E5</b>	Resource use and circular economy	<b>ESRS S1</b>	Own workforce	<b>ESRS S2</b>	Workers in the value chain	<b>ESRS S3</b>	Affected communities	<b>ESRS S4</b>	Consumers and end-users	<b>ESRS G1</b>	Business conduct
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16.	<p><b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b></p>	<p>Definitions vary depending on the legal act in question.</p> <p>For example, the EU Taxonomy Regulation focuses on environmental factors and defines an environmentally sustainable investment as an investment in one or several economic activities that qualify as environmentally sustainable under the EU Taxonomy Regulation (for details, please see our answer to question 12).</p> <p>As for the new regulations implementing the CSRD, please refer to our reply to question 13 and question 15.</p> <p>The SFDR, in turn, uses the term ‘sustainability factors’, which are defined as environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters (the STS Regulation refers to this definition exactly). A sustainable investment under the SFDR is: (1) an investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, the production of waste, and greenhouse gas emissions or on their impact on biodiversity and the circular economy; or (2) an investment in an economic activity that contributes to a social objective, in particular, an investment that contributes to tackling inequality or fosters social cohesion, social integration and labour relations, or an investment in human capital, or economically or socially disadvantaged communities, provided that such investments: (1) do not significantly harm any of these objectives; and (2) the investee companies follow good governance practices, particularly with respect to sound management structures, employee relations, remuneration of staff and tax compliance.</p> <p>ESG risks are not at all defined in the CRR, but the draft ITS prepared by the EBA under Article 449a of the CRR defines ESG risks as risks of losses arising from any negative financial impact on the institution stemming from current or prospective impacts of ESG factors on an institution’s counterparties or invested assets. The ITS further defines such concepts as social risk, governance risk and environmental risk.</p>																								

17.	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	<p>We identify such cross-impacts in relation to financial products covered by the SFDR, which takes into account not only environmental but also social factors. Under the SFDR, 'dark green' (Article 9 of the SFDR) and 'light green' (Article 8 of the SFDR) products may be distinguished. The latter category covers products that: (1) promote, among other characteristics, environmental or social characteristics, or a combination of those characteristics; and (2) at the same time, companies in which investments are made that follow good governance practices, also with respect to sound management structures, employee relations, remuneration of staff and tax compliance. 'Dark green' products, on the other hand, have sustainable investment or reduction of carbon emissions as their objective. In relation to sustainable investments, as clearly stems from the definition cited in our answer to question 16, an investment cannot be deemed sustainable if, at the same time, it significantly harms objectives in the cited definition or if the investee companies do not follow good governance practices. Consequently, the SFDR recognises cross-impacts between different ESG factors, which need to be taken into account when assessing whether a given financial product is, in fact, a 'light green' or 'dark green' product under the SFDR.</p>
18.	<p><b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b></p>	<p>We believe that, for the time being, the answer lies somewhere in the middle. On the one hand, investors want to know the way in which companies build long-term value, how they manage ESG risks and whether they take responsibility for their impact on surroundings. Therefore, the development of obligatory disclosure regimes in the realm of ESG should be assessed positively. So far, as the disclosures were not made in a standardised way and therefore, it was difficult for investors to compare different ESG data. But as CSRD introduces unified reporting standards (ESRS), the ESG disclosure, although their preparation may be associated at first with additional costs on the part of the reporting entity, should – in the long term – translate into creating investor value.</p>
19.	<p><b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b></p>	<p>Although the European Sustainability Reporting Standards (ESRS) have set the unified framework for sustainability reporting in Europe, their complexity, and in some places – ambiguity – constitute a great source of challenges for reporting entities. Therefore, the clients are pleased to receive additional guidance and tools which help to report in accordance with ESRS.</p>
20.	<p><b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b></p>	<p>There are no specific mandatory disclosure requirements in the Polish regulations related to the issuance of securities other than those resulting from EU regulations.</p>
21.	<p><b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b></p>	<p>The PFSA maintains a page dedicated to sustainable finance issues, including information on existing or proposed legislation, so-called soft regulations such as recommendations or guidelines, as well as information on current consultation processes by the European Commission and European agencies with oversight of specific financial market sectors. The questions and answers published on this website come mostly from representatives of supervised entities. The answers provided are intended to clarify selected issues concerning the interpretation of the SFDR. The answers take into account the positions presented by EU authorities.</p> <p>For questions related to the SFDR Regulation 2019/2088 and Regulation 2020/852 (taxonomy), eg, concerning the subject matter of the regulation and specific issues of concern, it is possible to forward them to the PFSA at: <a href="mailto:esg@knf.gov.pl">esg@knf.gov.pl</a>.</p> <p>The Warsaw Stock Exchange published guidelines for ESG reporting for listed companies.</p>
22.	<p><b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b></p>	<p>The PFSA's page listing imposed administrative penalties does not indicate that penalties have been imposed in relation to breaches of ESG disclosures.</p> <p>There is also no publicly available information on investor claims in this regard.</p>

23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	<p>Under new regulations implementing the CSRD, sustainability reporting and the sustainability reporting of the capital group are subject to sustainability reporting attestation, within the meaning of Article 2, point 4c of the Act on statutory auditors. Attestation of sustainability reporting is carried out by statutory auditors authorised to conduct it, in accordance with the national sustainability reporting attestation standard (yet to be adopted). As a result of the sustainability reporting attestation, the statutory auditor prepares a report on the sustainability reporting attestation. The report is prepared in electronic form and bears a qualified electronic signature of the statutory auditor.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>Some significant changes can be observed in board oversight and governance of ESG issues. The boards are increasingly held accountable for ESG-related issues and are being obliged to understand and oversee ESG-related risks, set ESG-related goals and monitor their performance. One of the changes is also the growing interest of stakeholders in the structure of board bodies, their composition and the appointment process which results in more transparency and disclosure. Due to increasingly strict sustainability reporting obligations, companies are becoming aware of the need to effectively manage not only financial, but also environmental, social and governance aspects in order to achieve business success in the long term and maintain the trust of their stakeholders.</p> <p>Some companies are establishing dedicated board committees or subcommittees focused specifically on ESG oversight. Such committees are responsible for providing strategic guidance, monitoring ESG performance, and ensuring that ESG factors are integrated into decision-making processes across the organisation. There is also a growing recognition of the importance of board diversity. Boards are seeking directors with diverse backgrounds, skills and expertise. These developments reflect a broader shift towards more responsible approaches to corporate governance, where ESG factors are integrated into board oversight processes to drive sustainable long-term value and enhance stakeholder trust and confidence in the organisation.</p>
25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p>The Polish companies covered by the scope of the CSRD will be obliged to prepare their sustainability reporting in accordance with ESRS. In May 2024 the European Financial Reporting Advisory Group (EFRAG) issued interoperability guidance between ESRS and ISSB, which describes the alignment of disclosure requirements and information that an entity starting with each set of standards needs to know to enable compliance with both sets of standards, ensuring interoperability between them.</p>



26.	<b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b>	<p>Companies are in various stages of preparation to meet disclosure requirements. Currently, financial institutions and the biggest companies listed on the Warsaw Stock Exchange are best prepared to report sustainability information. They often have both the human and technological resources to collect, analyse and report ESG-related data.</p> <p>In contrast, companies that are yet to be required to report according to ESRS starting from 2025 are in the process of preparing for this operation. Most of the companies do not have the necessary capability and resources to make the required disclosures. They may have limited resources and expertise, which could affect their ability to comply with disclosure requirements effectively. This process is time-consuming and requires significant financial resources. Companies do not seem to be prepared to incur expenses related to both the implementation of new procedures and technology, as well as staff training.</p>
27.	<b>Is it mandatory for companies to set climate-related targets?</b>	<p>In Poland there are no regulations obliging companies to set climate-related targets. Such obligations would stem from companies covered by the scope of CS3D. Also, the companies that are covered by the scope of the CSRD, ie, those obliged to sustainability reporting, shall disclose information on the entity's plans to ensure that the entity's business model and business strategy take into account the transition to a sustainable economy, limiting global warming to 1.5°C in accordance with the Paris Agreement under the United Nations Framework Convention on Climate Change adopted on 12 December 2015, and achieving climate neutrality by 2050.</p>
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	<p>Some of the Polish companies voluntarily set climate-related targets, however only approximately 20 of them, representing various industries, have joined the SBT initiative.</p>
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>We identify the following trends:</p> <ul style="list-style-type: none"> <li>• to keep up with the new compliance requirements, mitigate growing ESG risks, and begin reporting it is anticipated that companies' ESG technology spending will increase within the upcoming years;</li> <li>• impact investing;</li> <li>• greater focus on the impact that specific technologies have on the environment (particularly visible in discussions on the Markets in Crypto Assets (MiCA) and a proposed ban on blockchain proof-of-work protocols, which are considered not environmentally friendly); and</li> <li>• greater standardisation of reporting.</li> </ul>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Łukasz Szegda, attorney-at-law and partner at Wardyński &amp; Partners.</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Portugal

### Portugal

1.	Which jurisdiction are you covering?	Portugal
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>Yes.</p> <p>ESG disclosures in Portugal are determined by European law and are based on a system consisting of EU directives and national implementing legislation is mandatory for some market participants.</p> <p><b>Non-financial statements (NFS)/sustainability reporting</b></p> <p>Undertakings in Portugal that meet certain thresholds are required to disclose a NFS in accordance with Article 66.º-B of the Portuguese Companies Code, as amended by Decree-Law No 89/2017, which transposed the EU Corporate Sustainability Reporting Directive (CSRD), which amended the Non-Financial Reporting Directive (NFRD), into Portuguese law.</p> <p>Under the Portuguese regime, companies are required to prepare a NFS if they qualify as large undertakings (<i>grandes empresas</i>) that are Public Interest Entities (PIEs, <i>entidades de interesse público</i>) and if their average number of employees during the financial year exceeds 500 at the balance sheet date.</p> <p>The three criteria are cumulative.</p> <p>Parent companies of a large group that are PIEs and have an average number of employees during the financial year that exceeds 500 at the balance sheet date are also required to include a non-financial statement in their consolidated management report.</p> <p>According to the Portuguese Companies Code, a large undertaking is an undertaking that, with reference to the preceding financial year, exceeds at least two of the following three thresholds:</p> <ol style="list-style-type: none"> <li>1. balance sheet total: €20,000;</li> <li>2. net turnover: €40m;</li> <li>3. average number of employees during the period: 250.</li> </ol> <p>A large group includes the parent company and the consolidated subsidiaries which, on a consolidated basis, exceed at least two of the three thresholds.</p>

		<p>According to Article 3 of the Portuguese Audit Supervision Regime (RJSA), the following entities are considered PIEs:</p> <ol style="list-style-type: none"> <li>1. issuers of securities admitted to trading on a regulated market located or operating in Portugal;</li> <li>2. credit institutions;</li> <li>3. insurance and reinsurance undertakings;</li> <li>4. pension funds;</li> <li>5. entities whose main activity consists of acquiring shareholdings with a majority of voting rights in credit institutions;</li> <li>6. holding companies in the insurance sector and mixed insurance holding companies; and</li> <li>7. some pension funds that finance a special social security scheme.</li> </ol> <p>However, with the amendment of the European sustainability reporting requirements, which, among other things, extended the scope of sustainability reporting to all large companies and all companies listed on a regulated market, with the exception of listed micro-companies, significantly more companies will be required to publish sustainability reports. The new version of the NFRD has yet to be transposed into Portuguese law and will require some amendments to the Portuguese Companies Code.</p> <p>Companies which are in-scope of the CSRD will also have to comply with the EU Taxonomy Regulation, which is directly applicable in Portugal. In-scope companies must disclose on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable. Non-financial undertakings shall also disclose the proportion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable and the proportion of their capital expenditure and proportion of their operating expenditure related to assets or processes associated with economic activities that qualify as environmentally sustainable.</p> <p><b>Remuneration policy and sustainability risks</b></p> <p>The Portuguese Securities Code requires listed companies to establish and disclose on their website a remuneration policy that explains how the remuneration policy contributes to the sustainability of the company. In addition, the remuneration policy must set out the criteria for granting variable remuneration, if applicable, and how these criteria contribute to the company's business strategy, long-term interests and sustainability.</p> <p><b>Sustainable Finance Disclosure Regulation (SFDR)</b></p> <p>The SFDR, directly applicable in Portugal, sets out specific disclosure obligations for financial market participants and advisers at both the entity and product levels.</p>
3.	<p><b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b></p>	<p>In Portugal, the distinction between entities required to make ESG disclosures is primarily based on their size, average number of employees and whether they qualify as PIEs, as mentioned in the previous answer.</p>
4.	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b></p>	<p>In Portugal, companies are required to prepare a NFS if they qualify as large undertakings that are PIEs and if their average number of employees during the financial year exceeds 500 at the balance sheet date.</p> <p>The fact that a company is listed has an impact on its qualification as a public interest entity. If a company is not listed, it will only be subject to sustainability disclosure if it qualifies as a public interest entity for other reasons (see answer to question 2) and is considered a large company or the parent company of a large group.</p> <p>As mentioned in the answer to question 2, in addition to being a PIE, to be subject to sustainability reporting, the undertaking must meet two of the three requirements relating to balance sheet total, net turnover and number of employees, which should be more than 500 at the balance sheet date.</p>

		<p>With the implementation of the latest version of the CSRD, effective from 5 January 2023, the scope of entities required to make annual ESG disclosures will expand.</p> <p>A company may be exempted from these disclosure obligations if it is a subsidiary of a parent company that itself is subject to relevant reporting requirements.</p>
5.	<p><b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b></p>	<p>In Portugal, ESG disclosures are primarily required on a continuous annual reporting basis, rather than being triggered by specific transactions.</p> <p>Furthermore, certain sector-specific regulations may require additional ESG disclosures. For example, the SFDR requires financial market participants and financial advisers to provide periodic disclosures at both the entity and product level, as well as in pre-contractual documents and on websites.</p> <p>While there are no specific transaction-triggered ESG disclosure requirements in Portugal, companies may choose to voluntarily disclose ESG information in the context of certain transactions, such as mergers and acquisitions or financing arrangements, to meet the expectations of investors, lenders, or other stakeholders.</p> <p>Therefore, ESG disclosures in Portugal are primarily required on a continuous annual reporting basis, in accordance with the Portuguese Companies Code, and other applicable sector-specific regulations, rather than being triggered by specific transactions.</p>
6.	<p><b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b></p>	<p>In Portugal, sustainability disclosures (NFS) are primarily required to be included in the company's annual management report.</p> <p>These NFS should contain information on the company's policies, main risks, and outcomes related to environmental, social, and employee matters, respect for human rights, anti-corruption, and bribery issues.</p> <p>However, companies have the option to prepare a separate report containing the required ESG information, as long as it is published together with the management report or made publicly available on the company's website within six months of the balance sheet date and is referred to in the management report.</p> <p>With the implementation of the CSRD, effective from 5 January 2023, companies within its scope will be required to include sustainability information in their management report. The CSRD introduces more detailed reporting requirements and mandates the adoption of European Sustainability Reporting Standards (ESRS), which will provide a common framework for ESG disclosures.</p> <p>It is important to note that while separate ESG reports are not mandatory in Portugal, many companies choose to voluntarily publish standalone sustainability reports or integrated reports to provide more comprehensive information on their ESG performance and to meet the growing expectations of investors and other stakeholders.</p> <p>Therefore, mandatory ESG disclosures in Portugal are primarily required to be included in the company's annual management report, with the option to prepare a separate report under certain conditions. The introduction of the CSRD and ESRS will further standardise and enhance the quality of ESG disclosures in the management report.</p>
7.	<p><b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b></p>	<p>According to the Portuguese Companies Code, in-scope entities have two main options for the location of their ESG disclosures:</p> <ol style="list-style-type: none"> <li>1. management report: NFS or sustainability information can be directly included in their annual management report. The entire management report, including the NFS, is registered, ensuring official integration of the NFS.</li> <li>2. separate report: a separate standalone report containing the required ESG information can be prepared. In this case, the separate report must be: <ol style="list-style-type: none"> <li>a. published together with the management report; or</li> <li>b. made publicly available on the company's website within six months of the balance sheet date and referred to in the management report.</li> </ol> </li> </ol> <p>In both cases, the ESG disclosures are made publicly available through the company's website for a year.</p>

		<p>The following companies must publish the management report, including the NFS, within four months of the end of the financial year and keep it publicly available for at least ten years:</p> <ol style="list-style-type: none"> <li>1. issuers for which Portugal is the competent Member State; and</li> <li>2. issuers with securities exclusively admitted to trading on a regulated market in Portugal, but for which Portugal is not the competent Member State.</li> </ol> <p>In this case, this information is published on the website of the Portuguese Regulatory Authority (CMVM website) in the section 'Information Dissemination System'.</p> <p>Additionally, companies subject to the SFDR must make ESG disclosures in their pre-contractual documents, on their websites, and in periodic reports, depending on the specific requirements of the regulation.</p> <p>Some companies that are not in scope of the obligation to publish ESG disclosures in Portugal choose to publish standalone sustainability reports or integrated reports on their websites to provide more detailed and comprehensive information on their ESG performance and to meet the growing expectations of investors and other stakeholders.</p>
8.	<p><b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b></p>	<p>Yes, even in cases where there is no mandatory disclosure requirement, many companies in Portugal are voluntarily making ESG disclosures as a result of growing investor expectations and a broader shift towards sustainable investing.</p> <p>In addition, Portuguese companies that are contractual partners to companies subject to corporate due diligence in supply chains (eg, German LKSG) voluntarily disclose ESG information in order to comply with the legal requirements of the contractual partner.</p> <p>Investors, particularly institutional investors, are increasingly incorporating ESG factors into their investment decision-making processes and are actively seeking information on companies' ESG performance. This trend is driven by the recognition that ESG factors can have a material impact on a company's long-term financial performance and risk profile, as well as by the growing awareness of the social and environmental responsibilities of businesses.</p> <p>In response to these investor expectations, many Portuguese companies, including those not subject to mandatory ESG disclosure requirements, are voluntarily publishing sustainability reports, integrated reports, or dedicated ESG sections on their websites. These voluntary disclosures often follow international reporting frameworks such as the Global Reporting Initiative (GRI) Standards, the Sustainability Accounting Standards Board (SASB) Standards, or the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD).</p> <p>The increasing participation of Portuguese companies in sustainability indices, such as the Euronext Vigeo Eiris index family and the FTSE4Good Index Series, also demonstrates the growing importance of ESG performance and voluntary disclosures in attracting investors and maintaining a competitive edge in the market.</p> <p>Therefore, while not all companies in Portugal are subject to mandatory ESG disclosure requirements, many are voluntarily making ESG disclosures to meet growing investor expectations, demonstrate their commitment to sustainability, and maintain their competitiveness in the market.</p>
9.	<p><b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b></p>	<p>In Portugal, there are several regulators responsible for monitoring ESG disclosure compliance, depending on the type of company and the applicable regulations.</p> <ol style="list-style-type: none"> <li>1. Portuguese Securities Market Commission (CMVM): The CMVM is the primary regulator for listed companies and issuers of securities in Portugal. It monitors compliance with mandatory ESG disclosures under the CSRD for listed companies;</li> <li>2. Bank of Portugal (Banco de Portugal): The Bank of Portugal is responsible for supervising credit institutions and financial companies in Portugal. It monitors compliance with ESG disclosure requirements for these entities, particularly in relation to the SFDR; and</li> <li>3. Portuguese Insurance and Pension Funds Supervisory Authority (ASF): The ASF is responsible for supervising insurance companies and pension funds in Portugal. It monitors compliance with ESG disclosure requirements for these entities, particularly in relation to the SFDR.</li> </ol>

		<p>Penalties for non-compliance with mandatory ESG disclosures under Portuguese law may include:</p> <ol style="list-style-type: none"> <li>1. fines: entities subject to CMVM's supervision may be subject to fines ranging from €25,000 to €5m depending on the severity of the violation and the size of the company. In some cases, the fine may be increased up to 10 per cent of the company's total annual turnover; and</li> <li>2. other administrative sanctions: The CMVM may also impose other administrative sanctions, such as public reprimands, temporary suspension of certain business activities, or even the revocation of the company's license to operate in the securities market, in cases of severe or repeated violations. Through these supervisions, the CMVM aims to ensure that the information presented to investors and the public is accurate and transparent, thereby contributing to the broader national effort to combat deceptive sustainability claims and promote genuine sustainable practices within the private sector.</li> </ol> <p>Regarding grace periods, there are no specific grace periods for non-compliance with mandatory ESG disclosures in Portugal. However, when new ESG disclosure requirements are introduced, there may be transitional periods to allow companies to adapt to the new rules. The exact transitional periods for the CSRD will be determined by the Portuguese legislature when transposing the directive into national law.</p>
10.	<p><b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b></p>	<p>In Portugal, false or misleading ESG disclosures can lead to penalties, regardless of whether the disclosure was mandatory or voluntary.</p> <p>Companies that provide false or misleading information (both mandatory and voluntary) may be subject to the penalties outlined in the Portuguese Securities Code.</p> <ol style="list-style-type: none"> <li>1. fines: Companies may face fines ranging from €25,000 to €5m, depending on the severity of the violation and the size of the company. In some cases, the fine may be increased up to 10 per cent of the company's total annual turnover;</li> <li>2. other administrative sanctions: CMVM may also impose other administrative sanctions, such as public reprimands, temporary suspension of certain business activities, or even the revocation of the company's license to operate in the securities market, in cases of severe or repeated violations; and</li> <li>3. criminal liability: In extreme cases, where false or misleading ESG disclosures are found to be intentional and cause significant harm to investors or the public, those responsible may face criminal charges under the Portuguese Criminal Code (Código Penal).</li> </ol> <p>For voluntary ESG disclosures made by companies that are not subject to CMVM's supervision (eg, unlisted companies), while there are no specific penalties outlined in Portuguese law, companies may still face legal consequences for providing false or misleading information.</p> <ol style="list-style-type: none"> <li>1. reputational damage: False or misleading ESG disclosures can lead to significant reputational damage for companies, as investors and the public become increasingly aware of the importance of accurate and reliable ESG information. This reputational damage can have long-term negative effects on a company's financial performance and competitiveness; and</li> <li>2. civil liability: Companies may be subject to civil lawsuits brought by investors or other stakeholders who have suffered losses due to reliance on false or misleading ESG disclosures. These lawsuits may seek compensation for damages incurred.</li> </ol> <p>In both cases, the Portuguese regulators, such as CMVM, the Bank of Portugal, and the Portuguese Insurance and Pension Funds Supervisory Authority (ASF), have the power to investigate and take action against companies that provide false or misleading ESG disclosures within their respective areas of supervision.</p> <p>Therefore, false or misleading ESG disclosures can result in penalties for companies in Portugal, including fines, administrative sanctions, civil liability, and reputational damage, regardless of whether the disclosure was mandatory or voluntary. The specific penalties may vary depending on the severity of the violation and the applicable legal framework.</p>

<p>11.</p>	<p><b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b></p>	<p>In Portugal, there is currently no formal tiered disclosure system for ESG reporting. However, the level of ESG disclosure required depends on the size and type of the company, as well as the applicable regulations.</p> <p>The CSRD, which will be transposed into Portuguese law by 6 July 2024, will introduce a more comprehensive and standardised ESG reporting framework. The CSRD will expand the scope of companies required to make ESG disclosures, based on their size and type.</p> <p>The CSRD will require companies to report ESG information in accordance with mandatory ESRS.</p> <p>In addition to the CSRD, further ESG disclosure requirements are expected in Portugal in the near future, particularly in the financial sector:</p> <p><b>SFDR</b></p> <p>The SFDR, which is already in effect, requires financial market participants and financial advisers to make ESG disclosures at both the entity and product levels. The SFDR is expected to be further strengthened and aligned with the EU Taxonomy Regulation. In Portugal, most market participants are still adjusting to the SFDR disclosure obligations.</p> <p><b>EU Taxonomy Regulation</b></p> <p>The EU Taxonomy Regulation, which establishes a classification system for environmentally sustainable economic activities, requires companies to disclose the extent to which their activities align with the taxonomy. The taxonomy is expected to be gradually expanded to cover more economic activities and sustainability objectives.</p>
<p>12.</p>	<p><b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b></p>	<p>In Portugal, there is no formal, legally mandated system of ESG certification or benchmarks that companies must meet to have an 'ESG approved/compliant' status.</p> <p>However, the EU Taxonomy Regulation, which applies, inter alia, to undertakings which are subject to the obligation to publish a non-financial statement, establishes a classification system for environmentally sustainable economic activities based on six environmental objectives:</p> <ol style="list-style-type: none"> <li>1. climate change mitigation;</li> <li>2. climate change adaptation;</li> <li>3. sustainable use and protection of water and marine resources;</li> <li>4. transition to a circular economy;</li> <li>5. pollution prevention and control; and</li> <li>6. protection and restoration of biodiversity and ecosystems.</li> </ol> <p>Under the EU Taxonomy Regulation, companies are required to disclose the extent to which their activities align with the taxonomy, based on technical screening criteria that define the conditions under which an economic activity can be considered environmentally sustainable. This classification system provides a common language and a set of objective, science-based criteria for assessing the environmental sustainability of economic activities.</p> <p>The EU Taxonomy Regulation is expected to become a key reference point for companies, investors, and policymakers in Portugal and across the EU. Companies that align their activities with the taxonomy will be able to demonstrate their environmental sustainability and attract investors who are increasingly focused on ESG factors.</p> <p>In addition to the EU Taxonomy Regulation, there are several voluntary ESG reporting frameworks and standards that companies in Portugal can adopt to demonstrate their commitment to sustainability and to provide transparent and comparable ESG information to investors and other stakeholders, such as:</p>

		<ol style="list-style-type: none"> <li>1. Global Reporting Initiative (GRI) Standards: The GRI Standards provide a comprehensive framework for sustainability reporting, covering a wide range of ESG topics;</li> <li>3. Sustainability Accounting Standards Board (SASB) Standards: The SASB Standards provide industry-specific guidance on financially material ESG factors;</li> <li>3. Task Force on Climate-related Financial Disclosures (TCFD) recommendations: The TCFD recommendations provide a framework for disclosing climate-related risks and opportunities; and</li> <li>4. United Nations Sustainable Development Goals (SDGs): Companies can align their ESG strategies and reporting with the SDGs, which provide a global framework for addressing sustainability challenges.</li> </ol> <p>The quest for conceptual uniformity is ongoing. A good example is the promulgation of Decree-Law No 78/2021 that clarifies ambiguous terms like 'biodegradable plastic', which could otherwise mislead consumers. This legislative intervention underscores Portugal's resolve to bridge the informational asymmetry between consumers and organisations, a critical step towards fostering an informed consumer base capable of making discerning choices in the green market.</p> <p>While adherence to these frameworks and standards is voluntary, companies that adopt them can demonstrate their commitment to sustainability, provide transparent and comparable ESG information, and potentially attract investors who prioritise ESG factors in their decision-making.</p> <p>Therefore, while there is no formal system of ESG certification or benchmarks in Portugal, the EU Taxonomy Regulation provides a classification system for environmentally sustainable activities based on objective and transparent criteria. Additionally, companies can voluntarily adopt recognised ESG reporting frameworks and standards to demonstrate their sustainability performance and meet the growing demands of investors and other stakeholders.</p>
13.	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p>In Portugal, the nature and extent of ESG disclosures required depend on the size and type of the company, as well as the applicable regulations. The main requirements are as follows:</p> <p><b>Non-financial statement:</b></p> <ul style="list-style-type: none"> <li>• implemented in Portugal through Decree-Law No 89/2017;</li> <li>• applies to large public interest entities with more than 500 employees;</li> <li>• requires disclosure of non-financial information, including environmental, social, and employee-related matters, respect for human rights, and anti-corruption and bribery matters; and</li> <li>• information must be included in the management report or in a separate report.</li> </ul> <p><b>When the current version of the CSRD is transposed into Portuguese law it will:</b></p> <ul style="list-style-type: none"> <li>• expand the scope of companies required to make ESG disclosures, including large companies meeting certain thresholds and listed SMEs;</li> <li>• will require reporting in accordance with mandatory European Sustainability Reporting Standards (ESRS); and</li> <li>• require information to be included in the management report.</li> </ul> <p><b>Disclosures from financial market participants and financial advisers (SFDR):</b></p> <ul style="list-style-type: none"> <li>• SFDR is directly applicable in Portugal;</li> <li>• require financial market participants and financial advisers to make ESG disclosures at both the entity and product levels; and</li> <li>• disclosures must be made in pre-contractual documents, on websites, and in periodic reports.</li> </ul>



	<p><b>EU Taxonomy Regulation:</b></p> <ul style="list-style-type: none"> <li>• directly applicable in Portugal;</li> <li>• establishes a classification system for environmentally sustainable economic activities; and</li> <li>• companies will be required to disclose the extent to which their activities align with the taxonomy.</li> </ul> <p>In addition to these mandatory requirements, many companies in Portugal voluntarily make ESG disclosures in line with international frameworks and standards, such as the GRI Standards, the SASB Standards, and the TCFD recommendations.</p> <p>ESG disclosures typically cover a wide range of topics, including:</p> <ul style="list-style-type: none"> <li>• environmental matters: greenhouse gas emissions, energy consumption, water usage, waste management, and biodiversity impacts;</li> <li>• social matters: human rights, labour practices, diversity and inclusion, and community engagement; and</li> <li>• governance matters: board composition, executive compensation, business ethics, and anti-corruption measures.</li> </ul> <p>We further stress the following legal requirements, at the national level:</p> <ul style="list-style-type: none"> <li>• Portugal’s Climate Framework Law (Law 98/2021, 31 December) mandates private companies to prioritise climate and environmental balance. It compels businesses to integrate climate change factors into corporate governance and financial decision-making, considering climate risks. Directors are also expected to consider and disclose climate change-related risks to companies;</li> <li>• the Structured Deposits Law (Law 35/2018, 20 July) mandates credit institutions to include sustainability objectives in the design of structured deposits and provide transparent information about their sustainability characteristics. This also extends to marketing and advisory roles;</li> <li>• the Asset Management Legal Framework (Decree-Law 27/2023, 28 April) dictates that asset managers incorporate sustainability risks, ensuring they have the resources and procedures to do so effectively;</li> <li>• the Investment Firms Regulation (Decree-Law 109-H/2021, 10 December) emphasises the importance of investment firms having strategies and internal policies to manage and control sustainability risks that can adversely affect investment value;</li> <li>• Decree-Law No 89/2017, which amends the Portuguese Securities Code and Commercial Companies Code, mandates that major corporations disclose non-financial and diversity information in accordance with the EU Non-Financial Reporting Directive (as mentioned before);</li> <li>• the Balanced Gender Representation Law (Law No 62/2017, 1 August) ensures gender parity in management positions and the supervisory bodies of the public sector entities and listed companies;</li> <li>• companies with over 75 employees must hire a percentage of staff with significant disabilities, as per the Employment of Persons with Disabilities Law (Law 4/2019, 10 January);</li> <li>• the Labor Code guards against discrimination and addresses workers’ health and safety;</li> <li>• the Gender Salary Equality Law (Law 60/2018, 21 August) promotes gender-neutral pay structures; and</li> <li>• the Protection for Whistleblowers Law (Law 93/2021, 20 December) safeguards individuals reporting specific violations.</li> </ul> <p>The level of detail and the specific topics covered may vary depending on the company’s sector, size, and the applicable reporting framework.</p> <p>Overall, the nature and extent of ESG disclosures in Portugal are evolving rapidly, driven by both mandatory requirements and voluntary initiatives, as investors and other stakeholders increasingly demand transparent and comparable information on companies’ sustainability performance.</p>
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<p>14.</p>	<p><b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b></p>	<p>Although there is no specific regulation in Portugal that deals specifically with climate change-related disclosures, there is a growing emphasis on these disclosures driven by both EU regulations and national initiatives.</p> <ol style="list-style-type: none"> <li>1. the current version of the CSRD strengthens climate change-related disclosures by requiring companies to report in accordance with the ESRS, which will include specific standards on climate change;</li> <li>2. EU Taxonomy Regulation establishes a classification system for environmentally sustainable economic activities, with a focus on climate change mitigation and adaptation. Companies will be required to disclose the extent to which their activities align with the taxonomy, providing investors with clear information on their contribution to climate change objectives;</li> <li>3. the SFDR requires financial market participants and financial advisers to issue PAI statements. Where they consider principal adverse impacts of investment decisions on sustainability factors, a statement on their due diligence policies with respect to those impacts should be published and maintained on the financial participant's or adviser's website;</li> <li>4. financial products that promote environmental characteristics or have sustainable investment objectives must disclose information on how they contribute to climate change mitigation and adaptation.</li> </ol> <p><b>EU Paris-aligned benchmarks and climate transition benchmarks</b></p> <p>Portugal has embraced the paradigm of sustainable or green benchmarks, including EU Paris-aligned Benchmarks and Climate Transition Benchmarks and sustainability-related disclosures for benchmarks (Regulation (EU) 2019/2089), reflecting Portugal's commitment to the broader sustainable finance agenda promulgated by the EU.</p> <p><b>National initiatives</b></p> <p>The Portuguese Carbon Neutrality Roadmap 2050, approved by the Council of Ministers in 2019, sets the goal of achieving carbon neutrality by 2050 and emphasises the importance of climate change-related disclosures.</p> <p>The Portuguese Central Bank has issued guidelines on climate-related and environmental risks, encouraging financial institutions to integrate these risks into their governance, strategy, and risk management processes, and to make related disclosures.</p> <p>Under the National Energy and Climate Plan (PNEC), approved in May 2020, Portugal set targets for reducing greenhouse gas emissions, incorporating renewable energy and improving energy efficiency, with a commitment to communicate information on greenhouse gas emissions as per EU Directive 2003/87/EC, establishing a scheme for greenhouse gas emission allowance trading.</p> <p>A significant stride in Portugal's ESG reporting landscape is the enactment of the Framework Law on the Climate (FLC) on 31 December 2021, mandating companies to embed climate change considerations in their corporate governance and integrate climate risk analysis into their decision-making processes. It also requires an annual assessment of the economic, environmental and social dimensions of their activities and operations concerning climate change, which should be integrated into their management reports. The law hints at future amendments to existing legislation to encapsulate the duties outlined in the FLC.</p> <p>The extension of Portugal's National Climate Change Adaptation Strategy to 2025 lays a strong emphasis on bolstering the energy sector against climate adversities, understanding that vulnerabilities in this sector could amplify challenges in others. It advocates for integrated contingency plans to counter the ripple effects of cascading failures, with a multi-dimensional approach to climate resilience encompassing land use, water resource management and transport.</p> <p>The launch of the National Roadmap for Adaptation 2100 (RNA 2100) by the Portuguese Environment Agency in September 2020, alongside the Action Programme for Adaptation to Climate Change (2019), outlines nine action lines focused on critical climate impacts, emphasising wildfires, floods and energy sector resilience. By 2030, it envisages all energy companies to have climate adaptation and contingency plans in place, embodying a proactive industry-wide approach to climate resilience.</p>
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<p>15.</p>	<p><b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b></p>	<p>In Portugal, ESG disclosures are becoming increasingly standardised, driven by EU regulations and the adoption of international reporting frameworks. However, companies still have some latitude in terms of the extent and manner of disclosures they make, depending on the applicable regulations and the voluntary frameworks they choose to follow.</p> <p><b>The Portuguese Companies Code</b></p> <p>This provides a framework for non-financial reporting but allows companies some flexibility in determining the content and format of their disclosures.</p> <p>The current version of the CSRD, when transposed, will introduce more standardised reporting requirements by mandating the use of the ESRS. This will ensure greater comparability and consistency in ESG disclosures across companies and sectors.</p> <p><b>SFDR</b></p> <p>The SFDR and Delegated Regulation (EU) 2022/1288 introduces standardised disclosure requirements for financial market participants and financial advisers, including the use of pre-defined templates for presenting sustainability-related information.</p> <p>However, the level of detail and the specific content of the disclosures may still vary depending on the nature of the financial products and the investment strategies employed.</p> <p><b>EU Taxonomy Regulation</b></p> <p>The EU Taxonomy Regulation provides a standardised classification system for environmentally sustainable economic activities, with clear technical screening criteria for determining alignment.</p> <p>Companies will be required to disclose the proportion of their turnover, capital expenditure, and operating expenditure that is aligned with the taxonomy, ensuring a consistent approach to reporting on environmental sustainability.</p> <p><b>Voluntary reporting frameworks</b></p> <p>Many companies in Portugal choose to follow international reporting frameworks, such as the GRI Standards, the SASB Standards, or the recommendations of the TCFD.</p> <p>While these frameworks provide guidance on the content and structure of ESG disclosures, companies still have some flexibility in determining the specific indicators and metrics they report on, based on their materiality assessments and stakeholder engagement processes.</p> <p>In practice, the level of standardisation in ESG disclosures varies across companies and sectors in Portugal. Larger companies and those in sectors with higher ESG risks, such as energy, utilities, and finance, tend to have more comprehensive and standardised disclosures, often following multiple reporting frameworks. Smaller companies and those in less ESG-sensitive sectors may have more limited disclosures and may rely more on voluntary frameworks.</p>

<p>16.</p>	<p><b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b></p>	<p>The Portuguese Companies Code requires non-financial statements to include information on environmental, social and labour issues, gender equality, non-discrimination, respect for human rights, corruption and bribery. However, Portuguese national laws, such as the Portuguese Companies Code and the Portuguese Securities Code, do not provide a clear definition of ESG factors or specify the specific scope of ESG disclosures. Instead, it relies on the framework established by EU legislation. While these regulations provide a framework for ESG reporting, market players feel that there is still some ambiguity regarding the precise scope and definition of ESG factors.</p> <p>Regarding the framework established by the EU legislation:</p> <p><b>NFRD and CSRD</b></p> <p>The NFRD defines the scope of non-financial reporting to include environmental, social and employee-related matters, respect for human rights, and anti-corruption and bribery matters. However, the directive does not provide a detailed definition of each of these factors or specify the exact indicators to be reported.</p> <p>The CSRD aims to clarify and expand the scope of ESG reporting by introducing more detailed reporting requirements and mandating the use of the ESRS. The ESRS are expected to provide clearer guidance on the specific ESG factors to be reported and the associated indicators and metrics.</p> <p><b>SFDR</b></p> <p>The SFDR defines sustainability factors as environmental, social, and employee matters, respect for human rights, anti-corruption, and anti-bribery matters. It also introduces the concept of principal adverse impacts, which refers to the negative effects of investment decisions on sustainability factors.</p> <p><b>EU Taxonomy Regulation</b></p> <p>The EU Taxonomy Regulation focuses specifically on environmental sustainability and defines six environmental objectives: climate change mitigation, climate change adaptation, sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, and protection and restoration of biodiversity and ecosystems.</p> <p>The taxonomy provides clear technical screening criteria for determining whether an economic activity contributes to these objectives, but it does not cover social or governance factors.</p>
<p>17.</p>	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	<p>The measurement and consideration of cross impacts between ESG goals is an evolving area in Portugal, and there is currently no clear legal framework that specifically addresses this issue. However, EU regulations and international reporting frameworks provide some guidance on how companies should approach the integration and balancing of different ESG factors.</p> <p><b>EU Taxonomy Regulation</b></p> <p>The EU Taxonomy Regulation establishes a classification system for environmentally sustainable economic activities based on six environmental objectives. To be considered environmentally sustainable, an economic activity must contribute substantially to at least one of these objectives while not significantly harming any of the others (the ‘do no significant harm’ principle).</p> <p>In the example of a coal mining company with effective gender diversity policies, the company would likely not be considered environmentally sustainable under the EU Taxonomy, as coal mining is generally considered to have significant negative impacts on climate change mitigation and other environmental objectives, regardless of its social policies.</p> <p><b>SFDR</b></p> <p>The SFDR requires financial market participants and financial advisers to disclose how they consider principal adverse impacts (PAI) of their investment decisions on sustainability factors. This means that they must consider the negative impacts of their investments on environmental, social, and governance factors, even if the investment performs well on certain ESG metrics.</p>

		<p>In the case of a coal mining company with strong gender diversity policies, a financial market participant would still need to consider the negative environmental impacts of coal mining when assessing the overall sustainability of the investment.</p> <p><b>International reporting frameworks</b></p> <p>Frameworks such as the GRI Standards and the SASB Standards emphasise the importance of materiality in determining which ESG factors are most relevant to a company's operations and stakeholders. They also encourage companies to consider the interconnections and trade-offs between different ESG factors.</p> <p>Under these frameworks, a coal mining company with effective gender diversity policies would still need to disclose and address its material environmental impacts, such as greenhouse gas emissions and water use, in addition to reporting on its social policies.</p> <p>In practice, the measurement and balancing of cross impacts between ESG goals is a complex challenge that requires a holistic and company-specific approach. While strong performance on certain ESG metrics, such as gender diversity, can be positive, it does not necessarily offset negative impacts in other areas, such as environmental sustainability.</p>
18.	<p><b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b></p>	<p>The impact of ESG disclosure regulation on investor value creation in Portugal lies somewhere in the middle. While the increasing regulatory requirements have undoubtedly created a greater compliance burden for companies (many of which resist compliance by disclosing vague and unspecific information), they have also contributed to greater transparency, comparability, and accountability in ESG reporting, which can ultimately benefit investors and other stakeholders.</p> <p>Investor value creation can be identified in the following aspects.</p> <ol style="list-style-type: none"> <li>1. increased transparency and comparability. The standardisation of ESG disclosure through EU regulations such as the CSRD, SFDR, and the EU Taxonomy Regulation has made it easier for investors to compare the ESG performance of different companies and make more informed investment decisions. This can lead to better allocation of capital to companies with strong ESG practices, potentially driving long-term value creation;</li> <li>2. improved risk management. Mandatory ESG disclosure helps investors to better understand and assess the ESG risks and opportunities associated with their investments. This can enable investors to make more risk-informed decisions and potentially avoid investments in companies with significant ESG-related liabilities or exposures; and</li> <li>3. increased stakeholder trust. Comprehensive and transparent ESG disclosures can help build trust between companies and their stakeholders, including investors, customers, employees, and local communities. This trust can translate into improved brand reputation, customer loyalty, and employee retention, all of which can contribute to long-term value creation.</li> </ol> <p>However, ESG disclosure requirements also increase the compliance burden.</p> <ol style="list-style-type: none"> <li>1. cost of compliance: Complying with ESG disclosure regulations can be costly and resource intensive for companies, particularly for smaller firms with limited reporting capabilities. The need to collect, analyse, and disclose ESG data can divert resources away from other business priorities and potentially impact short-term financial performance;</li> <li>2. lack of standardisation and comparability. Despite efforts to standardise ESG reporting through EU regulations, there is still significant variation in the way companies interpret and apply these requirements. This can make it challenging for investors to compare ESG performance across companies and sectors, potentially reducing the usefulness of the disclosures for investment decision-making; and</li> <li>3. risk of greenwashing. The increased focus on ESG disclosures may incentivise some companies to engage in greenwashing, or the practice of making misleading or unsubstantiated claims about their ESG performance. This can create confusion for investors and undermine the credibility of ESG reporting as a whole.</li> </ol>

		Therefore, while ESG disclosure regulation in Portugal has created a greater compliance burden for companies, it has also contributed to improved transparency, comparability and risk management, which can ultimately benefit investors and drive long-term value creation. As the regulatory landscape continues to evolve and best practices in ESG reporting become more established, the balance between compliance costs and investor value creation may continue to shift. Ultimately, the effectiveness of ESG disclosure regulation in driving investor value will depend on how well companies are able to integrate ESG considerations into their core business strategies and decision-making processes.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	<p>Yes, most clients in Portugal would likely favour a greater, more transparent, clear and effective ESG disclosure regime than the current one.</p> <p>Institutional investors and asset managers are increasingly focused on integrating ESG factors into their investment decisions and portfolio management. Clear and comprehensive ESG disclosures from companies aid in assessing ESG risks and opportunities, enabling better-informed decision making and compliance with their own ESG commitments and regulatory obligations (eg, SFDR).</p> <p>Moreover, multinational corporations, especially those with international operations or listings, prefer consistent and comparable ESG disclosure standards across jurisdictions. The current patchwork of ESG disclosure requirements across different countries and regions creates complexity and challenges in reporting and benchmarking ESG performance.</p> <p>From a legal perspective, clients value regulatory certainty and predictability.</p> <p>By advocating for a more robust and harmonised ESG disclosure regime, such as the CSRD, clients can benefit from enhanced transparency, comparability, and accountability, facilitating better risk management, stakeholder engagement, and access to sustainable finance opportunities.</p> <p>Furthermore, as ESG considerations become mainstream, clients recognise the reputational and competitive advantages of being perceived as ESG leaders through comprehensive and credible ESG reporting, attracting investors, customers, and talent.</p>
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	In the context of securities issues, there are no specific Portuguese rules to prevent greenwashing. However, according to the Portuguese Securities Code, all information disclosed to the market must be complete, truthful, up-to-date, clear, objective and lawful. False, incomplete or misleading information may have the consequences mentioned in question 9.
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	<p>In Portugal, there has been growing regulatory scrutiny and concern from regulators not only about compliance with ESG disclosures, but also about the potential for greenwashing in ESG disclosures and investment products.</p> <p>A significant part of the effort addressing greenwashing challenges is the active role played by the CMVM, which has initiated targeted supervisions to mitigate the risks associated with greenwashing. Through these supervisions, the CMVM aims to ensure that disclosure requirements are complied with, and that the information presented to investors and the public is accurate and transparent, thereby contributing to the broader national effort to combat deceptive sustainability claims and promote genuine sustainable practices within the private sector.</p> <p>CMVM is also participating in the joint supervisory action in the area of asset management at the European Securities and Markets Authority (ESMA) level. This action aims to assess the degree of integration of sustainability risks and sustainability-related disclosures by management entities, gather more information on greenwashing risks and identify other relevant supervisory and regulatory interventions to address these risks.</p> <p>Portugal is aligned in following the ESMA's guidelines for the use of ESG or sustainability-related terms in fund names. In order not to mislead investors, the ESMA believes that ESG- and sustainability-related terms in fund names should be supported in a material way by evidence of sustainability characteristics or objectives that are reflected fairly and consistently in the fund's investment objectives and policy.</p>

		At the regulatory forefront, the Portuguese Consumer Authority (DGC – <i>Direção-Geral do Consumidor</i> ), mandated with overseeing consumer protection and advertising activities, has stated its opposition to misleading advertising and greenwashing. In a collaborative endeavour with the national Self-Regulatory Entity for Advertisement, the DGC unveiled a seminal report in August 2021 delineating the contours of greenwashing practices. This document serves as a guiding light for economic operators, enshrining the imperative of ensuring that environmental claims are rooted in verifiable scientific facts and articulated in a truthful, clear and precise manner. The report also furnishes a practical checklist to gauge the alignment of environmental claims with international standards of fair advertising practices.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	<p>Climate litigation in Portugal is taking its first steps, since Portuguese jurisprudence has not yet recorded relevant cases of litigation used to ensure compliance with ESG disclosures or to claim damages for non-compliance or misleading, false or incomplete ESG disclosure.</p> <p>Although not related to ESG disclosures in connection with securities issues, we would like to highlight the following:</p> <ul style="list-style-type: none"> <li>• a significant recent legal action related to climate change and the enforcement of ESG principles in Portugal involves environmental associations suing the Portuguese state. On 27 November 2023, the environmental group ‘Último Recurso’, supported by Quercus and Sciaena, filed a lawsuit against the Portuguese government for failing to meet the targets set out in the Climate Framework Law. The lawsuit claims that the government’s inaction represents a severe violation of both national and international climate commitments, including those under the Paris Agreement; and</li> <li>• additionally, a historic case of incorrect and misleading ESG disclosures is the class action lawsuit filed by the Portuguese Association for Consumer Protection (Associação Portuguesa Para A Defesa Do Consumidor) on 27 October 2016, against Volkswagen, SEAT, SIVA – Sociedade de Importação de Veículos, and SEAT Portugal (case number 26412/16.0T8LSB). This case, which is still pending, was based on the manufacturing of cars with defective engines that emitted nitrogen oxides in excess of the legal limits. DECO sought the return and reimbursement or repair of the affected vehicles, the assumption of remaining rental or leasing costs by the companies, and compensation for consumers for the false information provided and for the depreciation of the affected vehicles.</li> </ul>
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company’s annual reporting obligations? Which party can perform the assurance or give such certification?</b>	<p>The annual financial information contained in the financial statements must be audited by a statutory auditor or audit firm. However, non-financial statements are exempt from such audits.</p> <p>The Corporate Governance Code of the Portuguese Institute of Corporate Governance (IPCG), applicable to listed companies under a ‘comply or explain’ model, underwent revision in 2023. Notable among the changes introduced by this revision is the Code’s increased emphasis on sustainability issues.</p> <p>Recommendation VIII.1.1, along with its related interpretative note, stipulates that the internal regulation of the supervisory body should mandate the monitoring of the adequacy of the process through which the management body prepares and discloses financial and non-financial information.</p>
24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	<p>Boards are increasingly aware of the need to factor in sustainability risks when making decisions and to weigh the adverse impacts on sustainability caused by the company, adopting a dual-materiality perspective.</p> <p>There is a growing trend towards appointing dedicated individuals to oversee ESG matters, whether at the board level or within the senior management team.</p> <p>Moreover, the Corporate Governance Code of the Portuguese Corporate Governance Institute (2018, revised in 2023) recommends that listed companies assign the task of supervising compliance with ESG policies to a specialised board committee, preferably composed of a majority of independent non-executive directors. This committee should be responsible for monitoring ESG disclosure policies, evaluating the effectiveness of the company’s ESG policies, and ensuring alignment between ESG practices and the established strategy. It also recommends the implementation of internal control mechanisms to ensure that sustainability issues are taken into consideration in an appropriate manner.</p> <p>Furthermore, remuneration policies are increasingly reflecting the alignment with ESG goals. While progress is being made, there remains a considerable journey ahead in terms of capacitating and educating board members on ESG matters. However, there is a noticeable uptick in discussions surrounding this area, signalling a positive shift towards greater board-level engagement with sustainability issues.</p>

25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p>In Portugal, while there is a growing awareness of the importance of ESG reporting, we anticipate that many companies will face significant challenges in implementing the applicable standards.</p> <p>Firstly, there is a lack of familiarity with the specific requirements and guidelines outlined in these standards, resulting in uncertainty and confusion among companies.</p> <p>Secondly, the technical complexity associated with measuring various ESG indicators poses a significant challenge.</p> <p>Thirdly, many companies may find it challenging to allocate sufficient resources to understand and implement ESG reporting effectively. This may be due to a lack of awareness that adapting to new standards requires time and investment in training and learning.</p> <p>Overall, while some companies are already preparing for the new disclosure requirements and there is a recognition of the importance of aligning with these standards, the road to implementation is expected to be challenging for the majority of Portuguese companies.</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>Companies subject to disclosure requirements are currently navigating a learning curve as they endeavour to meet the necessary capability and resource demands for making the required disclosures. The landscape surrounding ESG disclosure obligations is still evolving, and companies are grappling with understanding the intricacies involved. Most companies are seeking guidance from legal counsel to ensure compliance and to navigate the complexities of emerging regulations. However, legal counsels themselves are also on a learning journey, as legislation in this area is relatively new and subject to frequent updates and revisions.</p> <p>Moreover, as companies engage in the disclosure process, they are refining their ideas and strategies around sustainability impacts and risks. Disclosure obligations are prompting/nudging companies to integrate ESG concerns into their decision-making processes. However, achieving effective ESG disclosure requires technical knowledge related to ESG metrics, posing a challenge for companies as they seek the right partners to assist them in collecting and treating ESG information.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>There is no specific obligation under Portuguese law for companies to set climate-related targets.</p>
28.	<p><b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b></p>	<p>No, voluntary commitments to climate-related targets are not widely adopted among companies in Portugal. While there is increasing awareness of the importance of addressing climate change and its impact on businesses, the uptake of voluntary commitments remains limited.</p>



29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>Based on current developments and emerging trends, the following future trajectories can be envisaged for ESG disclosures in the Portuguese jurisdiction.</p> <ol style="list-style-type: none"> <li>1. expanded scope and mandatory requirements: The CSRD will significantly broaden the scope of companies required to provide comprehensive ESG disclosures, moving beyond just public-interest entities. This will likely include large private companies, listed SMEs, and potentially even non-EU companies operating in Portugal;</li> <li>2. standardisation and comparability: In line with the CSRD, Portugal is expected to adopt the forthcoming ESRS, which will provide detailed, sector-specific disclosure requirements. This standardisation will enhance the comparability and reliability of ESG data across companies and industries;</li> <li>3. assurance and verification: The CSRD mandates independent third-party assurance of reported sustainability information, akin to financial audits. This will drive the development of robust assurance practices and standards in Portugal, increasing the credibility and trustworthiness of ESG disclosures;</li> <li>4. digitalisation and data accessibility: Disclosures will likely transition toward structured, machine-readable formats, such as the European Single Electronic Format (ESEF), enabling efficient data extraction, analysis, and integration with financial reporting;</li> <li>5. double materiality perspective: In line with the ESRS, companies will need to disclose not only how sustainability matters impact their business (inside-out perspective) but also their impacts on people and the environment (outside-in perspective), reflecting a more comprehensive and stakeholder-centric approach;</li> <li>6. integrated reporting: While initially separate, ESG disclosures may progressively become more integrated with financial reporting, providing a holistic view of a company's performance, risks, and long-term value creation;</li> <li>7. regulatory scrutiny and enforcement: As ESG disclosures become mandatory and more prominent, regulatory bodies like the Portuguese Securities Market Commission (CMVM) are likely to increase their oversight, guidance, and enforcement efforts to combat greenwashing and ensure compliance; and</li> <li>8. talent and expertise development: The increasing complexities and significance of ESG reporting will drive demand for specialised sustainability reporting professionals, auditors, and advisory services, fostering the development of relevant skills and expertise within the Portuguese market.</li> </ol> <p>These trends point toward a future ESG disclosure landscape in Portugal that is more robust, standardised, assured and integrated, reflecting the growing importance of sustainability considerations for companies, investors, and regulators alike.</p>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Gonçalo dos Reis Martins is a Partner in the Banking and Finance and Capital Markets Team at PLMJ Advogados and also lectures at the Faculty of Law of Universidade Nova de Lisboa.</p> <p>Madalena Perestrelo de Oliveira is a Senior Counsel in the Banking &amp; Finance and the Corporate M&amp;A Teams at PLMJ Advogados. She holds a PhD in Civil Law, specialising in capital markets, from the University of Lisbon School of Law. She is a professor at the same Faculty and a Researcher at the Research Centre for Private Law.</p> <p>Raquel Burgoa Dias is a trainee lawyer in the Banking, Finance &amp; Capital Markets Team at PLMJ Advogados. She holds a Master's degree in International Business Law from Tilburg University and is a Research Associate at the NOVA Knowledge Centre for Business, Human Rights, and the Environment (NOVA BHRE) at NOVA School of Law.</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Singapore

### Singapore

1.	Which jurisdiction are you covering?	Singapore
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Yes, for listed issuers on the Singapore Exchange (SGX) (Listed Issuers) since 2016, and for large, non-listed companies (NLCos) from the financial year (FY) 2027.
3.	If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?	Yes.
4.	If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?	<p>All issuers listed on the SGX have to file a sustainability report since 2016 (please see our response to question 13 on the required components of the sustainability reports). Climate reporting, based on the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), was made mandatory for all issuers on a 'comply or explain' basis from the financial year commencing between 1 January 2022 to 31 December 2022. Climate reporting is thereafter mandatory for issuers in the (1) financial industry; (2) agriculture, food and forest products industry; and (3) energy industry for the financial year commencing between 1 January to 31 December 2023; and for issuers in the (4) materials and buildings industry; and (5) transportation industry for the financial year commencing between 1 January to 31 December 2024.</p> <p>SGX has, in March 2024, proposed to enhance the sustainability reporting regime for reporting on the primary components of a sustainability report from a 'comply or explain' basis to a mandatory basis. Among others, SGX Regulation (SGX Regco) has proposed to amend its listing rules to mandate all issuers to make climate-related disclosures (CRD) aligned with the International Sustainability Standards Board (ISSB), including Scope 1 and 2 greenhouse gas (GHG) emissions from FY2025. Listed issuers will be required to report Scope 3 GHG emissions from FY2026.</p> <p>NLCos with annual revenue of at least S\$1bn and total assets of at least S\$500m (Large NLCos) will be required to report and file CRDs, including Scope 1 and 2 GHG emissions, from FY2027. The annual revenue and total assets threshold for NLCos are measured using company-level financials, unless the NLCo is a parent. A Large NLCo is exempted from mandatory reporting if: (1) its immediate, intermediate or ultimate parent (local or foreign) is minimally preparing climate or sustainability reports in accordance with prescribed CRD in Singapore or deemed equivalent (the European Sustainability Reporting Standards (ESRS)); and (2) its activities are included in that parent's report, which is available for public use.</p>

5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	The mandatory ESG disclosures described in the response to question 4 are required to be made on an annual basis. The existing reporting and filing timelines for financial statements in the Companies Act 1967 will be applied to CRD.
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	Sustainability reports are typically included as part of the annual reports issued by an SGX-listed issuer. Listed companies need to include CRD (1) in a separate report; or (2) as part of the annual report. If CRD is included in a separate report, both reports must be published at the same time. NLCos will file CRD with Accounting and Corporate Regulatory Authority (ACRA) from FY2027.
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	These are included as part of the annual reports issued by an SGX-listed issuer, which are typically also available on the SGX website and uploaded on the issuer website. CRD for Large NLCos are to be filed in a digital structured format to facilitate the consumption of data.
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	Yes, more corporates are making an effort to disclose the green or sustainable features of their investments or business in response to investor and/or shareholder interest, even when no mandatory disclosure requirement applies.
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>The regulator monitoring sustainable reporting by issuers is the SGX. Large NLCos required to report CRD according to ISSB-aligned local reporting standards (local reporting standards) will file their CRD with ACRA. Non-compliance with a listing rule may lead to disciplinary action being taken by the SGX, including the imposition of public or private reprimands, or denial of access to market facilities.</p> <p>The Sustainability Reporting Advisory Committee (SRAC) has recommended that the legal provisions relating to sanctions of the Companies Act 1967 will apply, in particular, 'Section 401(2) of the Companies Act 1967 provides that any person who wilfully makes or authorises the making of a false or misleading statement can be subjected to a fine of up to S\$50,000 or to imprisonment not exceeding two years, or to both'. ACRA will hold a public consultation on the Bill to amend the Companies Act 1967 (CA Bill) to the Companies Act 1967.</p> <p>For a transitional period of three years (FY2027 to FY2029, both years inclusive), Large NLCos that prepare CRD using other international standards and frameworks such as TCFD and GRI are exempted from reporting using the local reporting standards. Large NLCos are not required to report Scope 3 GHG emissions until further notice. At least two years' notice will be given to allow sufficient time for preparation.</p>
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	There are potential criminal and civil liabilities for false or misleading public statements made by issuers. Section 401(2) of the Companies Act 1967 provides that any person who wilfully makes or authorises the making of a false or misleading statement can be subjected to a fine of up to S\$50,000 or to imprisonment not exceeding two years, or to both. Similarly, contravention of the provisions of the Securities and Future Act 2001 provisions can lead to civil liability and criminal liability for the Securities and Future Act 2001. These are generally applicable to false or misleading statements which can include ESG disclosures. More generally, false claims, or acts by suppliers which deceive or mislead consumers, including greenwashing, could constitute unfair practices under the Consumer Protection (Fair Trading) Act 2003 and give rise to civil claims or investigations by the Competition and Consumer Commission of Singapore.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	The SRAC will conduct a review around 2027 to consider whether the mandatory climate reporting should be expanded to other NLCos by around the financial year 2030.

12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an ‘ESG Approved/Compliant’ status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	No, there is no national system of ESG certification for ESG approval/compliance.
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	<p>The annual sustainability report required to be made by SGX-listed issuers must include the following primary components:</p> <ul style="list-style-type: none"> <li>• material ESG factors;</li> <li>• climate-related disclosures consistent with the TCFD recommendations;</li> <li>• policies, practices and performance;</li> <li>• targets;</li> <li>• sustainability reporting framework; and</li> <li>• a statement from the board of directors and associated governance structure for sustainability practices.</li> </ul> <p>As set out in the response to question 4, SGX has proposed to amend its listing rules to mandate all issuers to make ISSB-aligned CRD, including Scope 1 and 2 GHG emissions from FY2025. Listed Issuers will be required to report Scope 3 GHG emissions from FY2026. Large NLCos with annual revenue of at least S\$1bn and total assets of at least S\$500m will be required to report and file CRDs, including Scope 1 and 2 GHG emissions, from FY2027.</p>
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	Yes. Please refer to question 4.
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	The SGX provides specific guidance in its notice on sustainability reporting, which sets out the information expected from each issuer in relation to the ESG disclosures to be made in the annual sustainability report. Other than ISSB-aligned CRD, issuers are not obliged to adopt any specific international standards but should give priority to globally recognised frameworks and disclosure practices to guide their reporting. SGX recommends a list of 27 core ESG metrics for issuers to use as a starting point for sustainability reporting, with each metric mapped against globally accepted reporting frameworks such as the Global Reporting Initiative (GRI); the Sustainability Accounting Standards Board (SASB); the TCFD recommendations; and the World Economic Forum’s recommended set of metrics and disclosures.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	Please see the response to question 15 on requirements for ESG disclosures. There are laws in Singapore addressing specific issues such as in environmental protection, employment, health & safety, and governance, but no single overarching law on ‘ESG’ compliance.

17.	<p><b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b></p>	N/A as the focus is on disclosure rather than ESG compliance.
18.	<p><b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b></p>	The quality of ESG disclosure has improved significantly since the initial introduction of the requirement for sustainability reporting. Further improvements towards a more standardised set of disclosures and independent audits are expected to facilitate investor assessment of these reports and enhance the value of these reports.
19.	<p><b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b></p>	Generally, issuers appreciate the clear guidance given on the level of mandatory disclosures required for SGX-listed issuers.
20.	<p><b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b></p>	<p>There are generally laws which apply to false or misleading statements which can include ESG disclosures but are not specific to greenwashing. False and misleading ESG claims can lead to criminal or civil liabilities under the Misrepresentation Act 1967, and the Consumer Protection (Fair Trading) Act 2003, among others. Under the Securities and Future Act 2001, ‘a person who makes a statement or disseminates information that is false or misleading in a material particular ... with actual or constructive knowledge that the statement or information is false or misleading’ can be fined or imprisoned. More generally, false claims, or acts by suppliers which deceive or mislead consumers, including greenwashing, could constitute unfair practices under the Consumer Protection (Fair Trading) Act 2003 and give rise to civil claims or investigations by the Competition and Consumer Commission of Singapore.</p> <p>The Monetary Authority of Singapore (MAS) in 2022 issued Circular No CFC 02/2022 which prescribes specific disclosure and reporting guidelines that companies offering retail ESG funds that are lodged with MAS on or after 1 January 2023 must comply with. The Competition and Consumer Commission of Singapore is also developing a set of guidelines to help companies make fair and accurate claims about the ‘green’ credentials of their products and to avoid unintentionally engaging in actions that could amount to unfair practices under the Consumer Protection (Fair Trading) Act 2003.</p>
21.	<p><b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority’s approach towards such disclosures, in particular with regard to greenwashing issues?</b></p>	Please refer to question 20.
22.	<p><b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b></p>	A climate activist group, Australia’s Market Forces, in 2023 lodged a complaint with the SGX over JERA Co Inc, alleging that the company did not fully disclose risks related to its S\$300m bond issue on SGX.

23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	<p>External limited assurance is mandatory for CRD. Listed Issuers will be required to conduct external limited assurance on their Scope 1 and 2 GHG emissions from FY2027, while Large NLCos will be required to do so from FY2029. External limited assurance is to be provided by a registered climate auditor, which can be either audit firms registered with ACRA or Testing, Inspection and Certification firms accredited by the Singapore Accreditation Council.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>Board and management are expected to assess the impacts of climate change on the business and the company's resilience to climate change. In addition, the legal responsibilities in line with that of financial statements will be imposed on the company, directors, and/or officers to ensure accountability for CRDs. CRD will fall under the scope of directors' duties and carry both civil and criminal liability.</p>
25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p>Climate reporting, based on the recommendations of the TCFD, was already made mandatory for all issuers on a 'comply or explain' basis from the financial year commencing between 1 January 2022 to 31 December 2022. Climate reporting is thereafter mandatory for issuers in the (1) financial industry; (2) agriculture, food and forest products industry; and (3) energy industry for the financial year commencing between 1 January to 31 December 2023; and for issuers in the (4) materials and buildings industry; and (5) transportation industry for the financial year commencing between 1 January to 31 December 2024.</p> <p>Among others, SGX has proposed to amend its listing rules to mandate all issuers to make ISSB-aligned CRDs, including Scope 1 and 2 GHG emissions from FY2025. Listed Issuers will be required to report Scope 3 GHG emissions from FY2026. Large NLCos will be required to report and file CRDs, including Scope 1 and 2 GHG emissions, from FY2027).</p> <p>There is increasing awareness that the CSRD applies to non-EU companies with activities in the EU above a certain threshold. Companies based in South-east Asia may be subject to EU CSRD as an in-scope company, or as a direct/indirect supplier to in-scope companies, and there are companies already planning for this. With respect to transition planning, SGX has not currently proposed it to be mandatory under the Listing Rules, but issuers are encouraged to consider formulating transition plans to harness green and transition opportunities.</p> <p>Companies see the importance of keeping up to date on these developments and attending information sharing sessions.</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>The capabilities of the companies subject to disclosure requirements fall on a wide spectrum and the larger companies generally are more well-equipped to make disclosures.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>Yes. Under the ISSB-aligned CRD, an entity shall provide disclosures about metrics and targets – 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. SGX also mandates that the sustainability report should set out the issuer's targets for the forthcoming year in relation to each material ESG factor identified, thus if climate risk is a material factor, related targets are required.</p>

28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	An increasing number of companies are gaining awareness of the importance of climate-related risks and facing pressure from their stakeholders.
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	We expect greater regulation and movement towards a common set of disclosures for more industries as regulators seek to manage greenwashing and provide investors with a reliable and consistent dataset to assess sustainability claims.
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Name: Lee Kee Yeng/Elsa Chen</p> <p>Firm Name: Allen and Gledhill</p> <p>Biography of Lee Kee Yeng: Kee Yeng is Co-Head of the Firm’s ESG &amp; Public Policy Practice. Her areas of practice encompass mergers and acquisitions (for both public and private companies), equity capital markets and corporate advisory work for financial institutions and public companies listed on the Singapore Exchange. Kee Yeng has advised sovereign funds, private equity firms and multinational corporates in an extensive range of domestic and cross-border transactions including public takeovers, private acquisitions and joint ventures. She is also actively involved in the listing of structured warrant programmes on the Singapore Exchange.</p> <p>Biography of Elsa: Elsa is Co-Head of the Competition &amp; Foreign Investment Review Practice and ESG and Public Policy practice. Elsa’s ESG and public policy experience ranges from assisting clients to map out ESG trends and implications, policy drafting, advocacy, and assisting on legislative changes. She is also the only economist cited as a Thought Leader in Asia and Singapore by Who’s Who Legal: Thought Leaders: Competition 2020 and 2021.</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for South Korea

### South Korea

1.	<b>Which jurisdiction are you covering?</b>	South Korea
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	There is no mandatory consolidated ESG disclosure requirement applicable to the market participants in Korea, but the Korea Sustainability Standards Board (KSSB), which is mandated to establish the sustainability disclosure standards from the Financial Services Commission (FSC), published the draft of the Korean Sustainability Disclosure Standards for public comments on 30 April 2024 (with the public comment period ending on 31 August 2024). The mandatory disclosure timeline within the legal framework or the listing rules of the Korea Exchange Inc (KRX) has not been determined by the Korean government. Consequently, the effective dates of the mandatory disclosure standards and the specific location for information will be established in conjunction with the development of the mandatory sustainability disclosure system.
3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	<p>As proposed by the KSSB, the Korean Sustainability Disclosure Standards consist of two mandatory disclosure standards (KSSB 1 and KSSB 2) and one non-mandatory disclosure standard (KSSB 101):</p> <ul style="list-style-type: none"> <li>• Sustainability Disclosure Standard 1 (KSSB 1): General Requirements for Disclosure of Sustainability-related Financial Information (based on IFRS S1);</li> <li>• Sustainability Disclosure Standard 2 (KSSB 2): Climate-related Disclosure (based on IFRS S2);</li> <li>• Sustainability Disclosure Standard 101 (KSSB 101): Additional Disclosure aligned with Policy Objectives</li> </ul> <p>Entities applying the Korean Sustainability Disclosure Standards must comply with the mandatory disclosure standards, KSSB 1 and KSSB 2, which are based on the IFRS Sustainability Disclosure Standards. KSSB 101 is a unique country-specific standard that allows companies to selectively disclose additional sustainability-related information as required by domestic laws or to meet the sustainability-related policy objectives.</p>
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	Please refer to our response to question 2.



5.	What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?	Please refer to our response to question 2.
6.	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	Please refer to our response to question 2.
7.	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?	Please refer to our response to question 2.
8.	In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?	The KRX issued the <i>ESG Disclosure Guidance</i> on 18 January 2021, which provides the basic principles on ESG disclosures for companies to voluntarily disclose ESG information through sustainability reports. Only 160 companies listed on the KRX voluntarily disclosed their sustainability reports in 2023.
9.	What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?	If the mandatory sustainability disclosures are included in the annual reports to be published by the public companies in accordance with the Financial Investment Services and Capital Markets Act (FSCMA), the FSC and the Financial Supervisory Service (FSS) monitors the compliance with the mandatory disclosure requirements. If the mandatory sustainability disclosures are included in the separate form of reports to be disclosed under the listing rules of the KRX, the KRX monitors the compliance with such disclosure requirements.
10.	What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?	<p><b>Penalties under the listing rules of the KRX</b></p> <p>The failure to file the mandatory sustainability disclosure report as required under the listing rules of the KRX or the false disclosure therein will constitute the non-fulfilment of disclosure obligations which may trigger the suspension of the trading and/or the imposition of monetary penalties.</p> <p><b>Penalties under the FSCMA</b></p> <p>The failure to make the mandatory sustainability disclosure in the annual report as required under the FSCMA may trigger the imposition of the monetary penalties and/or criminal penalties including the fine or imprisonment.</p>
11.	Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?	Please refer to our response to question 2.
12.	Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?	Currently, there is no mandatory ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status.

<p>13.</p>	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p><b>KSSB 1 and KSSB 2</b></p> <p><i>Climate-first approach</i></p> <p>The Korean Sustainability Disclosure Standard prioritises mandatory disclosure of climate-related issues due to their direct impact on entities' financial reporting and their importance in the global capital market. The disclosures required to be made will include:</p> <ol style="list-style-type: none"> <li>1. governance structure – the decision-making process, protocol and procedure utilised for the supervision and management of climate-related risks and opportunities;</li> <li>2. strategy – the methodology adopted by the entities in managing their climate-related risks and opportunities;</li> <li>3. risk assessment process – the process from the stage of identification to evaluation and management of the climate-related risks and opportunities; and</li> <li>4. current and target indicators – the cross-industry indicators (mandatory), industry-based indicators (voluntary), climate-related target indicators, and other performance-related indicators.</li> </ol> <p><i>Industry-based merits</i></p> <p>Climate-related risks and opportunities vary depending on activities or industries of entities, enhancing comparability between industries when information reflecting industry characteristics is disclosed, thus providing useful information to investors. However, given the current situation where industry-specific disclosure information is unclear due to the absence of common industry standards, KSSB 2 allows entities to choose to disclose industry-based metrics. The obligation and timing of mandatory disclosure of industry-based metrics will be determined by taking into comprehensive consideration the development of international industry standards and domestic readiness.</p> <p><i>Internal carbon prices</i></p> <p>Internal carbon prices serve as crucial metrics of how entities manage climate risks and can assist in evaluating the vulnerability of specific business models to such risks. However, given the immaturity of the method of determining internal carbon prices, KSSB 2 requires the disclosure of whether and how entities apply internal carbon prices, while also allowing entities to choose to disclose the price per metric tonne of greenhouse gas emissions. The obligation and timing of mandatory disclosure of internal carbon prices will be determined through comprehensive consideration of international trends and domestic situations.</p> <p><i>Greenhouse gas emissions</i></p> <p>The draft of the Korean Sustainability Disclosure Standards requires entities to disclose their absolute gross Scope 1, 2, and 3 greenhouse gas emissions generated, expressed as metric tonnes of CO<sub>2</sub> equivalent. While entities measure their greenhouse gas emissions in accordance with the Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard (2004) (the GHG Protocol (2004)), they are also allowed to use measurement methods required by jurisdictional authorities. However, the obligation and timing of mandatory disclosure of Scope 3 greenhouse gas emissions will be determined based on the feedback received on the draft and consultations with relevant authorities.</p> <p><b>KSSB 101</b></p> <p>KSSB 101 aims to enhance the usefulness of information for users by requiring the disclosure of various pieces of information, which are scattered across various locations according to domestic sustainability-related laws or regulations, along with sustainability financial information. Additionally, it aims to promote the implementation of government policies through sustainability-related disclosures, such as childcare-friendly management, industrial safety, human rights management, and employment of people with disabilities. Entities have the option to apply KSSB 101 and may selectively disclose the required information item by item.</p>
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14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	Yes, KSSB 2 will require climate-related disclosures as referred to in our response to question 13.
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	Upon adoption of the Korean Sustainability Disclosure Standards, it will serve as the ESG disclosure standards in Korea.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	The relevant law and guidance is forthcoming.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	Currently, cross-impacts are not covered by law or regulations.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	When KSSB published the draft of the Korean Sustainability Disclosure Standards, it announced that it aimed to enable domestic companies to effectively navigate the evolving global ESG regulations while ensuring such standards do not impose excessive burdens on domestic companies.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	Yes.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	Currently, there are no mandatory ESG disclosure requirements in connection with securities issues imposed by law or regulators. However, the Ministry of Environment published (1) the Korean Green Bond Guideline in December 2020 and (2) the national green taxonomy guideline ('K-Taxonomy') on 21 December 2021, which are not legally binding but provide the principles and standards on what types of economic activities are considered green activities. To utilise green finance such as green bonds, green loans and green funds, corporations and financial institutions in Korea must confirm whether their economic activities meet the requirements under the Korean Green Bond Guideline and the K-Taxonomy.
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	Please refer to our response to question 20.

22.	Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?	No.
23.	If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?	Currently, there is no mandatory external certification/assurance requirements in connection with the ESG disclosure.
24.	What kind of developments have you seen in relation to board oversight and governance of ESG matters?	The KSSB 1 and KSSB 2 include the disclosure on the 'governance structure' which covers the decision-making process, protocol and procedure utilised for the supervision and management of climate-related risks and opportunities – for instance, information on the internal decision-making body for climate risk management and the management's oversight role.
25.	<p>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	Because it is expected that the ESRS will apply to the Korean companies which operate their subsidiaries, the Korean parent companies having EU subsidiaries may have to plan for the compliance with the ESRS in order to continue their EU operations in the future.
26.	In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?	Considering the fact that the draft of Korean Sustainability Disclosure Standards as proposed by the KSSB have been formulated to ensure interoperability with ESG disclosure standards of other major countries to minimise the burden of disclosure duties for domestic companies, it is expected that the Korean companies will be able to satisfy such disclosure requirements.
27.	Is it mandatory for companies to set climate-related targets?	KSSB 1 and KSSB 2 will require the disclosure on the information about 'current and target indicators' including mandatory industry indicators (such as greenhouse gas) and voluntary industry-based indicators (in reference to the <i>Industry-based Guidance on implementing Climate-related Disclosures accompanied to IFRS S2 Climate-related Disclosures</i> ).

28.	If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets ( <a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?	No.
29.	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	As discussed in question 18, the ESG disclosure requirements will be amended to streamline the disclosure requirements reflected in the various laws and regulations and to expand the items and metrics for ESG disclosures.
30.	Please provide your name, firm name, and a brief biography (optional) about yourself.	

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Spain

### Spain

1.	<b>Which jurisdiction are you covering?</b>	Spain
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>Yes, companies that meet certain thresholds are subject to ESG disclosure obligations. In particular, they are required to prepare a non-financial statement (NFS or, following the transposition of the Corporate Sustainability Reporting Directive (CSRD) into Spanish law, a 'sustainability report').</p> <p>There are no material disclosure obligations in respect of ESG information that apply to companies other than public interest entities (PIEs) (as referred to in the EU Accounting Directive, as amended). However, we note that certain corporate documentation (eg, the management report that accompanies the statutory annual accounts and the notes in the statutory annual accounts) must include limited ESG information.</p> <p>Furthermore, Spanish market participants may be subject to certain EU regulations. These regulations include (1) the Sustainable Finance Disclosure Regulation (SFDR), which sets out concrete disclosure requirements for financial market participants and financial advisers at both an entity level and a product level; and (2) the EU Taxonomy Regulation, which requires companies that fall within the scope of the NFRD to disclose in the NFS certain indicators about the extent to which their activities are environmentally sustainable.</p> <p>Apart from these general obligations, ESG disclosure obligations may arise from issuing bonds in accordance with the EU Regulation on European Green Bonds (EGBR). According to the EGBR, if an entity issues bonds that are to be labelled as 'European Green Bonds', the issuer must comply with certain disclosure obligations when they are issued and during their lifespan.</p>
3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	<p>The NFS disclosure framework applies to: (1) private limited companies (<i>sociedades limitadas</i>), public limited companies (<i>sociedades anónimas</i>) and limited joint-stock companies (<i>sociedades comanditarias por acciones</i>); and (2) parent companies (which can be different from the companies referred to in (1) above) of a group required to prepare consolidated accounts.</p> <p>The NFS disclosure framework applies in the same manner to all the aforementioned companies.</p>

4.	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b></p>	<p>Currently, the companies referred to in question 3 above are required to prepare the NFS (consolidated or individual) if (1) their average number of employees during a financial year exceeds 250 (on a consolidated or individual basis, as applicable); and (2) any of the following criteria are met: (a) it is a PIE, in accordance with the Spanish Audit Law or the Spanish Audit Regulation (except if it qualifies as an SME); or (b) for two consecutive financial years, either of the following circumstances occurs at the closing date of each of them: (i) the total assets are worth more than €20m (on a consolidated or individual basis, as applicable); or (ii) the net annual turnover exceeds €40m (on a consolidated or individual basis, as applicable).</p> <p>Note that the following entities are also PIEs in accordance with Spanish law: (a) investment firms and collective investment undertakings that, for two consecutive financial years, at the closing date of each financial year, have at least: (1) 5,000 clients in the case of investment firms; or (2) 5,000 unit holders or shareholders in the case of collective investment undertakings and the management companies managing such undertakings; (b) pension funds and the management companies managing such funds that, for two consecutive financial years, at the closing date of each financial year, have at least 10,000 members; (c) banking foundations, financial credit institutions, payment institutions and electronic money institutions; and (d) entities whose net turnover and average number of employees during two consecutive financial years, at the closing date of each financial year, exceeds €2bn and 4,000 employees, respectively.</p> <p>We also note that the CSRD, which is still to be transposed into Spanish law, (1) extends the obligation to prepare and publish the NFS to all large companies and SMEs (except micro undertakings) which are PIEs; and (2) provides that non-EU companies that generate over €150m per year in the EU and have either (a) a branch with a turnover exceeding €40m; or (b) a subsidiary that is a large company or a listed SME in the EU, will have to report on the sustainability impacts at the group level of that non-EU company for financial years starting on or after 1 January 2028. Also, EU Delegated Directive 2023/2775, which is yet to be transposed into Spanish law, adjusts the size criteria for micro, small, medium-sized and large undertakings or groups. Specifically, the thresholds are increased by 25 per cent.</p> <p>With regard to the transposition of the CSRD into Spanish law, it should be noted that Member States must apply the necessary measures in order to comply with the CSRD rules in three stages: (1) for companies already subject to the NFRD, for financial years starting on or after 1 January 2024; (2) for large companies that were not subject to the NFRD when the CSRD was approved, for financial years starting on or after 1 January 2025; and (3) for listed SMEs, small and non-complex credit institutions, and captive insurance undertakings, for financial years starting on or after 1 January 2026. Consequently, SMEs will benefit from some exemptions such as having less stringent publication requirements.</p>
5.	<p><b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b></p>	<p>The NFS must be prepared every year and drafted by the directors within three months of the end of the relevant financial year.</p> <p>The consolidated NFS (if any) must be submitted for shareholder approval at the general meeting as a separate item on the agenda within six months of the end of the relevant financial year. The interpretation of the Institute of Accounting and Auditing of Accounts (Instituto de Auditoría y Cuentas (ICAC)) is that the individual NFS must also be submitted for shareholder approval at the general meeting as a separate item on the agenda.</p>
6.	<p><b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b></p>	<p>Spanish law allows to present the NFS both as part of the management report, which is, in turn, part of the financial statements, or as a standalone report.</p> <p>We note that the CSRD, which as mentioned above is yet to be transposed into Spanish law, amended the existing reporting requirements of the NFRD by, among other things, introducing more detailed reporting requirements and a requirement to report according to mandatory European Sustainability Reporting Standards (ESRS).</p>

7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>The NFS must be registered, along with the company's statutory annual accounts, within one month of it being approved by the shareholders at the general meeting with the Commercial Registry (Registro Mercantil) of the place where the company's registered office is located, at which point it becomes publicly accessible without having to prove a legitimate interest. There are no grace periods to submit the NFS.</p> <p>Furthermore, the consolidated NFS (if any) must be published on the company's registered corporate website within six months of the end of the relevant financial year and must remain available for a period of five years. Note that the corporate website is used for company-related corporate governance matters, which may be different from the website used for commercial purposes. Having a corporate website is only compulsory for listed companies; however, non-listed companies can also create one and register it with the Commercial Registry. In addition, listed companies must make available on their website the annual and interim financial reports including the management reports, which must also include the NFS.</p> <p>From 10 January 2028, companies must feed the reported information into the European single access point, such information having to be machine readable and include some metadata.</p>
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>Yes, the recent surge in ESG considerations among institutional and retail investors has led to heightened demand for ESG information in Spain. This demand has become particularly pronounced as large companies, influenced by their own ESG disclosure obligations, are now requiring ESG information from their suppliers, creating a trickle-down effect throughout the supply chain.</p> <p>For instance, many SMEs are experiencing increased requests for sustainability data, notably from banks extending loans and large companies with whom they do business. This trend underscores the evolving landscape where sustainability reporting is becoming standard practice for companies of all sizes.</p> <p>In addition to investor pressure, regulatory requirements and supply chain demands, the transition to a sustainable economy also underscores the strategic importance of ESG disclosure. Companies that embrace and transparently report on their ESG performance are not only meeting current expectations but also positioning themselves for long-term sustainability and improved access to capital.</p>
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>The Commercial Registry and ICAC are responsible for monitoring ESG disclosure compliance in Spain. But note that these bodies only carry out a formal review rather than a material one. In particular, when companies deposit the NFS at the Commercial Registry, registrars only analyse whether: (1) the document corresponds to the one legally required; (2) the shareholders have approved it at the general meeting; and (3) it has been duly signed.</p> <p>The ICAC can fine companies that do not submit the NFS to the Commercial Registry within the deadline mentioned in question 7 above. The Audit Regulation has been amended to enable the Commercial Registry (which, as a body, is much more involved in the company's statutory filings) to intervene in the sanctioning process and expedite it.</p> <p>Failure to register the NFS with the Commercial Registry (as part of the management report that accompanies the statutory annual accounts) may result in a fine for the company ranging between €1,200 and €60,000, which can be increased up to €300,000 per year of delay if the company's annual turnover exceeds €6m. The amount of the fine depends on the following criteria (always within the limits outlined in this paragraph): (1) an amount equal to: (a) 0.5 per thousand of the total amount of the value of the assets; plus (b) 0.5 per thousand of the turnover of the company as listed in the last tax returns filed (to be provided during the procedure); (2) if the company does not provide the tax returns referred to above, an amount equal to 2 per cent of the company's registered share capital; and (3) if the amounts identified in (1) exceed 2 per cent of the share capital, the fine will 90 per cent of the amount calculated in accordance with (2).</p> <p>Additionally, courts may consider failing to comply with the obligation to prepare the NFS an infringement of the directors' duty of care, and they may be held liable for the damage the infringement causes the company (eg, fines imposed). This outcome depends on the relevant claimant providing evidence that a breach of this duty of care caused damage to the company or the claimant itself.</p>



		<p>It is important to highlight the role of the Spanish National Securities Market Commission (CNMV) in overseeing listed companies' annual and interim financial reports, which include the NFS, aimed at bolstering confidence in the accuracy and reliability of the information disseminated by issuers. The CNMV's supervisory approach toward NFS mirrors its scrutiny of financial reporting, characterised by both formal and substantive assessments. Formally, the CNMV ensures compliance with filing requirements, scrutinises verification reports, and addresses specific aspects of the reports. Substantively, the focus lies on aligning with the priorities outlined by the European Securities and Markets Authority and the CNMV, emphasising material aspects pertinent to each company. As part of its supervisory role, the CNMV may issue recommendations and requests to issuers, prompting them to clarify or augment certain information within their NFS to enhance transparency and completeness.</p> <p>Failure by listed companies to prepare, disseminate, publish or make available to the public or submit to the CNMV regulated information, or providing the CNMV with regulated financial information with inaccurate or untrue data, or information that is misleading or omits relevant aspects or data, may constitute very serious or serious infringements, which carry sanctions of up to €5m if the infringement is very serious or up to €300,000 or higher if the infringement is serious, as well as other related sanctions.</p> <p>Lastly, there are no grace periods to submit the NFS.</p>
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>In addition to the fines mentioned in question 9 above, the Criminal Code establishes that directors who misrepresent the annual accounts or other documents that should reflect the company's legal or economic status (eg, the NFS) in such a way as to cause economic damage to the company, one of its shareholders or a third party may be punished with imprisonment of one to three years and a fine of six to twelve months. The penalties imposed will be in the upper half of the range if economic damage is caused.</p> <p>It could be argued that disclosure does not have to be mandatory in order for this offence to be committed, which means that directors who voluntarily provide false or misleading non-financial information in such a way as to cause economic damage may also be committing a crime.</p>
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	<p>There is no tiered disclosure system in Spain. The same disclosure framework applies to all companies that meet the thresholds mentioned in question 4 above, which trigger the obligation to prepare the NFS.</p> <p>With regard to further ESG disclosure requirements, the CSRD, which is yet to be transposed into Spanish law, amends the existing reporting requirements of the NFRD by, among other things, introducing more detailed reporting requirements and a requirement to report according to mandatory ESRS.</p>
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	<p>There is no system of ESG certification or benchmarks that need to be met to have 'ESG approved/compliant' status.</p> <p>Notwithstanding the above, Spanish law requires that the non-financial KPIs used in the NFS are of a type that may be generally applied and comply with the European Commission Guidelines (2017/C 215/01) as supplemented on the reporting of climate-related information (2019/C 209/01) and the Global Reporting Initiative (GRI) Standards. Reporting entities also rely on many different initiatives, both local and international, and generic and industry/topic based, when drafting the NFS, such as the UN Global Compact (UNGC), Sustainable Development Goals (SDGs) or Sustainability Accounting Standards Board (SASB).</p> <p>The EU Climate Transition Benchmarks Regulation amending the EU level Benchmark Regulation (BMR) introduced two climate-related benchmarks: the EU Climate Transition Benchmark (EU CTB) and the EU Paris-aligned Benchmark (EU PAB). BMR's delegated regulations further specify ESG disclosure requirements for such benchmarks. It is worth noting that the European Securities and Markets Authority (ESMA) is carrying out a Common Supervisory Action (CSA) with national competent authorities on ESG disclosures under the BMR. The CSA will focus on assessing the supervised benchmark administrators' compliance with the ESG disclosure requirements of the BMR.</p> <p>In practice, many companies use more than one framework, standard or guideline, mostly when they are operating in a global context. It can also be reasonably deduced that such standards complement each other, where some are generic, others are topic or sector specific.</p>

13.	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p>The NFS must include the following: (1) a brief description of the group's business model, including its business environment, organisation and structure, the markets in which it operates, its objectives and strategies, and the main factors and trends that may affect its future development; (2) a description of the group's policies pursued in relation to those matters, including the due diligence processes implemented to identify, assess, prevent and mitigate significant risks and impacts, and to verify, among other things, what measures have been taken and to monitor them; (3) the outcome of those policies, including relevant non-financial KPIs to be able to monitor and evaluate progress and be able to compare across companies and sectors, in accordance with the national, European or international frameworks used for each subject; (4) the principal risks related to the group's operations, including where relevant and proportionate, its business relationships, products or services that are likely to cause adverse impacts in those areas and how the group manages those risks, with an explanation of the procedures used to identify and assess them in accordance with the national, European or international frameworks used for each issue. Information on the impacts that have been identified must be included, with a breakdown of these impacts, in particular, the main short-, medium- and long-term risks; and (5) the non-financial KPIs relevant to the company that meet the criteria of comparability, materiality, relevance and reliability.</p> <p>In addition, the NFS must include material information on the following aspects: (1) environmental matters (eg, pollution, circular economy, waste prevention and management, sustainable use of resources, climate change and biodiversity protection); (2) social and employee-related matters (eg, employment, work organisation, health and security, social relations, training, universal accessibility for persons with disabilities and gender equality); (3) respect for human rights; (4) anti-corruption and anti-bribery matters; and (5) the company (eg, company commitments to sustainable development, subcontracting and suppliers, consumers and tax information).</p> <p>In addition, the EU Taxonomy Regulation requires companies that fall within the scope of the NFRD to disclose in the NFS certain indicators about the extent to which their activities are environmentally sustainable. Furthermore, companies reporting under the CSRD will have to report on their alignment with the EU Taxonomy Regulation.</p>
14.	<p><b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b></p>	<p>Yes, there is a special focus on climate change-related disclosures. In particular, in the NFS, reporting companies must identify: (1) the material components of greenhouse gas emissions resulting from their activities, including using the goods and services they produce; (2) the measures taken to adapt to the consequences of climate change; and (3) the voluntary targets set in the medium- and long-term to reduce greenhouse gas emissions and the means implemented to this end.</p> <p>Also, under the EU Taxonomy Regulation and in relation to the disclosure obligations of companies that publish the NFS, companies must take into account that an economic activity qualifies as environmentally sustainable where, among other things, that economic activity contributes substantially to, and does not significantly harm any of, one or more of the following objectives: (1) climate change mitigation; (2) climate change adaptation; (3) the sustainable use and protection of water and marine resources; (4) the transition to a circular economy; (5) pollution prevention and control; and (6) the protection and restoration of biodiversity and ecosystems.</p>
15.	<p><b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b></p>	<p>Currently, Spanish law does not establish a standardised format for drafting the NFS, so companies have leeway when preparing it, provided the minimum legally required content is covered. However, as mentioned, the CSRD, which is yet to be transposed into Spanish law, requires entities to report according to the ESRS.</p> <p>In particular, the ESRS provides companies with common standards and templates for them to report on both their impact on people and the environment and on how social and environmental issues create financial risks and opportunities for the company. There are 12 ESRS, covering the full range of sustainability issues. ESRS 1 (General Requirements) sets general principles to be applied and does not itself set specific disclosure requirements. ESRS 2 (General Disclosures) specifies essential information to be disclosed irrespective of which sustainability matter is being considered. ESRS 2 is mandatory for all companies that fall under the CSRD scope. All the other standards and the individual disclosure requirements and datapoints within them are subject to a materiality assessment. This means that the company will report only relevant information and may omit information that is not relevant (material) for its business model and activity. Disclosure requirements subject to materiality are not voluntary.</p> <p>In addition, listed SMEs may report according to separate, proportionate standards that will be less demanding than the full set of ESRS. The European Financial Reporting Advisory Group (EFRAG) is currently developing the draft versions of the proportionate standards for listed SMEs.</p>

16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	Yes, as described above, Spanish law clearly identifies the scope of the ESG disclosure to be included in the NFS. However, while the legislation sets a clear scope for ESG disclosures, the dynamic nature of ESG factors and evolving best practices calls for continuous monitoring and their updating.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	Spanish law does not address cross-impacts between ESG goals, apart from the general classification assessment contained in the EU Taxonomy Regulation, by which in order to perform an environmentally sustainable economic activity, a company must not only contribute to at least one environmental objective but also must not violate the remaining ones.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	<p>It lies somewhere in the middle.</p> <p>On the one hand, the disclosure of non-financial information has empowered financial market participants to assess and incorporate ESG risks into their investment decisions in Spain, thereby directing financial resources towards companies and initiatives that promote the transition to a more sustainable economy. This has resulted in tangible benefits for businesses, such as enhancing brand value and reputation. High-quality ESG disclosures have enabled companies to improve their access to financial capital, proactively identify and manage ESG-related risks and opportunities, and bolster their standing in the eyes of investors and stakeholders.</p> <p>However, on the other hand, ESG disclosure is often perceived by Spanish companies as an administrative burden and a compliance exercise. Many companies find themselves grappling with the challenge of gathering non-traditional data and information, which may not be readily accessible or readily available. This can impose additional costs and resource burdens on companies, particularly smaller ones, as they strive to meet regulatory requirements and investor expectations regarding ESG reporting.</p>
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	<p>Although investors express a strong desire for greater transparency, clarity, and effectiveness in ESG disclosure, they have encountered several significant challenges in the past: (1) some companies either fail to report ESG information altogether, or those that do often omit relevant details essential for users' understanding; (2) applicable regulations do not clearly specify the information that companies should disclose and do not mandatorily require companies to use non-financial reporting standards, so reported information is not sufficiently comparable and reliable; (3) disclosure requirements are often high-level, principles-based and flexible, which can result in varied interpretations and inconsistent reporting practices; (4) information on intangibles is frequently underreported; and (5) it is difficult for investors to find and exploit the information they are looking for even when the information is reported, in part because it is not sufficiently digitalised.</p> <p>Bear in mind that the CSRD has taken steps to address some of these issues. For instance, it mandates that NFS be presented in a single electronic format, ensuring greater accessibility and standardisation. Additionally, the CSRD requires entities to report according to mandatory ESRS, enhancing comparability and reliability of reported data. Moreover, the inclusion of information on intangibles further enhances the completeness of ESG reporting.</p> <p>However, companies subject to ESG disclosure obligations continue to face challenges in determining what information to report and in obtaining necessary non-financial data from suppliers, clients and investee companies. This difficulty often results in unnecessary costs associated with compiling and reporting non-financial information.</p> <p>Overall, while recent regulatory efforts have made strides in improving ESG disclosure practices, further enhancements are needed to streamline reporting requirements, improve data accessibility, and reduce reporting burdens for companies.</p>

20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	As mentioned, ESG disclosure obligations may arise from the issuance of bonds in accordance with the EGBR. According to the EGBR, if an entity issues bonds which are intended to be labelled as European Green Bonds, the issuer must comply with certain disclosure obligations when they are issued and during their lifespan. This information must be verified by an ESMA-registered external verifier.
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	<p>There have been significant advancements in ESG disclosures among Spanish issuers, driven by investors' growing interest in assessing the sustainability and ethical implications of their investments over the long term.</p> <p>Issues of green bonds in accordance with the EGBR have emerged as a key tool to finance sustainable projects and mitigate climate change. The EU has established a robust regulatory framework to promote the green bond market. These regulations set clear and transparent criteria for determining which projects are considered environmentally sustainable, providing green bond issuers with a solid guide for information disclosure and labelling of their issuances.</p> <p>Additionally, in Spain, there is a notable preference for utilising the International Capital Market Association (ICMA) Green Bond Principles (GBP), the Social Bond Principles (SBP), the Sustainability Bond Guidelines (SBG) and the Sustainability-Linked Bond Principles (SLBP) for green, social, sustainability or sustainability-linked bond issuances. While these principles and guidelines are not legally binding, they provide a robust and internationally recognised framework for issuing such types of bonds, setting clear standards in areas such as project selection, evaluation processes, revenue management, and information disclosure.</p> <p>In addition, there has been a growing focus on ESG disclosures by issuers from regulatory authorities. For instance, in its public activity plan for 2024, the CNMV emphasised the need to increase supervision to ensure proper integration of sustainability in the financial sector and to address potential shifts in investor preferences. It also highlighted the importance of enhancing the reliance on and comparability of available information and education to mitigate the risk of greenwashing.</p>
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	<p>Although not related to securities issues, there are various recent cases of greenwashing claims involving Spanish companies.</p> <p>Most recently, a leading Spanish power company brought a claim against a major Spanish oil company accusing it of misleading advertising and unfair competition over its eco-friendly products and services. While the case has made its way to court, the outcome (and its consequences) remains uncertain at present.</p>
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	<p>Yes, an independent third party (which may be the company's auditor) must verify the consolidated NFS. The ICAC's interpretation is that the individual NFS must also be verified by the independent service provider.</p> <p>In particular, the verification report should explain whether the purpose of the verification is to obtain assurance (which may be reasonable or limited, or otherwise, with the extent and nature of the assurance obtained being clearly specified) that the NFS does not contain any material misstatements.</p> <p>The CSRD, which is yet to be transposed into Spanish law, requires companies to appoint an external verifier, which may be different from the firm auditing the financial statements, to issue a report to verify that the NFS meets with the CSRD requirements, the process the company followed to determine the information presented and that the marking requirements under the EU Taxonomy Regulation have been complied with when reporting on sustainability.</p>

		<p>The regulation on the content of this verification report will be implemented in two stages. Until the EU Commission adopts the delegated act implementing the rules on reasonable verification, which should happen no later than 1 October 2028, the verification report will consist of a limited review, which will be formulated in a negative way and will be limited to stating that the verifier has not identified any elements that would lead to the conclusion that the sustainability report contains material misstatements. Once the EU Commission adopts the implementing act on the reasonable assurance standards, the verifier report must reflect the conclusions on the company's internal controls and the content of the sustainability report.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>The Spanish Code of Good Governance for listed companies recommends companies to implement an adequate sustainability policy covering environmental and social matters, as a non-delegable function of the board of directors, clearly and sufficiently setting out how it will be developed and implemented as well as its expected results.</p> <p>In this regard, listed companies assign the task of supervising compliance with ESG policies to one board committee, which could be a dedicated committee. The committee should be made up solely of non-executive directors, the majority being independent and specifically assigned, among others, the following tasks: (1) monitor the implementation of the ESG disclosure policy; (2) periodically assess the effectiveness of the company's corporate governance system and ESG policies; and (3) ensure that the company's ESG practices are aligned with the established strategy and policy.</p> <p>Furthermore, Spanish law establishes as one of the board's non-delegable powers the approval of a corporate social responsibility policy. In this context, it is increasingly common to see companies aligning their business strategy with shared objectives related to ESG matters, which results in both the board of directors and management being more actively involved in monitoring and implementing ESG measures.</p>
25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p>The impact that the new sustainability disclosure standards are having on companies varies depending on their level of experience in ESG disclosure matters. Those companies that were already required to collect ESG information and publish the NFS feel more prepared to comply with the ESRS and CSRD obligations, especially with regard to the need to comply with the standardised ESRS templates and the dual materiality impact assessment obligations, which also require identifying and interacting with stakeholders.</p> <p>Most of the companies are undergoing a transition period to prepare for these new ESG disclosure requirements. This process will be influenced by the final transposition of the CSRD into Spanish law, which has not yet taken place.</p> <p>In particular, companies (especially smaller ones) are focusing on preparing and adapting their internal reporting structures so that they can collect the required information in a comprehensive manner, for which companies are starting to use technology to help them collect data and structure future sustainability reports.</p> <p>Listed companies are setting up specialised board sustainability committees to monitor the quality of non-financial reporting, non-financial internal control systems and risk management, and other ESG aspects, or assigning those functions to other existing board committees.</p> <p>Also, companies are increasingly looking for external consultants to complement and support the information gathering and processing activities of their internal teams, frequently relying on the assessment of the auditors, especially with regard to the sustainability report's compliance with ISSB sustainability disclosure standards and ESRS.</p> <p>It is worth noting that some Spanish companies have embraced the guidance published by TNFD. These are mainly large listed companies with a long history of ESG disclosure focus.</p>

26.	<b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b>	<p>The companies subject to ESG disclosure requirements vary in terms of their capability and resources to make the necessary disclosures.</p> <p>Larger companies often have dedicated sustainability teams or departments equipped with the resources and expertise to gather and report ESG data effectively. They may also have access to sophisticated software and tools for data collection and analysis, as well as the financial resources to invest in sustainability initiatives and reporting frameworks. However, smaller companies may find it harder to meet ESG disclosure requirements because they have fewer resources and less expertise. They generally do not have dedicated sustainability personnel or the financial means to invest in robust ESG reporting systems. As a result, compliance with ESG disclosure requirements can be more burdensome for smaller companies.</p> <p>Regulatory bodies and industry associations in Spain guide and support companies in meeting ESG disclosure requirements, including offering resources, training, and best practice recommendations.</p> <p>In addition, as the scope of the CSRD is quite broad, there is a significant difference in the size and resources of the companies facing the new sustainability disclosure obligations. A determining factor is the prior existence of the requirement to publish the NFS in accordance with NFRD. Those companies that already publish the NFS and had information collection and publication structures in place will have to invest less in resources to adapt to the CSRD requirements. However, companies that are subject to the obligation to publish the sustainability report for the first time will have to allocate more resources to comply with these reporting obligations, in particular with regard to impact and dual materiality analyses. The challenge for them is how quickly they can, both internally and with external support, develop these structures.</p>
27.	<b>Is it mandatory for companies to set climate-related targets?</b>	<p>In general, companies are not obligated to set climate-related targets. But reporting greenhouse gas emissions, which is currently optional under Spanish law, is expected to become mandatory for certain companies, and will require those companies to create a strategic plan to reduce those gases. Although such new legislation is not currently in place at the national level, there are certain Spanish regions that do require companies meeting certain thresholds to publish greenhouse gas emission data and, in some cases, to prepare and implement strategies to reduce greenhouse gas emissions.</p>
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	<p>In recent years, Spanish companies, especially SMEs, have been increasingly involved in different climate initiatives, such as Science Based Targets (SBTi), the CDP Climate Survey or the carbon footprint registry of the Spanish Climate Change Office.</p> <p>These commitments are particularly relevant for listed companies, especially those with large market capitalisation. It is worth noting that the IBEX 35 is the European index with the highest percentage of companies who have adhered to the SBTi.</p> <p>We can find other examples of voluntary commitments in the financial sector, where a significant number of financial institutions, especially the larger ones, have adhered to targets such as the Equator Principles or principles such as those set out in the recommendations of the Task Force on Climate-related Financial Disclosure of the Financial Stability Board.</p> <p>Finally, the number of companies resorting to debt capital markets financing has increased, either in accordance with EGBR or the ICMA's principles and guidelines, whereby issuers link the cost of financing to achieving certain sustainability targets or allocate the funds to developing green projects.</p>
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>Future trends in Spain on ESG disclosure requirements will mainly be driven by (1) the transposition of the CSRD and gradual implementation of its requirements by the different undertakings, and how they are able to respond to these additional obligations; (2) the approval of the EU Directive on Corporate Sustainability Due Diligence (CS3D), which will set specific obligations for large companies regarding actual and potential adverse impacts on human rights and the environment with respect to their own operations, those of their subsidiaries, and those carried out by their business partners; (3) the adoption of the EU Regulation on transparency and integrity of ESG rating activities; and (4) the assessment of the impact of the new greenwashing prevention regulation (particularly the EU Directive empowering consumers for the green transition) on the level of greenwashing complaints and how companies present products or services with ESG components.</p>

		<p>Generally, in the coming years, some emerging trends in the Spanish market may become the new norm. These include, from a regulatory standpoint, a noticeable transition from a soft law stance to a more stringent hard law framework. Similarly, in terms of supervision, the 'comply or explain' model seems to be shifting towards a stricter regulatory approach. Additionally, from a corporate perspective, there has been a noticeable change from a marketing-focused approach to one that emphasises addressing the inherent risks associated with ESG factors, heralding a development in corporate sustainability strategies.</p>
30.	<p><b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b></p>	<p>Gabriel Núñez joined Uría Menéndez in 1994 and has been a partner at the firm since 2004. He was a resident partner at the London office in 2005 and 2006. He focuses on capital markets, M&amp;A, banking and finance, and corporate governance of listed companies. He has over 25 years of experience advising domestic and foreign companies on a large number of deals, such as public offerings and IPOs, takeovers, project finance and M&amp;A involving listed and unlisted companies. Gabriel is an officer of the IBA Securities Markets Committee, lecturer for several master's degrees, including at the Instituto de Empresa and Instituto de Estudios Bursátiles, and has published many articles in books and legal magazines.</p> <p>Susana Serrano joined Uría Menéndez in 2017 and currently works in in the capital markets practice in the Madrid office. She focuses on public M&amp;A, including mergers and public takeovers of listed companies, as well as IPOs, public offerings and admissions to trading.</p> <p>Manuel Suero joined Uría Menéndez in 2018 and currently also works in the capital markets practice in the Madrid office. He focuses on capital markets, especially ECM transactions, and M&amp;A, including mergers and public takeovers of listed companies, as well as their corporate governance.</p>



# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Sweden

### Sweden

1.	<b>Which jurisdiction are you covering?</b>	Sweden
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	Most of the ESG regulation applicable in Sweden has been established by the EU. These regulations mainly consist of directives and regulations that have been integrated into Sweden's legal framework. The primary emphasis for companies' disclosure lies in sustainable reports, which are to be disclosed according to the Non-Financial Reporting Directive (NFRD), the Corporate Sustainability Reporting Directive (CSRD), EU Taxonomy Regulation, the Sustainable Finance Disclosure Regulation (SFDR) and the Swedish Annual Reports Act.
3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	Yes, please refer to question 4 below.
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	<p>The SFDR is applicable to financial market participants and financial advisers, each as defined in Article 2 of the SFDR. According to the SFDR, disclosures are required under Article 6 and 8 or 9 respectively, depending on its characteristics and level of sustainability: (1) Article 6: funds without a sustainability scope; (2) Article 8: funds that promote environmental or social characteristics (light green); and (3) Article 9: funds with sustainable investment as their objective (dark green).</p> <p>According to the Swedish Annual Reports Act, large companies, defined as those meeting at least two of the following criteria: (1) a balance sheet total of SEK 175m; (2) revenue of SEK 350m; and (3) an average of 250 full-time employees during the financial year, are required to produce a sustainability report alongside their annual report. It's important to note that the Swedish legislator has, through the Swedish Annual Reports Act, expanded the scope of companies obligated to produce a sustainable report compared to what NFRD stipulates.</p> <p>CSRD will apply to all public companies whose shares are traded on a regulated marketplace or a comparable marketplace, meaning that eventually smaller companies may need to prepare sustainable reports.</p> <p>The EU Taxonomy Regulation only applies at a product level and thus is independent in relation to the types of entities.</p>
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	ESG disclosures are required to be made on a continuous annual reporting basis.



6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>A company has the option to include the sustainability report as part of the directors' report or to prepare it as a separate document from the annual report. This report should be submitted to the undertaking's auditor simultaneously with the annual report. This possibility will be abolished with the implementation of the CSRD.</p> <p>Regarding the SFDR, a fund must disclose sustainability-related information. The SFDR delineates the disclosure requirements for ESG information, contingent upon the type of entity within the financial market participant (eg, alternative investment fund manager (AIFM), investment firm, and insurance undertaking). Website disclosures should be segregated into a distinct section on the website, while pre-contractual disclosures should be provided as an appendix to that information.</p>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	Please refer to question 6 above.
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	In some cases, we have observed that companies without a regulated obligation to make ESG disclosures may, in connection with their annual reports, provide information on ESG factors at the request of their investors. This is because the investors themselves are subject to certain disclosure requirements.
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>In Sweden, oversight of sustainability reports is primarily managed by the Board for Swedish Financial Reporting Supervision, a self-regulatory body affiliated with the Swedish Securities Market Association. Supervision covers companies whose shares are traded on a regulated market and is conducted through delegation from the Swedish Financial Supervisory Authority.</p> <p>The Swedish Financial Supervisory Authority also oversees companies subject to the obligation to submit a sustainability report but whose shares are not traded on a regulated marketplace.</p>
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>The Board for Swedish Financial Reporting Supervision has no right to impose sanctions, but, if necessary, may instructs companies to rectify their reporting.</p> <p>The Swedish Financial Supervisory Authority is ultimately responsible for the supervision in Sweden and has the authority to intervene against infringements. According to the regulatory framework, the Board for Swedish Financial Reporting Supervision turns over matters to the Swedish Financial Supervisory Authority primarily in two cases: when the issuer is not cooperating with the Board and when a company's infringement cannot be considered negligible.</p>
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	No, however, the future European Corporate Sustainability Due Diligence Directive (CS3D) will be implemented in Swedish law and then be applicable to Swedish companies.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	No, however, the EU EcoLabel is a voluntary certification scheme established by the EU to promote and identify environmentally friendly products and services.

13.	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<p><b>Disclosures under SFDR</b></p> <p>The SFDR mandates that financial market participants and financial advisers disclose the following information on their websites:</p> <ul style="list-style-type: none"> <li>• sustainability risk policy: a statement on how sustainability risks influence their investment decisions;</li> <li>• principal adverse impact: a description of how their investments impact various sustainability factors; and</li> <li>• sustainability risk remuneration policy: a statement on how sustainability risks influence their remuneration policy.</li> </ul> <p>Financial market participants failing to consider the sustainability impact of their investment decisions must prominently state this on their website and provide a clear reason for their omission. Moreover, SFDR requires financial market participants and financial advisers to disclose the sustainability profile of financial products they produce or promote, categorising them as:</p> <ul style="list-style-type: none"> <li>• Article 6: mandatory requirements for all participants, including those whose financial products lack a sustainability focus;</li> <li>• Article 8: financial products promoting environmental or social characteristics; and</li> <li>• Article 9: financial products with sustainable investment objectives.</li> </ul> <p>Similar to entity-level disclosures, firms must reveal how sustainability risk was considered and what principal adverse impacts exist. Failure to do so warrants an explanation. If a financial product promotes environmental or social characteristics, the specific characteristics and sustainability indicators used for measurement must be clarified. Similarly, financial products with sustainable investment objectives must specify the sustainability indicators utilised.</p> <p><b>Disclosures under NFRD</b></p> <p>The NFRD mandates certain firms, specifically public interest entities (PIEs) with over 500 employees, to prepare a sustainability report. This report should include disclosures related to sustainability essential for understanding a firm’s earnings, position, development, and operational impact. The directive outlines environmental protection, social responsibility, employee treatment, human rights respect, and corruption prevention as key areas.</p> <p>According to the European Commission’s non-binding guidelines, climate-related information may adhere to recommendations by the TCFD, acting on behalf of the Financial Stability Board.</p> <p><b>Disclosures under the Swedish Annual Reports Act</b></p> <p>Per the Swedish Annual Reports Act, the sustainability report should encompass necessary sustainability information for comprehending the undertaking’s development, financial status, operational results, and consequences. This includes details on environmental aspects, social relationships, personnel matters, human rights, and anti-corruption endeavours.</p> <p><b>Disclosures under the EU Taxonomy Regulation</b></p> <p>The EU Taxonomy Regulation impacts various participant groups. It mandates firms subject to the NFRD to estimate the percentage of their activities meeting environmentally sustainable criteria. Additionally, financial market participants under the SFDR offering environmentally sustainable financial products must disclose the extent to which underlying investments in each product align with EU Taxonomy Regulation criteria.</p>
14.	<p>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</p>	<p>Yes, companies must include information on how their activities impact the climate.</p>

15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	<p>Companies have flexibility regarding the format, visualisation and other aspects of their report. However, they must ensure compliance with the content requirements outlined in the Swedish Annual Report Act.</p> <p>As for financial market participants and products, the SFDR is supplemented with delegated regulations specifying the information to be disclosed and the manner of public disclosure. This delegated regulation includes a standardised template for disclosing information.</p>
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	<p>The EU Taxonomy establishes a unified classification system to identify economically sustainable activities, assisting investors in recognising and comparing environmentally sustainable investments.</p> <p>The SFDR outlines a definition of sustainable investments and sustainability-related risks, which are also carried over to other EU financial legislation.</p> <p>For companies disclosing ESG information under the NFRD or the Swedish Annual Report Act, there is no specific legal definition of ESG.</p>
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	<p>The goals are considered collectively when assessing ESG compliance under the SFDR and EU Taxonomy Regulation.</p> <p>Under the SFDR, 'sustainable investment' broadly refers to investments in activities contributing to environmental or social objectives, or investments in human capital or disadvantaged communities. Such investments must not significantly harm these objectives and must adhere to good governance practices, including sound management structures, employee relations, staff remuneration and tax compliance.</p> <p>The SFDR provides a standardised definition of 'sustainable investment', ensuring that investee companies uphold good governance practices and adhere to the precautionary principle of 'do no significant harm', preventing significant harm to environmental or social objectives.</p> <p>Concerning the EU Taxonomy Regulation, uniform criteria are established for each environmental objective to determine the substantial contribution of economic activities toward those objectives. These criteria include avoiding significant harm to any environmental objectives outlined in the regulation. This is to prevent investments from being classified as environmentally sustainable when the activities they support cause environmental harm outweighing their contributions to environmental objectives.</p>
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	<p>ESG disclosures mandated by the SFDR have emerged as a crucial tool for investors seeking to integrate environmental, social, and governance factors into their investment decisions. These disclosures provide investors with transparency and insight into the sustainability practices of financial products, enabling them to make informed choices aligned with their values and long-term objectives.</p> <p>However, the implementation of ESG disclosure requirements has posed challenges for financial market participants, especially smaller firms. These firms often lack the necessary resources, expertise, and infrastructure to effectively collect, analyse, and report on ESG data. As a result, they may face difficulties in meeting regulatory obligations, potentially leading to increased compliance costs and administrative burdens.</p>
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	N/A
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	<p>The Taxonomy Regulation provides the most explicit description of greenwashing as a phenomenon. This regulation emphasises intentional greenwashing, defining it as gaining an unfair competitive advantage by promoting a financial product as environmentally friendly, despite not meeting basic environmental standards. Similarly, SFDR addresses intentional greenwashing. Although the term 'greenwashing' is not explicitly mentioned, SFDR includes rigorous regulations against it. According to SFDR, financial market participants and advisers are required to ensure that their marketing materials align with the information provided in accordance with this regulation.</p>

21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	The Swedish Financial Supervisory Authority has published a strategy against greenwashing. Greenwashing is identified in the strategy as practices where sustainability-related statements, commitments, or communications regarding a company, a financial product, instrument, or service may mislead consumers, investors, or society by failing to reflect underlying sustainability characteristics. The strategy describes that the authority adopts a broad definition because the concept and its scope are still evolving, including through the work conducted within the framework of European Supervisory Authorities (ESAs), in which the authority participates. The activities outlined by the authority also highlight the areas where the risk of greenwashing is deemed highest. This encompasses access to sustainability-related information, the quality of ESG ratings and ESG data providers, disclosures concerning sustainable financial products, information provided alongside advice, and the integration of sustainability factors into authorisation processes.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	N/A
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	<p>Currently, statutory auditors or audit firms are responsible for verifying financial reports and management statements. Their validation of sustainability reporting ensures the integration and consistency of financial and sustainability information.</p> <p>Moreover, the CSRD outlines a strategy aimed at bolstering the assurance level for sustainability information. This strategy commences with a mandate for statutory auditors or audit firms to assess whether sustainability reporting aligns with EU requirements. This assessment is conducted through a limited assurance engagement, providing an opinion with limited assurance.</p> <p>Under the CSRD, statutory auditors are required to undergo practical training for a minimum of eight months in the quality review of annual sustainability reporting, group sustainability reporting, or other sustainability-related services, considering their prior professional experience. The CSRD extends these regulations to encompass statutory auditors conducting quality reviews of sustainability reporting. The Commission is tasked with adopting delegated acts to regulate the quality review for limited assurance statements by no later than 2026.</p>
24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	As institutional investors demand higher standards for business operations from an ESG perspective, the board oversight and governance of ESG matters also increase to meet these requirements.
25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	CSRD introduces stricter requirements for sustainability reporting compared to those under NFRD by imposing additional categories of companies to report sustainability information. Upon full implementation, all large companies and all companies (except micro-companies) whose securities are traded on a regulated market in the EU must submit sustainability reports. According to CSRD, companies are obligated to report on both the impact of their operations on people and the environment, as well as how sustainability issues affect the company.

26.	<b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b>	Please refer to question 18.
27.	<b>Is it mandatory for companies to set climate-related targets?</b>	Financial market participants under the SFDR offering environmentally sustainable financial products must disclose the extent to which underlying investments in each product align with EU Taxonomy Regulation criteria.
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	No, however, companies describe more in general terms how they address ESG-related challenges.
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>The regulations governing the accounting and reporting of sustainability-related information are comprehensive, spanning international, EU, and Swedish legislation. These laws establish the groundwork for transparent and standardised reporting practices, ensuring that companies disclose relevant ESG information to stakeholders.</p> <p>Aligned with global endeavours to promote sustainable finance, the EU has crafted a comprehensive framework to steer financial institutions and businesses in integrating ESG factors into their decision-making processes.</p> <p>In this vein, Sweden is poised to align its national legislation with the EU framework for sustainable finance. This harmonisation process entails integrating key provisions of EU regulations into Swedish law, fostering consistency and coherence in sustainability reporting standards.</p> <p>In the foreseeable future, stakeholders can anticipate further advancements in Swedish legislation as Sweden will continue to implement the EU framework for sustainable finance.</p>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Fredrik Arvebratt, Wigge &amp; Partners Advokat KB.</p> <p>Fredrik Arvebratt is specialised in M&amp;A and Banking and Finance, and has experience in various types of transactions, such as regular M&amp;A transactions as well as asset divestments, and the related acquisition financing. Fredrik also has vast experience from providing advice on securities and financial market regulatory issues, including sustainability issues.</p>

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Switzerland

### Switzerland

1.	<b>Which jurisdiction are you covering?</b>	Switzerland
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>In 2020, the so-called Responsible Business Initiative was put before the public but was rejected. However, drawing conclusions from the political discussion, the Swiss Parliament introduced new general and specific ESG reporting, and due diligence requirements in the area of conflict minerals and child labour as a counter-proposal, which came into effect on 1 January 2022. It sets out non-financial reporting obligations, and due diligence and transparency obligations.</p> <ul style="list-style-type: none"> <li>• Certain companies have to meet non-financial reporting obligations and account for environmental issues (especially regarding CO2 targets), social issues, employee issues, respect for human rights and anti-corruption. This obligation applies to public interest entities (PIEs, ie, publicly traded companies, banks, insurance companies and other regulated entities in the financial sector) that, together with their subsidiaries in Switzerland and abroad, have at least 500 full-time employees (averaged over the year) and exceed either a balance sheet total of CHF 20m or a turnover of CHF 40m in two consecutive financial years.</li> <li>• In December 2021, effective per 1 January 2022, the Swiss Federal Council (ie, the Swiss Government) issued an ordinance dealing with due diligence and reporting obligations. Companies with their place of incorporation or head office in Switzerland that import or process minerals or metals containing tin, tantalum, tungsten or gold from conflict or high-risk areas are subject to special due diligence and related reporting obligations with respect to their supply chain. The same obligations apply to companies that offer products or services where there are reasonable grounds to suspect that they were produced or provided using child labour.</li> </ul> <p>In March 2022, the Swiss government published a draft ordinance, which specifies climate-related reporting obligations. The ordinance came into force on 1 January 2024 and provides for the binding implementation of the internationally recognised recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) for large Swiss companies. The reporting obligations apply to large Swiss companies and are part of the general ESG reporting. The general ESG report will have to be issued for the first time in 2024 with respect to financial year 2023.</p> <p>Pursuant to the Directive on Information relating to Corporate Governance, issuers whose equity securities have their primary listing on the SIX Swiss Exchange may undertake, by means of opting-in, to prepare sustainability reports in accordance with an internationally recognised standard and to publish them on their website. SIX Exchange Regulation recognises the following international standards for sustainability reporting: the Global Reporting Initiative, the Sustainability Accounting Standards Board's (SASB) standards, the UN Global Compact and the European Public Real Estate Association's Best Practices Recommendations on Sustainability Reporting.</p>

		<p>On 1 January 2025, the Climate and Innovation Act will enter into effect. This act stipulates that financial flows should be made 'climate compatible', ie, investments and financing are to adhere to the target of net-zero greenhouse gas emissions by 2050. The law also requires the financial sector to make an effective contribution to achieving climate goals. This will initially be done on a voluntary basis. The impact of voluntary climate measures is assessed periodically by the federal government.</p> <p>The Swiss Financial Market Supervisory Authority (FINMA), the competent Swiss regulator for banks, insurance companies and certain other entities acting in the financial sector, also requires large banks (supervisory categories 1 and 2 (ie, internationally active, systemically relevant banks and non-internationally active, systemically relevant banks)) and insurance companies (category 2) to disclose climate risks, and has revised its circulars in this respect (TCFD). The main climate-related financial risks and their impact on the business strategy, business model and financial planning must be described (strategy). Institutions must disclose the process for the identification, assessment and treatment of climate-related financial risks (risk management), as well as quantitative information (including a description of the methodology used). Finally, institutions must describe the key features of their governance structure in relation to climate-related financial risks. In April 2024, FINMA announced that, after now three reporting cycles, it does an ex post evaluation of the climate-related disclosure requirements. To this end, it published a questionnaire and invited affected institutions and other stakeholders to, until 13 May 2024, share their experiences with the disclosure requirements. In February 2024, FINMA also announced that it will issue a new circular that will set out FINMA's supervisory practice on the management of nature-related financial risks in line with the recommendations of international standard-setters. The circular will only apply to banks and insurers and was subject to a public consultation until 31 March 2024.</p> <p>In addition to the above 'legislative' initiatives, various industry associations have issued guidelines and recommendations on how to proceed with the implementation of ESG factors, such as (but not limited to) the Swiss Bankers Association (SBA), Asset Management Association Switzerland (AMAS) and the Swiss Pension Fund Association (Association Suisse des Institutions de Prévoyance or ASIP).</p> <p>The Federal Office for the Environment (FOEN) and the State Secretariat for International Finance initiated a third climate test in 2022 to analyse financial portfolios (global equities, corporate shares and loan portfolios) for their climate impact and to track the progress of the financial markets' climate goal alignment. The test, titled the Paris Agreement Capital Transition 2022 (PACTA 2022), was voluntary and anonymous. All Swiss banks, asset managers, pension funds and insurance companies could participate, and 133 institutions participated. More than two-thirds of these also took part in the qualitative survey on climate-relevant measures. In 2024 the FOEN and the State Secretariat for International Finance SIF will run the comprehensive PACTA climate test for the fourth time.</p>
3.	<p><b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b></p>	<p>Yes, to date, the disclosure/reporting obligations in the field of ESG mainly focus on certain 'public interest companies', companies active in certain sectors, large companies or large banks and insurance companies (see question 2).</p>
4.	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b></p>	<p>Non-financial reporting obligations only apply to so-called PIEs (ie, Swiss publicly-traded companies, banks, insurance companies and other regulated entities in the financial sector) that, together with their subsidiaries in and outside Switzerland, have at least 500 full-time employees (averaged over the year) and exceed either a balance sheet total of CHF 20m or a turnover of CHF 40m in two consecutive financial years.</p> <p>The general due diligence and reporting obligations apply to all companies with their place of incorporation or head office in Switzerland that import or process minerals or metals containing tin, tantalum, tungsten or gold from conflict or high-risk areas. These companies are subject to special due diligence and related reporting obligations with respect to their supply chain, or offer products or services where there are reasonable grounds to suspect that they were produced or provided using child labour.</p> <p>FINMA's duties to disclose climate risks only apply to large Swiss banks and insurance companies.</p> <p>Guidelines and recommendations issued by industry associations on how to proceed with the implementation of ESG factors, such as those from the Swiss Bankers Association (SBA), Asset Management Association Switzerland (AMAS) and the Swiss Pension Fund Association (Association Suisse des Institutions de Prévoyance or ASIP) apply to their members. Some of these guidelines, such as the SBA's 'Guidelines for financial service providers on the integration of ESG preferences and ESG risks into investment advice and portfolio management' provide for an opt-in for non-members.</p>



5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	Where required, as a general matter, ESG disclosures are to be made on a continuous reporting basis. In addition – although not legally required but generally requested/expected by the market and wise to use in order to avoid prospectus liability – where specific financial products or bonds are issued and labelled as ‘green’, ‘social’ or ‘sustainable’, transaction-specific disclosure on the use of proceeds and the applicable standards is typically included.
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>The non-financial reporting for public interest companies as per the counter-proposal (see question 2) must be made in a separate report. Such report has to be approved and signed by the board of directors, which is responsible for the substantive review of the report. In addition, it must be approved by the general meeting of shareholders (but does not need to be audited by the company’s auditors). In accordance with the principle of ‘comply or explain’, a reporting company may elect not to report in relation to matters with respect to which the group does not pursue policies if the report provides a clear and reasoned explanation therefor, eg, if due to its activities the group has no or only very minor risks related to certain non-financial matters. Like the annual financial statements, the report must be prepared in one of Switzerland’s official languages (German, French, Italian or Romansh) or in English. The board of directors has to publish the report electronically immediately after its approval and ensure that it remains publicly available for at least ten years.</p> <p>The due diligence and related reporting obligations have to be in an annual report on compliance with these obligations, which may be included in the report on non-financial matters, if applicable. The annual report must be published electronically within six months after the end of the financial year and remain publicly available for at least ten years.</p> <p>The reporting on climate risks required for large banks and insurance companies is part of the general financial report and must be within the appropriate parts of the financial report. Partial or complete references to separately published reports are also possible.</p>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>The general non-financial reporting for public interest companies is part of a separate report. Such report must be published electronically and remain publicly available for at least ten years. The due diligence and related reporting obligations have to be in an annual report on compliance with these obligations but may be included in the report on non-financial matters, if applicable. The report must be published electronically within six months after the end of the financial year and also remain publicly available for at least ten years.</p> <p>The climate risk related disclosure for large banks and insurance companies is part of the annual reporting which, as a rule, must also be available on the banks’ or insurance companies’ websites.</p>
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>Irrespective of whether the ESG disclosure applies or not, there is increasing pressure from investors to prepare and publish ESG disclosure. This pressure is driven by the demand for ‘green’ or ‘social’ or ‘sustainable’ investments for funds, pension funds or asset managers as well as by the general public expectation of companies being in line with ESG aspects.</p> <p>To prevent and combat misleading practices, ie, so called ‘greenwashing’, FINMA has published respective guidance in 2021 (FINMA Guidance 05/2021) which applies to sustainability-related collective investment schemes and their management companies. Apart from information and organisational requirements applying to funds and management companies, it sets out the expectations with regard to rules to be followed at the point of sale (advisory process). Over the last few years, FINMA has continuously tightened its practice regarding greenwashing and has forced management companies to strictly adhere to its guidance.</p>
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>For violations of the non-financial reporting and due diligence and related reporting obligations, the public prosecutor is responsible as the violation is regulated in the Swiss Criminal Code.</p> <p>Violations of climate-risk related disclosure by large Swiss banks and insurance companies are sanctioned by FINMA.</p> <p>Violations of disclosure obligations required by the regulations of a Swiss trading venue, such as the SIX Swiss Exchange, are sanctioned by the relevant trading venues’ bodies.</p>



10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	Non-compliance with the non-financial reporting obligations of public interest companies set out above (see question 2) is subject to criminal liability under the Swiss Criminal Code. Anyone who makes false statements in, or fails to provide, a required report will be fined up to CHF 50,000 in case of negligence and up to CHF 100,000 in case of intent.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	The Swiss system of ESG disclosure is still developing. We expect there to be more regulations on ESG disclosure in the future or at least that a broader range of companies will be subjected.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	There is no certification system yet. However, on 29 June 2022, the Federal Council launched Swiss Climate Scores for climate transparency in financial investments. The Swiss Climate Scores provide institutional and private investors in Switzerland with comparable and meaningful information on the extent to which their financial investments are compatible with international climate goals. The Federal Council recommends that Swiss financial market players apply the Swiss Climate Scores to financial investments and client portfolios where appropriate.
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	Please see question 2.
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	The climate risk disclosure required by FINMA for large banks and insurance companies focuses on the risk of climate change (see question 2). The other ESG disclosures are more general in scope.
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	There is no standardisation yet. Companies are relatively free in the way they present the ESG disclosure as long as the minimum requirements are met. The disclosure required by FINMA for large banks and insurance companies also just regulates the minimum content of the disclosure.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	The relevant regulations, including the implementing ordinances, regulate what the reports have to cover (principles based approach). There is, however, no standardised checklist that regulates the order of publication and/or how it is to be presented as long as the content is included.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	There is no such specific rule and/or established practice in this respect, yet.

18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	The main driver of value creation and/or reduction has been the market generally, lifted or fuelled by cheap central bank money. Moreover, regulation on ESG disclosure still is emerging. Through a growing focus on ESG generally, ESG-compliant or eligible investments may have profited more. There is, however, not yet enough reliable data to draw a conclusion and the general 'greening of the financial market' will certainly make a good analysis more difficult.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	For financial institutions, greater, more transparent, clear and effective ESG disclosure aids their 'ESG compliance' and reduces the risk that 'greenwashing' and other topics materialise. For issuers generally, being transparent on ESG-related aspects that they may have done for years and now can stick a label on and can report about it may help to attract different and/or more investors. Notwithstanding this, the administrative efforts (especially given the risks of wrong/false disclosure and/or a blame of 'greenwashing' generally) are significant and will lead to increased costs.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	<p>In Switzerland, the landscape of ESG disclosure requirements is evolving, reflecting the growing importance of sustainability issues in the financial market. The following are key points regarding ESG disclosure requirements and rules aimed at preventing greenwashing in connection with securities issues.</p> <ul style="list-style-type: none"> <li>• Swiss Code of Obligations: The Swiss Code of Obligations requires certain large companies to report on non-financial matters, which include environmental, social, and employee matters, respect for human rights, and anti-corruption and bribery issues.</li> <li>• Ordinance on Financial Services (FinSO): The FinSO requires issuers of securities to provide information on significant risks, which could certainly include ESG factors in individual cases, to investors in the prospectus.</li> <li>• SIX Swiss Exchange Regulation: The SIX Swiss Exchange, as a key financial market infrastructure in Switzerland, has its own regulatory framework that imposes disclosure requirements on issuers. These include the requirement to disclose relevant and material information, eg, on an ad hoc basis, which could encompass ESG issues, in order to ensure transparency and prevent market abuse.</li> <li>• SIX Exchange Regulation's Directive on Information Relating to Corporate Governance (DCG): Issuers listed on the SIX Swiss Exchange must disclose information on corporate governance, including remuneration and loans, shareholders' participation rights, changes of control and defence measures, and auditors. While not exclusively focused on ESG, these disclosures can touch upon governance aspects of ESG.</li> <li>• Green Bond Standards: While not mandatory, issuers of green bonds on the SIX Swiss Exchange are encouraged to align with the Green Bond Principles of the International Capital Market Association (ICMA), which aim to promote transparency and prevent greenwashing. Stating the investments to be in a 'green' eligible way and not doing so could have regulatory and liability (wrong prospectus) and criminal (misuse of funds) consequences.</li> <li>• Swiss Sustainable Finance (SSF) Guidelines: SSF provides guidelines for the integration of ESG considerations into financial services, which, while voluntary, are influential in shaping market practices.</li> <li>• FINMA Guidance: FINMA monitors financial market players' adherence to legal requirements, including those related to ESG disclosures. FINMA has not yet issued specific ESG disclosure rules for securities issues but expects institutions under its supervision to consider sustainability risks in their investment decisions and risk management.</li> <li>• Upcoming developments: It is important to note that the regulatory framework is subject to change, and there are ongoing discussions at both the Swiss and international levels regarding the standardisation of ESG disclosures and the fight against greenwashing. The EU's Sustainable Finance Disclosure Regulation (SFDR) and Taxonomy Regulation may also influence Swiss practices, given the interconnectedness of financial markets.</li> </ul> <p>In conclusion, while there are no specific mandatory ESG disclosure requirements in Switzerland solely for securities issues outside of the broader financial and sustainability reporting obligations, issuers must consider ESG factors as part of their general duty to disclose material information. The regulatory environment is dynamic, and it is advisable to stay informed about the latest developments.</p>

21.	<p><b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b></p>	<p>In Switzerland, there has been a noticeable development in the area of ESG disclosures, particularly in connection with securities issues and the regulatory authority's approach towards such disclosures. The focus has been on enhancing transparency and combating greenwashing. Here are the key points:</p> <p><b>Regulatory developments</b></p> <ul style="list-style-type: none"> <li>• FINMA's stance: FINMA has been proactive in addressing ESG disclosures. FINMA acknowledges the growing importance of ESG factors in investment decisions and has emphasised the need for clear and reliable ESG information in the market.</li> <li>• ESG guidelines: FINMA has not yet issued specific ESG disclosure rules but has indicated that it expects financial institutions to consider ESG risks in their risk management processes.</li> <li>• Greenwashing prevention: To combat greenwashing, FINMA is monitoring the market and has indicated that it will take action against misleading ESG claims. This includes ensuring that financial products marketed as 'sustainable' or 'green' genuinely meet these criteria.</li> </ul> <p><b>SIX Swiss Exchange regulations:</b></p> <ul style="list-style-type: none"> <li>• ESG reporting: The SIX Swiss Exchange has introduced ESG reporting as a voluntary standard for listed companies. This encourages companies to disclose ESG-related information, although it is not yet a mandatory requirement.</li> <li>• Directive on Information Relating to Corporate Governance (DCG): The DCG requires issuers to provide information on corporate governance, including some aspects that overlap with ESG issues, such as remuneration policies and board diversity.</li> </ul> <p><b>Market practices</b></p> <ul style="list-style-type: none"> <li>• Issuers' ESG disclosures: There is a trend among issuers to voluntarily include ESG information in their offering documents, driven by investor demand for sustainable investment opportunities.</li> <li>• Third-party ESG ratings: The use of third-party ESG ratings and certifications has become more common among Swiss companies to substantiate their ESG claims and avoid greenwashing accusations.</li> </ul> <p><b>Outlook</b></p> <ul style="list-style-type: none"> <li>• Potential mandatory requirements: There is an ongoing discussion about whether ESG disclosures should become mandatory for Swiss companies, similar to developments in the EU.</li> <li>• Enhanced scrutiny: It is expected that both FINMA and the SIX Swiss Exchange will continue to enhance their scrutiny of ESG claims to prevent greenwashing and ensure that investors receive accurate and relevant ESG information.</li> </ul> <p>In conclusion, while specific ESG disclosure requirements are still evolving in Switzerland, there is a clear trend towards greater transparency and accountability to prevent greenwashing. Both regulatory authorities and market participants are increasingly focused on the integrity of ESG claims and disclosures.</p>
22.	<p><b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b></p>	<p>While there is a growing emphasis on ESG disclosures in Switzerland, there have not been significant claims brought forward in this area as of today. However, the landscape is dynamic, and entities involved in securities issues should monitor developments closely and maintain high standards of ESG reporting to mitigate the risk of future claims.</p>

23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	<p>There is no explicit legal requirement for external certification or assurance of ESG disclosures in Switzerland: certain companies, however, especially those listed on the SIX Swiss Exchange or operating in the financial sector, may be subject to certain ESG-related reporting obligations. External assurance of ESG disclosures is a voluntary practice that is gaining traction among Swiss companies seeking to demonstrate their commitment to sustainability and to meet the expectations of investors and other stakeholders.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>There are no specific developments to be reported on, but there seems to be a clear trend towards greater ESG integration into corporate governance driven by regulatory guidance (specifically in the financial sector), market expectations, and evolving international reporting standards. Clearly, there is an increasing awareness at board level that ESG is a key aspect of the strategic management and supervision of companies.</p>
25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<p>None of these standards and frameworks are directly enforceable in Switzerland. However, they represent a shift towards greater sustainability and transparency in corporate reporting that Swiss companies cannot ignore. Many Swiss companies are likely to voluntarily align with these standards to meet the expectations of their stakeholders and to prepare for potential future regulations that may draw from these international frameworks.</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>While larger and particularly internationally active (or foreign-listed) companies may be better equipped to handle ESG reporting requirements, there is a spectrum of preparedness across the market. Some companies may struggle with the complexity of ESG issues and the associated reporting obligations, others are market leaders even internationally.</p> <p>The capability and resources needed for ESG disclosures are not uniformly distributed across all companies subject to disclosure requirements. There may be a need for capacity building, particularly for SMEs, and for the development of clear, consistent standards and methodologies for ESG reporting.</p> <p>Given the complexity of ESG reporting and the varying levels of preparedness among companies, it is clear that while some companies may have the necessary capability and resources, others may find it challenging to meet the required disclosures without additional support or guidance.</p>

27.	<b>Is it mandatory for companies to set climate-related targets?</b>	In Switzerland, there is no explicit legal requirement for all companies to set climate-related targets. However, there are certain circumstances and contexts, or contractual arrangements (eg, in financing agreements), where setting and meeting such targets may be indirectly required or strongly encouraged (eg, to avoid higher interest rates in financings or due to regulatory or stakeholder expectations), particularly for companies in certain sectors or of a certain size.
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	While the adoption of science-based targets or other targets is not mandatory in Switzerland, there is a clear trend towards such voluntary commitments. Companies are increasingly aware of the benefits of setting and pursuing ambitious climate-related goals, both for risk management and to meet the expectations of stakeholders and the market.
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	We expect that the focus will be on standardisation and comparability of ESG aspects and related disclosure generally.
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	Theodor Härtsch, Walder Wyss. Benjamin Leisinger, Homburger. Patrick Schleiffer, Lenz & Staehelin.

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Thailand

### Thailand

1.	<b>Which jurisdiction are you covering?</b>	Thailand
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	Yes, ESG disclosures are mandatory in Thailand. According to the Securities and Exchange Act BE 2535 (1992) (the SEA), a securities issuing company under the SEA shall prepare and submit an annual report (Form 56-1 One Report) concerning the financial conditions and business operation of the company and submit it to the Securities and Exchange Commission (SEC).
3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	The entities required to make ESG disclosures are those that issue securities under the SEA (eg, bonds, bills of exchange, debentures, government bonds, warrants and shares).
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	All entities that issue securities under the SEA (eg, bonds, bills of exchange, debentures, government bonds, warrants and shares) are required to make ESG disclosures.
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	<p>There are both annual disclosure and event-based disclosure requirements. The event-based disclosure requirements may not be directly considered as ESG disclosures, but certain information about the securities issuing company must be disclosed to the SEC and to investors, including the following events:</p> <ol style="list-style-type: none"> <li>1. a company suffering from serious damages;</li> <li>2. a company ceases operating part or all of its business;</li> <li>3. a company alters its objectives or the nature of its business;</li> <li>4. a company enters into an agreement entrusting other persons with power in whole or in part for the management of the company;</li> <li>5. a company takes over or is taken over by, another company; and</li> <li>6. any event that affects or is likely to affect the rights and interests of the securities holder or decision-making on investments, or change the price of securities of the company as specified in the Notification of the SEC.</li> </ol> <p>For annual disclosure, the ESG disclosure must be made in the Form 56-1 One Report.</p>

6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	The ESG disclosure must be made in Form 56-1 One Report as prescribed by the SEC, not as a separate ESG report.
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	The ESG disclosure must be submitted to the SEC via SEC filings electronic system and published on the company's website.
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	N/A as the ESG disclosure requirement is mandatory in Thailand.
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	The name of the regulator is the Securities and Exchange Commission (SEC). Failure to submit the Form 56-1 One Report may result in a fine not exceeding THB 100,000 (approximately \$2,723) and a daily fine not exceeding THB 3,000 (approximately \$81.70) until compliant. There is no prescribed grace period after non-compliance. In any case, a company is required to submit the Form 56-1 One Report to issue the ESG disclosure to the SEC within three months after the end of the company's accounting period.
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	Penalties for making a false or misleading statement in the Form 56-1 One Report are imprisonment for a term not exceeding two years and/or a fine not exceeding THB 500,000 (approximately \$13,617). The penalties apply for disclosure on other matters in the Form 56-1 One Report.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	There is no tiered disclosure system in Thailand and we are not expecting any further ESG disclosure in the near future as the ESG disclosure requirement was recently amended in September 2023.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	No, there is no such system of ESG certification or benchmarks.
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	ESG disclosures in the Form 56-1 One Report must include the following main topics: <ol style="list-style-type: none"> <li>1. policies and targets for sustainability management;</li> <li>2. management of stakeholders 'impact in business value chain';</li> <li>3. sustainability management in terms of environment; and</li> <li>4. sustainability management in terms of society.</li> </ol> Details of each topic are outlined under Section 3, 'Sustainable Business Development,' in Form 56-1 One Report according to Notification of SEC No Tor Jor 7/2023 Re Criteria, Conditions, and Methods for Reporting Disclosure of the Financial Status and Operational Results of the Company Issuing Securities.

14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	A specific emphasis on climate change-related disclosures is to be included in the 56-1 One report in section 1. The business structure and operation of the company and its affiliate/subsidiary are included under the topic relating to the sustainable business development of the company. A company must calculate its carbon footprint and disclose such information. The calculation of the carbon footprint must be conducted by a reputable environmental firm registered with the Thailand Greenhouse Gas Management Organisation or an international firm that has conducted carbon footprint calculations for international standard projects.  In addition, a company is required to disclose its goal and strategy to tackle climate change issues, including both those implemented at present and to be implemented in the future.
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	There is a checklist of information for ESG disclosures as an annex to SEC Notification No Tor Jor 44/2556 as amended (which is an applicable law regarding rules, conditions and procedures used to prepare and submit a 56-1 One report to the SEC) published on the SEC's website. SEC Notification No Tor Jor 44/2556 as amended, together with the checklist, set out a framework in relation to ESG disclosures in Thailand. Specifically, they provide topics that need to be included in Form 56-1 One Report. A company must disclose the information as required in the guidelines and checklist, otherwise it would need to clarify with the SEC the reason why it is unable to disclose such a particular topic.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	There is no clear definition of ESG disclosures in applicable law. However, the scope of ESG disclosures is included in SEC Notification No Tor Jor 44/2556 as amended, SEC official guidelines, SEC official documents and the checklist in the annex to SEC Notification No Tor Jor 44/2556 as amended. SEC Notification No Tor Jor 44/2556 as amended provides procedures and clear guidance regarding ESG disclosures, including the topics to be disclosed and the timeline.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	N/A as the ESG regime in Thailand is merely on a disclosure basis and there is no prescribed ESG standard to comply with.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	ESG disclosure regulation in Thailand, to a certain extent, aids investor value creation.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	It is difficult to provide our clients' views. However, we view that the information to be disclosed in ESG disclosures in Thailand these days suffice in terms of transparency and effectiveness, and any additional requirement would create more of a burden for our corporate clients than presently exists.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	There are no specific mandatory ESG disclosure requirements which specifically aim to prevent greenwashing.



21.	<p>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</p>	<p>We have not seen any development with ESG disclosures with specific regard to greenwashing.</p>
22.	<p>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</p>	<p>We are not aware of any claims brought by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in Thailand.</p>
23.	<p>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</p>	<p>There is no additional separate report in addition to the disclosure requirements in the 56-1 One report.</p>
24.	<p>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</p>	<p>We have seen that the board of directors are increasing the importance of ESG matters in the exercise of their fiduciary duties and business management. Specific ESG committees are established in some companies.</p>
25.	<p>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<p>The SEC has issued a guideline for management and disclosures regarding the climate-related risks for investment management business operators, as suggested by the TCFD, which is the basis for IFRS S1 and IFRS S2 of the ISSB.</p> <p>However, we have not yet seen the effect of the other standards in our jurisdiction.</p>

26.	<b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b>	We view that the companies which issue securities under the SEA and are publicly traded should have the necessary capability and resources to make the required disclosure.
27.	<b>Is it mandatory for companies to set climate-related targets?</b>	It is not mandatory for companies to set climate-related targets. However, the Form 56-1 One Report requires the companies to disclose its carbon emission reduction measures. The carbon emission disclosure must be made in accordance with the prevalent international standards, and must specify the name of the carbon footprint auditor which must either be registered with the Thailand Greenhouse Gas Management Organisation, or is an internationally recognized auditor.
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	N/A
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>In the future, ESG disclosures will play a crucial part in creating investor value for companies as investors will pay more attention to ESG disclosures than they are presently. This is because there has been an increase in newcomer investors in Thailand in the past few years, and these newcomer investors are the younger generation (ie, 18–25 years old) who tend to pay more attention to the ESG aspects of a company than most existing investors.</p> <p>In addition, there has been growing political and social awareness in Thailand in the past few years, and a company that violates human rights or creates a severe impact on the environment may be subject to consumer boycotts.</p>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	Vinay Ahuja, DFDL.

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Turkey

### Turkey

1.	<b>Which jurisdiction are you covering?</b>	Turkey
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>The first legislative action of Turkey addressing ESG concerns was regulating mandatory disclosure requirements regarding ‘sustainability’ for publicly listed companies in 2020. The Capital Markets Board of Turkey (CMB) has amended the Communiqué on Corporate Governance (the ‘Communiqué’) and regulated publicly listed companies’ obligations on sustainability disclosures. The amendment came into force on 1 October 2020 and the disclosure requirement had to be incorporated into companies’ Corporate Governance Compliance Reports (‘annual reports’) published in 2021. The Communiqué authorised the CMB, and the CMB published a document called the <i>Sustainability Principles Compliance Outline</i> (the ‘Principles’), which outlines the fundamental principles on sustainability compliance. According to the Communiqué, the implementation of sustainability principles announced by the CMB shall be voluntary, thus there is no obligation for publicly listed companies to comply with the Principles. The only obligation is to include information in annual reports on whether sustainability principles are complied with, and if not, a reasoned explanation relating thereto, and explanations on the impacts to environmental and social risk management due to non-compliance.</p> <p>On the other hand, ESG disclosure requirements became mandatory in Turkey as of 2024 for companies meeting the criteria detailed in questions 3 and 4, regardless of whether they are publicly listed or not. As a background, in June 2022, a law was published to amend the Turkish Commercial Code. In addition, the scope of authorisation of a Turkish authority called the Public Accounting and Auditing Standards Authority (PAASA) was broadened. PAASA has been authorised to set the standards for reporting sustainability in line with international standards in order to ensure unity in practice and the international validity of reports on sustainability for the businesses that meet certain conditions and thresholds determined by PAASA. With the amendment, not only PAASA but also agencies and boards established by law to regulate and supervise certain areas (the ‘Regulatory Authorities’) can make detailed regulations regarding standards that will be valid for their own fields, provided they comply with the standards called Turkish Sustainability Reporting Standards (TSRS) adopted from the International Sustainability Standards Board’s (ISSB) standards to Turkish and separated as TSRS 1 (General Provisions on Disclosure of Sustainability-Related Financial Information) and TSRS 2 (Climate-related Explanations). According to these explanations announced on December 29, 2023; the first reporting will start in 2024, and although it is mandatory, no sanctions have yet been determined for businesses that do not comply with the rule.</p> <p>ESG requirements set forth both in the Principles and in TSRS follow the ‘comply or explain’ principle.</p>

3.	<p><b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b></p>	<p>With regards to the ESG disclosure requirements under the TSRS, the institutions, organisations and enterprises listed below, subject to the thresholds indicated in question 4, are required to comply with the TSRS:</p> <ol style="list-style-type: none"> <li>1. investment, collective investment, mortgage financing, data storage, central clearing, settlement and custody institutions and portfolio management companies, joint stock companies whose capital market instruments are traded on a stock exchange or other organised markets or which have a prospectus or issuance certificate with a validity period approved by the Capital Markets Board for the purpose of being traded, and joint stock companies which are not traded on a stock exchange or other organised markets but which issue capital market instruments other than shares without public offering and which have an issuance certificate with a validity period approved by the Capital Markets Board for this purpose subject to the regulation and supervision of the Capital Markets Board;</li> <li>2. rating agencies, financial holding and leasing, factoring, financing, asset management and savings finance companies and companies holding qualified shares in financial holding companies and banks as defined in Law No 5411 subject to the regulation and supervision of the Banking Regulation and Supervision Agency (BRSA);</li> <li>3. insurance, reinsurance, and pension companies operating under the Insurance Law No 5684 and Individual Pension Savings and Investment System Law No 4632; and</li> <li>4. authorised institutions, precious metals brokerage houses, companies engaged in the production or trade of precious metals, which are permitted to operate in the Istanbul Stock Exchange markets.</li> </ol> <p>On the other hand, the sustainability disclosure requirement set forth in the Communiqué for publicly listed companies, does not apply to certain companies indicated in Article 1/2 of the Communiqué such as publicly listed companies whose shares are not traded in a stock exchange or the companies whose shares are traded in markets or platforms other than the National Market, Second National Market or Corporate Products Market.</p>
4.	<p><b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b></p>	<p>With regards to the ESG disclosure requirements under the TSRS, in order for a company meeting the criteria mentioned in question 3 to be required to comply with the TSRS, such company, other than banks, also needs to exceed the thresholds of at least two of the following criteria in two consecutive reporting periods:</p> <ol style="list-style-type: none"> <li>1. TRY 500m (approximately US\$16.32m) total assets;</li> <li>2. 250 persons employed; and</li> <li>3. TRY 1bn (approximately US\$32.64m) annual net sales revenue.</li> </ol> <p>The banks other than saving deposit insurance Fund (SDIF) banks are subject to reporting requirements without any threshold.</p> <p>With regards to the ESG disclosure requirements under the Communiqué, publicly listed companies other than the ones exempted as mentioned in Question 3 are obliged to disclose the reasons for and effects of any non-compliance with the Principles in their Annual Reports. Under the Communiqué, there are no other thresholds to be triggered in order to meet a mandatory sustainability disclosure requirement.</p>
5.	<p><b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b></p>	<p>ESG disclosures under the TSRS need to be made on an annual basis.</p> <p>Reports on compliance/non-compliance with the Principles are made on an annual basis, but if there happens to be a radical difference from the annual activity report regarding compliance, the deviation must be disclosed in an interim period report according to the Communiqué.</p>

6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>With regards to the ESG disclosure under the TSRS, as stated in Question 2, there are two different explanation requirements under TSRS 1 (General Provisions on Disclosure of Sustainability-Related Financial Information) and TSRS 2 (Climate-related Explanations).</p> <p>With regards to the ESG disclosure under the Communiqué, the annual reports to be prepared by the publicly listed companies include issues other than the ESG issues as well. Thus, they are not separate and specific sustainability reports.</p>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>The location of the ESG disclosure under the TSRS is the sustainability reports and financial tables of the companies.</p> <p>The place for disclosure under the Communiqué is the same as that for the disclosure of the annual reports of publicly listed companies. The annual reports are disclosed in the Public Disclosure Platform (Kamuyu Aydınlatma Platformu or KAP), an electronic system that encompasses information about publicly listed companies.</p> <p>Additionally, listed companies are required to publish their annual reports, therefore indirectly their ESG disclosures, in their website.</p>
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	<p>Many companies that are targets for foreign investors and lenders have already adopted certain principles regarding ESG compliance in order to satisfy the expectations of such investors and lenders. Recently, we have observed that ESG compliance is increasingly influencing not only foreign investors/lenders but also Turkish investors and lenders regarding how they select their targets, given that the internal requirements of such investors and lenders also require their targets to meet certain ESG criteria. We have also observed that, from the latest transactions that we have participated in, financial institutions have stipulated certain ESG standards as KPIs.</p>
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>For disclosure under the TSRS, the regulator is PAASA and the penalties for non-compliance with mandatory ESG disclosures under the TSRS have not yet been announced by PAASA.</p> <p>For ESG disclosure under the Communiqué, the regulator is CMB. The CMB regulates persons who have acted in violation of the regulations, determines standards and forms based on Capital Markets Board Law and imposes an administrative fine from US\$2,986 (TRY 96,225) to US\$37,335 (TRY 1.2m). However, in cases in which a benefit was gained due to the violation of the obligation, the amount of the administrative fine to be imposed shall not be less than twice the amount of such a benefit. Additionally, in cases in which the person acting in violation of the above is a body or representative of a private legal entity, or when this person is tasked within the scope of activity of this legal entity although they are not a body or representative, an administrative fine shall also be imposed on the legal entity according to the above.</p>
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	<p>The PAASA has audit and enforcement regulations in terms of Turkish Accounting Standards. However, an entity may comply with TSRS regardless of whether the relevant general purpose financial statements are prepared in accordance with Turkish Accounting Standards. Therefore, there is no sanction in this respect.</p> <p>With regards to the ESG disclosure under the Communiqué, according to CMB regulations, those who provide false, wrong or misleading information, start rumours, publish notices, make comments, or prepare reports or disseminate them in order to affect the prices of capital market instruments, their values or the decisions of investors, thereby obtaining benefits, shall be sentenced to imprisonment for three to five years and be punished with a judicial fine of up to 5,000 days. Thus, misleading ESG disclosures, if within this context, can potentially lead to the implementation of such penalties.</p>
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	<p>Currently, there is no tiered disclosure system in our jurisdiction. However, having considered that ESG compliance is becoming a key criterion for investors and financial institutions, along with financial requirements on their investments, we expect more rigid mandatory regulations on ESG compliance and disclosure requirements.</p>

12.	<p><b>Is there a system of ESG certification or benchmarks that need to be met to have an ‘ESG Approved/Compliant’ status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b></p>	<p>No Turkish authority has yet the legal authority to certify that any company is ESG approved/compliant in Turkey.</p>
13.	<p><b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b></p>	<p>With regards to the ESG disclosure under the TSRS;</p> <ol style="list-style-type: none"> <li>1. The nature and extent of the TSRS 1 (General Provisions on Disclosure of Sustainability-Related Financial Information) are: <ol style="list-style-type: none"> <li>(a) governance: description of the specific methods and practices used to address any sustainability-related risks and opportunities;</li> <li>(b) strategy: it is the determination of how to act and will act in relation to all kinds of sustainability-related risks and opportunities;</li> <li>(c) risk management: identify any risks and opportunities related to sustainability;</li> <li>(d) metrics and aims: progress towards targets set by the enterprises themselves or by legislation; and</li> </ol> </li> <li>2. The nature and extent of the TSRS 2 (Climate-related Explanations) are: <ol style="list-style-type: none"> <li>(a) explanations on the climate-related physical and transition risks to which the entity is exposed; and</li> <li>(b) climate-related opportunities available to the business.</li> </ol> </li> </ol> <p>ESG disclosure under the Principles contain information regarding:</p> <ol style="list-style-type: none"> <li>1. how environmental issues are integrated into business objectives and strategies;</li> <li>2. companies’ policies on formulating processes for environmental issues;</li> <li>3. companies reports about air quality, energy management, water and wastewater management, waste management and total energy consumption data;</li> <li>4. companies’ strategies and actions to fight against the climate crisis;</li> <li>5. increasing the use of renewable energy sources, renewable energy generation and consumption data regarding renewable energy; and</li> <li>6. corporate human rights and employee rights.</li> </ol>
14.	<p><b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b></p>	<p>TSRS 2 contains climate-specific disclosures and provisions. In this context, entities that meet the conditions in questions 3 and 4 are expected to disclose how the entity plans to achieve climate-related objectives, including greenhouse gas emission targets.</p> <p>Moreover, a healthy transition is planned by providing an exemption for the calculation of carbon emission data in the transition process that will start with the reporting to be made by large enterprises that exceed the thresholds in question 4.</p> <p>On the other hand, Article 8 of the Communiqué regulates information about ‘environmental and social risk management’, but there is no specific and explicit reference to ‘climate change’. However, the Principles have climate change-related requirements, but companies are not obliged to comply with those requirements. The only obligation is to report why they don’t comply with those requirements and the impacts of such non-compliance.</p>

15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	The CMB and PAASA standardised sustainability disclosures with the Principles and the TSRS. However, there is no other standardised ESG obligation other than disclosure on a 'comply or explain' basis.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	In Turkey, there is no clear definition or a specific law regulating, outlining or defining ESG.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	Pursuant to pp. B41 (b), in the TSRS, an integrated or separate assessment report may be submitted according to the businesses' case-specific assessment and the assessment may be made accordingly. The Communiqué and the Principles on the other hand, do not set forth such possibility for integration. Nevertheless, we have seen that financial institutions have stipulated certain ESG standards as KPIs. In other words, although there is a gap in legislation, in practice, financial institutions and investors are giving importance to such standards and take into consideration all ESG goals when measuring ESG compliance.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	While the ESG disclosure requirements under the TSRS and/or the CMB legislation increase the workload of companies, they are important concrete steps for compliance with the EU legislation. In this regard, the 'comply or explain' basis ESG disclosure requirements constitute a significant incentive for the foreign investors and create additional investor value. Such that, sustainability-linked financing has occurred in the later years. Also, most companies prefer to make ESG disclosures voluntarily. These clearly show us that the ESG disclosure workload is worth taking when considering its outcome as creating investor value.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	Our clients are environmentally and socially conscious, seek to gain customer trust and loyalty, and are aware of how important ESG disclosures have become for investors and financial institutions. They are also aware that the conditions they must meet in order to attract investors and financial institutions are not only financial conditions; they also need to make improvements to ESG conditions. Thus, we believe that they would like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	The regulations concerning reporting obligations related to securities do not currently include any provisions specifically aimed at preventing 'greenwashing'. However, in order to prevent 'greenwashing,' guidelines have been established in accordance with the 'Green Bond Principles' formulated by the International Capital Market Association (ICMA), which include the Green Bond Guide, Sustainable Bond Guide, Green Lease Certificate Guide, and Sustainable Lease Certificate Guide. According to these guidelines, issuers are required, within the framework of the Capital Markets Board's regulations on the disclosure of special circumstances to the public, to disclose updated information on fund utilisation annually from the date of issuance, as well as any significant developments in fund utilisation, and, following the full utilisation of the fund, to disclose the estimated and/or realised environmental impacts in an 'impact report'. In the event of making false statements in such reporting (such as greenwashing), issuers are liable under the Capital Markets Law. For penalties to be applied by the CMB, please see question 9.
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	We have not detected any specific developments on greenwashing in such ESG disclosures. However, we see in various statements that the relevant institutions carry out studies for full, accurate and real sustainability disclosure and that they also take greenwashing into account in this context.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	As of the date of this questionnaire, we did not see any claim arisen by investors or Regulatory Authorities with regard to incorrect/incomplete or misleading ESG disclosures.

23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	<p>As of the date of this questionnaire, there is no regulation within the framework of the TSRS pertaining to any third-party assurance/certification. However, there are various statements indicating the ongoing efforts of the PAASA in this regard. In the sustainability reports published by publicly listed companies in accordance with the CMB regulations, there is no restriction concerning individuals defined as 'independent sustainability assurance providers'. However, if these companies undergo verification processes via such assurance providers, they shall disclose their sustainability performance measurements to the public and strive towards increasing the verification procedures.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>In the case of publicly listed companies that are required to report in accordance with the Communiqué, the CMB's secondary legislation obliges the board to identify ESG issues, risks and opportunities and to formulate ESG policies accordingly, to take decisions regarding these policies, to disclose the relevant decision to the public and to designate committees/units responsible for the implementation of ESG policies. However, there is no regulation that directly affects the boards within the scope of board oversight and governance of ESG. Nevertheless, since both the Communiqué and the TSRS establish a framework for disclosures and do not provide a comprehensive assessment of the substance, it is not possible to make a comprehensive assessment of the impact on the board on companies.</p>
25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p>As previously indicated, the establishment of the TSRS drew upon ISSB's ISRS, the contributions of the EU, the UK, and other international institutions that hold significant importance for PAASA. Additionally, it has been observed that companies generally consider multiple metrics in their sustainability disclosures. Nevertheless, the disclosure requirement set forth under the Corporate Sustainability Reporting Directive (CSRD) from 2029 onwards holds particular significance, especially for large-volume companies engaged in exports to Europe, prompting an acceleration of their compliance efforts in this direction.</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>As previously indicated, while disclosure has become an obligation for some companies, the absence of corresponding sanctions signifies a transitional phase for them as well. A noticeable surge in efforts in this regard is observable, particularly among entities engaging in transactions with European actors. Ultimately, while Turkish companies demonstrate proficiency in specific domains of disclosure, we assert that a concerted endeavour will be essential for comprehensive disclosure.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>No. However, if they prepare reports in accordance with the Communiqué or the TSRS, they may include these objectives in their reports.</p>



28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	In accordance with the comply or explain principle, we observe that a significant portion of publicly listed companies set climate-related targets and provide annual reporting on their objectives. However, there appears to be a lack of intensive effort among private companies to voluntarily undertake commitments. Despite numerous companies in Turkey articulating diverse commitments on their respective websites, the extent to which these commitments have been actualised remains challenging to ascertain. Within the framework of Science Based Targets (sciencebasedtargets.org), a mere 80 companies based in Turkey have pledged commitments, with four of these entities removing their commitments and the commitments of 31 companies accepted. Consequently, aligning with globally accepted ESG standards reveals a discernible need for companies to refine their approach towards establishing short-, medium-, and long-term climate-related goals and commitments, signalling room for improvement in this domain.
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	The impact of TSRS on many institutions, especially banks, and the CMB's regulations for publicly listed companies show that ESG is gaining value day by day. Therefore, further regulation by the BRSA and the CMB is inevitable. Besides, future trends in ESG disclosures are likely to mirror global patterns, driven by abovementioned regulatory changes, investor demands and societal expectations. Companies may face increased pressure to disclose their ESG practices transparently following the new regulations to be established in the short-medium term, potentially leading to the integration of ESG factors into financial reporting frameworks and the adoption of globally recognised standards. Especially with the efforts of the EU in this regard with a specific focus on CSRD, there is a possibility of short-term adverse effects on Turkish companies to deal with such disclosure requirement in the following years. However, these developments can also be seen as an opportunity to predispose Turkish companies to this process. Nevertheless, collaboration among various stakeholders including regulators, SMEs, NGOs and group companies may facilitate the development of common disclosure and the sharing of best practices and ease the process for Turkish companies. Overall, the trajectory of ESG disclosures in Turkey will depend on the convergence of regulatory, market, and societal forces, shaping how businesses perceive and prioritise sustainability in their operations.
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	Halide Çetinkaya provides Turkish law advice as part of Çetinkaya Taktak Baltalı Attorney Partnership (CCAO), a Turkish attorney partnership registered with the Istanbul Bar Association.  She leads the M&A practice of the firm. She has experience in M&A and private equity, as well as banking finance and acquisition finance. She has a wide array of experience, with 20 years in the Turkish legal market. Among others, she focuses on financial institutions, and the insurance, healthcare and energy sectors. She has a law degree from Galatasaray University and received an LLM degree from King's College London. She has been a member of the IBA Banking Law Committee since 2012.

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for United Kingdom

### United Kingdom

1.	<b>Which jurisdiction are you covering?</b>	United Kingdom
2.	<b>Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?</b>	<p>The UK Financial Conduct Authority's (FCA) listing rules (UKLR) require commercial companies with a listing of shares in certain categories of the UKLR to make disclosures in their annual financial reports. These include recommended disclosures of the Financial Stability Board's (FSB's) Task Force on Climate-related Financial Disclosures (TCFD) on the disclosure of climate-related financial risks and opportunities. The TCFD recommendations include disclosures about governance, strategy, risk management policies, metrics and targets.</p> <p>In addition, UK companies that are subject to the UK Companies Act 2006 (CA 2006) are also subject to the requirements for the non-financial and sustainability information statement (NFSI statement) to be included in their strategic reports, if such companies have more than 500 employees and are traded companies, banking companies, authorised insurance companies, companies carrying out insurance market activity, companies with securities admitted to the Alternative Investment Market (AIM) or other companies with a high turnover (more than £500m in turnover), in relation to financial years beginning on or after 6 April 2022.</p> <p>Broadly, these disclosures include certain climate-related financial disclosures (CRFD) and, subject to certain exclusions, information to the extent necessary for an understanding of the company's development, performance and position and the impact of its activity relating to environmental matters (including the impact of the company's business on the environment), the company's employees, social matters, respect for human rights, anti-corruption and anti-bribery matters.</p> <p>Further, companies that are subject to other relevant UK accounting standards and applicable international financial reporting standards are subject to reporting standards and guidance that may require disclosures on ESG matters. There are proposals for specific consultation on the UK implementation of IFRS Sustainability Disclosure Standards (IFRS S1 and IFRS S2). Clarification on the scope and timeline for implementation is awaited.</p> <p>The FCA has created a climate-related financial disclosure regime for UK asset managers, life insurers and FCA-regulated pension providers that is consistent with the TCFD recommendations and requires both entity level and product level disclosures.</p> <p>There is also a specific FCA regime for sustainability disclosure requirements (SDR) and labelling that applies to certain products managed by UK asset managers. There is a consultation on the possible extension of these rules to other market participants and products, such as portfolio managers, certain overseas funds marketed into the UK, pension and other investment products.</p>

3.	<b>If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?</b>	As outlined in the answer to question 2, there are distinctions between the types of entity that are required to make ESG disclosures. For example, the specific disclosure requirements vary between commercial companies with a listing of shares in certain categories of the UKLR; in-scope UK companies subject to CA 2006; companies that are subject to other relevant UK accounting standards and applicable international financial reporting standards and UK asset managers, life insurers and FCA-regulated pension providers.
4.	<b>If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?</b>	<p>The answer to question 2 outlines some general requirements for ESG disclosures that apply to commercial companies with a listing of shares in certain categories of the UKLR; UK companies subject to CA 2006; companies that are subject to other relevant UK accounting standards and applicable international financial reporting standards and UK asset managers, life insurers and FCA-regulated pension providers.</p> <p>The level of disclosure requirement varies. For example, the FCA's specific SDR and labelling regime that applies to certain products managed by UK asset managers is a more detailed regime than the TCFD-based regime that applies to commercial companies with a listing of shares in certain categories of the UKLR.</p>
5.	<b>What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?</b>	<p>Certain disclosures are made in annual reports and accounts, for example those disclosures required by commercial companies with a listing of shares in certain categories of the UKLR, UK companies subject to the requirement for a NFSI statement and companies that are subject to the other relevant financial reporting standards on environmental and climate change risks and impacts.</p> <p>Other types of disclosures are made in product documentation such as fund prospectuses and by way of company website disclosures, for example some of the disclosures required by the FCA regime for SDR and labelling.</p>
6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	<p>As outlined in question 5, certain disclosures are made in annual reports and accounts, for example those disclosures required by commercial companies with a listing of shares in certain categories of the UKLR, UK companies subject to the requirement for a NFSI statement and companies that are subject to the other relevant financial reporting standards on environmental and climate change risks and impacts.</p> <p>Other types of disclosures are made in product documentation such as fund disclosure documents and by way of company website disclosures, for example some of the disclosures required by the FCA regime for SDR and labelling.</p>
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	<p>As outlined in question 5, certain disclosures are made in annual reports and accounts, for example those disclosures required by commercial companies with a listing of shares in certain categories of the UKLR, UK companies subject to the requirement for a NFSI statement and companies that are subject to the other relevant financial reporting standards on environmental and climate change risks and impacts.</p> <p>Other types of disclosures are made in product documentation such as fund disclosure documents and by way of company website disclosures, for example some of the disclosures required by the FCA regime for SDR and labelling.</p>
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	Yes, there is an increased trend towards voluntary ESG disclosures by corporates and financial institutions in circumstances where there are no mandatory disclosure requirements.
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	<p>As outlined in question 2, there are various layers of applicable regulation in the UK, which is monitored by different regulators.</p> <p>This includes, for example, the FCA in its capacity as the UK Listing Authority (UKLA); the FCA in its capacity as primary regulator for the purposes of the FCA's regime for SDR and labelling and also relevant financial reporting regulators.</p> <p>The Financial Reporting Council (FRC) is the body responsible for monitoring compliance with relevant reporting requirements under the CA 2006.</p> <p>The FRC has powers to enquire into non-compliance with applicable reporting requirements and to apply to the courts for a declaration that the annual report or accounts of a company do not comply and for an order requiring the directors to prepare a revised report or set of accounts.</p> <p>Other possible penalties for non-compliance depend on the applicable disclosure framework and the type of the non-compliance. For example, a non-material error would likely be treated differently from intentionally misleading statements in financial reports or product documentation.</p> <p>Depending on the applicable framework and the nature of the non-compliance, penalties could range from warnings to financial penalties, sanctions on individuals or prosecution in the courts.</p>

10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	Please see question 9. In general, the FCA treats a firm's decision to opt into a voluntary disclosure as equivalent to being required to disclose information. In both instances, regulated firms are expected to be accurate and to treat customers fairly.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	<p>As outlined in question 2, there are various layers of applicable regulation in the UK. In addition, under certain rules (such as the FCA's regime for SDR and labelling) the types of disclosures required vary depending on whether the products are made available to institutional investors or retail investors.</p> <p>The regulatory framework is developing. Further rules will come into effect in the near future and several areas are currently under consultation, such as the extension of the FCA's SDR regime to market participants and products, such as portfolio managers, certain overseas funds marketed into the UK, pension and other investment products.</p> <p>Certain elements of the FCA's SDR regime require compliance at different points in 2024 and 2025. In addition, a UK green taxonomy will be implemented to set out the criteria that specific economic activities must meet to be considered environmentally sustainable or taxonomy aligned. Further developments are expected in other areas, including financial and non-financial reporting.</p>
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	<p>The FCA regime for SDR and labelling, which applies to certain products managed by UK asset managers, contains such a system. For example, there are specific requirements for the different types of sustainable investment product labels (Sustainability Focus, Sustainability Improvers, Sustainability Impact and Sustainability Mixed Goals).</p> <p>In addition, the UK green taxonomy will set out the criteria that specific economic activities must meet to be considered environmentally sustainable or taxonomy aligned. This is currently under development.</p>
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	<p>The nature and extent of the ESG disclosures depend on the specific rules that apply.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• the UKLR requirements for commercial companies with a listing of shares in certain categories of the UKLR to make disclosures in their annual financial reports include recommended disclosures aligned with the TCFD position on the disclosure of climate-related financial risks and opportunities;</li> <li>• UK companies that are subject to the CA 2006 rules on NFSI statements are required to make certain climate-related financial disclosures (CRFD) and, subject to certain exclusions, to disclose information to the extent necessary for an understanding of the company's development, performance and position and the impact of its activity relating to environmental matters (including the impact of the company's business on the environment), the company's employees, social matters, respect for human rights, anti-corruption and anti-bribery matters;</li> <li>• the FCA's climate-related financial disclosure regime for UK asset managers, life insurers and FCA-regulated pension providers is consistent with the TCFD recommendations and requires both entity level and product level disclosures; and</li> <li>• the FCA SDR and labelling that applies to certain products managed by UK asset managers can require detailed disclosures on matters such as sustainability objectives and positive outcomes, material negative environmental and social outcomes, investment policy and strategy, policies and procedures to monitor the performance of the product in achieving its sustainability objective, KPI's used to monitor performance and a range of other information.</li> </ul>

14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	<p>Yes, for example:</p> <ul style="list-style-type: none"> <li>• the UKLR requirements for commercial companies with a listing of shares in certain categories of the UKLR to make disclosures in their annual financial reports include recommended disclosures aligned with the TCFD position on the disclosure of climate-related financial risks and opportunities;</li> <li>• UK companies that are subject to the CA 2006 rules on NFSI statements are required to make certain climate-related financial disclosures (CRFD) and, subject to certain exclusions, to disclose information to the extent necessary for an understanding of the company's development, performance and position and the impact of its activity relating to environmental matters (including the impact of the company's business on the environment); and</li> <li>• the FCA's climate-related financial disclosure regime for UK asset managers, life insurers and FCA-regulated pension providers is consistent with the TCFD recommendations and requires both entity level and product level disclosures.</li> </ul>
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	The degree of standardisation varies, depending on the specific disclosure framework that applies.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	As outlined in question 11, the regulatory framework is developing. Further rules will come into effect in the near future and several areas are currently under consultation. Guidance on ESG disclosures, as well as market practice, is also expected to become more developed over time.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	<p>As outlined in the answers above, including question 13, different sets of rules apply to ESG disclosures in the UK and there is variation on how cross-impacts are treated.</p> <p>Some disclosure requirements are aligned with the TCFD position, however others (such the FCA SDR regime) require specific disclosures on both positive outcomes and material negative environmental and social outcomes.</p>
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	<p>As outlined above, the regulatory framework is developing and this is partly due to demand from investors and other stakeholders (as well as policy objectives).</p> <p>More time will be needed to fully assess the utility of the existing framework for ESG disclosures, as well as the additional rules that are likely to be implemented following further consultation.</p>
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	In general, there is a demand for disclosure regimes that set out clear requirements and are effective. As indicated above, the regulatory framework is developing, and more time will be needed to fully assess the utility of the existing framework for ESG disclosures.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	Yes, for example the FCA regime for SDR and labelling that applies to certain products managed by UK asset managers requires mandatory ESG disclosures and contains specific anti-greenwashing rules.

21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	The FCA regime for SDR and labelling contains specific anti-greenwashing rules. These rules came into effect in May 2024.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	<p>The anti-greenwashing rules in the FCA regime for SDR and labelling came into effect in May 2024. We are not aware of any claims being brought in relation to these rules.</p> <p>Claims relating to ESG disclosures can also be brought under other UK securities laws (such as the rules relating to misleading statements in the Financial Services &amp; Markets Act 2012).</p>
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	<p>As outlined in question 2, certain companies are required to make disclosures in their annual reports.</p> <p>NFSI statements produced for the purposes of the CA 2006 requirements are not required to be verified by an independent assurance services provider; however, as the NFSI statement forms part of the strategic report, the auditor must read the whole of the strategic report and state in the auditor's report whether the information given in the strategic report is consistent with the financial statements and whether the strategic report has been prepared in accordance with applicable legal requirements. They must also state whether, in the light of the knowledge and understanding of the company and its environment obtained in the course of the audit, they have identified material misstatements in the strategic report and the directors' report and give an indication of the nature of those misstatements.</p> <p>This is indicative of the general approach to ESG disclosures in financial statements of UK companies, however various areas are under review, such as UK implementation of IFRS Sustainability Disclosure Standards.</p>
24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	<p>The UK Corporate Governance Code operates as a 'comply or explain' code and applies to all companies with a listing of equity shares in the equity shares (commercial companies) (ESCC) category of the UKLR. The existing version of the UK Corporate Governance Code applies ESG principles to a limited extent. For example, there is some emphasis on 'long-term sustainable success' and references to companies 'contributing to wider society' and has an emphasis on stakeholder engagement.</p> <p>It is anticipated that additional ESG principles will be included in future versions of the UK Corporate Governance Code.</p> <p>In addition, the FRC's guidance on the UK Corporate Governance Code contains guidance to the effect that environmental impacts can be one of the main factors affecting the long-term success and viability of a company. The guidance notes that the TCFD recommendations and other relevant frameworks can be helpful in identifying relevant social and environmental considerations for the purposes of informing and communicating business strategy.</p> <p>For UK companies that are subject to the CA 2006, the rules on directors' duties already contain various ESG principles. For example, section 172 of CA 2006 requires that a director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to:</p> <ul style="list-style-type: none"> <li>• the likely consequences of any decision in the long term;</li> <li>• the interests of the company's employees;</li> <li>• the need to foster the company's business relationships with suppliers, customers and others;</li> <li>• the impact of the company's operations on the community and the environment;</li> <li>• the desirability of the company maintaining a reputation for high standards of business conduct; and</li> <li>• the need to act fairly as between members of the company.</li> </ul>

<p>25.</p>	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• <b>the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</b></li> <li>• <b>the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</b></li> <li>• <b>the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</b></li> <li>• <b>the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></li> </ul>	<p><b>The sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June</b></p> <p>There are proposals for specific consultation on the UK implementation of IFRS Sustainability Disclosure Standards (IFRS S1 and IFRS S2). Clarification on the scope and timeline for implementation is awaited.</p> <p>In May 2024, the FCA provided an update to an update to its proposals for amending its rules to transition from TCFD to UK adopted ISSB disclosure standards. The FCA noted that companies may wish to start reporting voluntarily against ISSB standards prior to the conclusion of the UK implementation process.</p> <p><b>The first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD))</b></p> <p>The EU Corporate Sustainability Reporting Directive 2022 (CSRD) and related European Sustainability Reporting Standards (ESRS) will be primarily relevant to in-scope UK companies that have securities admitted to EU-regulated markets and UK companies with an EU subsidiary or EU branch.</p> <p><b>The final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September</b></p> <p>In its March 2023 Green Finance Strategy, the UK Government indicated that it would explore how the TNFD framework should be incorporated into UK policy and legislation. In a May 2024 SDR implementation update, the UK Government confirmed that it is continuing to monitor the work that the ISSB is doing in this area.</p> <p><b>The final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</b></p> <p>The UK Government announced that it will consult in 2024 on its approach to transition plan disclosures for UK companies. The FCA will also consult in 2025 on strengthening transition plan disclosure expectations in line with the TPT framework. Since the publication of the final TPT disclosure framework and the expected introduction of mandatory requirements, publication of transition plans by UK companies is expected to increase.</p>
<p>26.</p>	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>As outlined in question 2, there are various layers of ESG disclosure regulation in the UK. Different aspects of the regulatory framework apply to different types of companies, for example:</p> <ul style="list-style-type: none"> <li>• the relevant UKLRs apply to commercial companies with a listing of shares in certain categories of the UKLR;</li> <li>• UK companies are subject to the CA 2006 requirements for the NFSI statements to be included in their strategic reports, if such companies have more than 500 employees and are traded companies, banking companies, authorised insurance companies, companies carrying out insurance market activity, companies with securities admitted to the Alternative Investment Market (AIM) or other companies with a high turnover (more than £500m in turnover);</li> <li>• companies that are subject to other relevant UK accounting standards and applicable international financial reporting standards are subject to reporting standards and guidance that may require disclosures on ESG matters;</li> <li>• the FCA has created a climate-related financial disclosure regime for UK asset managers, life insurers and FCA-regulated pension providers that is consistent with the TCFD recommendations and requires both entity level and product level disclosures; and</li> <li>• there is also a specific FCA regime for sustainability disclosure requirements (SDR) and labelling that applies to certain products managed by UK asset managers and there is a consultation on the possible extension of these rules to other market participants and products, such as portfolio managers, certain overseas funds marketed into the UK, pension and other investment products.</li> </ul> <p>As such, the regulatory landscape is developing, and it impacts different types of companies in different ways. Some companies are better able to adapt and comply with the relevant requirements than others.</p>



27.	<b>Is it mandatory for companies to set climate-related targets?</b>	At present, it is not mandatory for UK companies to set or disclose a net zero target.
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	<p>The Science Based Targets Initiative is one of the more commonly adopted frameworks for UK companies to set net zero targets: <a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a></p> <p>There are other net zero frameworks, such as the BSI standard for carbon neutrality: PAS 2060.</p>
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	<p>The direction of policy in the UK is clear and this survey references several areas that are currently developing or under consultation, for example:</p> <ul style="list-style-type: none"> <li>• UK implementation of IFRS Sustainability Disclosure Standards;</li> <li>• a UK Government review of non-financial reporting requirements;</li> <li>• consultation on the possible extension of the FCA regime for sustainability disclosure requirements (SDR) and labelling to other market participants and products, such as portfolio managers, certain overseas funds marketed into the UK, pension and other investment products;</li> <li>• development of a UK green taxonomy to set out the criteria that specific economic activities must meet to be considered environmentally sustainable or taxonomy aligned;</li> <li>• further development of ESG principles in future versions of the UK Corporate Governance Code;</li> <li>• discussion on how TNFD should be incorporated into UK policy and legislation;</li> <li>• consultation on approach to transition plan disclosures for UK companies; and</li> <li>• an increased trend towards voluntary ESG disclosures by corporates and financial institutions in circumstances where there are no mandatory disclosure requirements</li> </ul>
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	<p>Andrew Akintewe, Brodies.</p> <p>Andrew Akintewe specialises in the formation and operation of investment funds, related corporate transactions and financial regulation. He advises a diverse client base of investment managers, banks and other market participants on investment fund structures and regulatory projects covering a wide range of asset classes including private equity, infrastructure, real estate, sustainable assets, commercial forestry and carbon credits. Andrew has worked for a major financial institution and is an Associate Member of the Chartered Institute for Securities and Investment.</p>



# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for United States

### United States

1.	Which jurisdiction are you covering?	United States
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Limited ESG disclosures are currently required under federal and state law. For example, the US Securities and Exchange Commission (SEC) has adopted disclosure rules on cybersecurity and climate, the latter of which has been temporarily stayed pending ongoing litigation. The SEC has also indicated it intends to release new disclosure rules on board diversity and human capital. California has also adopted new laws requiring certain disclosures related to greenhouse gas (GHG) emissions, climate-related risks and the use of carbon offsets. Additionally, the Federal Insurance Office and certain state insurance regulators require insurance companies to provide disclosure on climate-related risks. The US Environmental Protection Agency (EPA) also requires mandatory GHG emissions reporting from large GHG emissions sources. The federal government has also proposed climate disclosure rules for federal contractors. Lastly, as a general matter, registrants are required to disclose material risks, which could include climate-related risks, if applicable, in their periodic filings with the SEC.
3.	If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?	The SEC disclosure rules on cybersecurity and (when effective) climate-related risks generally apply to both US issuers and foreign private issuers. The SEC has also proposed separate ESG disclosure rules that would apply to registered investment companies, business development companies, registered investment advisers and certain unregistered advisers. State-level regulations, such as the regulations related to GHG emissions, climate-related risks and use of carbon offsets recently adopted by California, apply to certain entities that operate within that specific state. There are also sector-specific rules, such as climate-related disclosures for insurers and GHG emissions rules issued by the EPA, which target companies in certain high-emitting sectors.
4.	If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?	Private companies are currently not subject to the SEC's disclosure rules related to cybersecurity and climate, though certain state regulations, such as California's climate-related disclosure regulations, extend to both public and private companies operating in California that surpass a certain annual revenue threshold. Disclosure rules and regulations promulgated by other federal and state agencies, such as the EPA, include quantitative thresholds that must be met before disclosure is required under such rules and regulations.
5.	What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?	Under the SEC's adopted rule on climate-related disclosure, if the rule becomes effective, climate-related reporting will be integrated into registration statements and periodic reports filed with the SEC. The SEC's cybersecurity disclosure rule requires periodic reporting, as well as the reporting of material cybersecurity incidents on Form 8-K. The SEC's proposed ESG disclosure rules applicable to registered investment companies, business development companies, registered investment advisers and certain unregistered advisers contemplate disclosure in fund prospectuses, annual reports and adviser brochures, as well as Forms N-CEN and ADV Part 1A.

6.	<b>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</b>	The SEC's cybersecurity and climate-related disclosure rules require (or, in the case of climate-related disclosure, will require) reporting that is integrated into a registrant's registration statements and periodic filings with the SEC. Other federal and state agencies require separate standalone reporting.
7.	<b>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?</b>	Currently, issuers make ESG disclosure via a number of public channels, including standalone sustainability reports, proxy statements, annual reports on Form 10-K and company websites.
8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	Yes, companies continue to issue sustainability reports that are aligned with the recommendations of the Task Force on Climate-Related Financial Disclosures and its successor, the International Sustainability Standards Board (ISSB), and provide disclosure to annual CDP questionnaires as a result of investor expectations, among others.
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	The SEC is the key regulator of ESG-related disclosure and compliance with applicable rules and regulations. Non-compliance with SEC rules could result in enforcement actions and civil lawsuits, potentially leading to criminal and civil penalties, respectively. States and federal agencies that have implemented their own disclosure requirements also separately enforce these requirements. The SEC's climate-related disclosure rule includes phase-in periods for compliance for issuers of different sizes, though it is not yet clear how the stay of the rule will affect these phase-in periods.
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	False or misleading ESG disclosure may result in enforcement actions, as well as civil litigation, potentially leading to criminal and civil penalties, respectively. Such penalties may vary depending on whether the disclosure is voluntary or mandatory.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	The SEC's climate-related disclosure rule includes phase-in periods depending on the size of the issuer, though it is not yet clear how the stay of the rule will affect these phase-in periods. The SEC has indicated that it intends to release new proposed rules on human capital management and board diversity disclosure.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	There is currently no taxonomy or similar classification system in place, but companies may choose to provide assurance for certain ESG disclosures, such as emissions data. Additionally, the SEC's climate-related disclosure rule includes an attestation requirement for certain registrants in connection with such registrant's disclosure relating to certain GHG emissions information. If the rule becomes effective, such registrants will be required to (1) include with their SEC filings the attestation reports that cover these emissions disclosures and (2) provide certain information about the attestation service provider.
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	Currently, there is a limited range of mandatory disclosures that have been implemented by federal agencies and a handful of states. A number of companies also make voluntary sustainability disclosures.
14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	Yes, the SEC has adopted a climate-related disclosure rule that will require qualitative and quantitative disclosure in periodic reports and registration statements filed with the SEC. The rules are currently stayed pending ongoing litigation. Additionally, insurance regulators have focused on climate-related risk disclosures and California has adopted regulations on GHG emissions and climate-related risks disclosure.
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	Mandatory ESG disclosures retain some variability in the nature and scope of the required disclosure – for example, the SEC climate-related risks disclosure rule generally only requires disclosure to the extent such risks are material to the registrant.

16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	Currently, applicable law does not define ESG, and debate on its definition remains unsettled.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	Cross-impacts are not currently covered directly by law or regulation, but investors may take such issues into account when assessing a company's ESG profile.
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	There remains much debate on the value of ESG-related disclosure, but investors have consistently pushed for expanded, standardised disclosure on climate-related risks.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	Most companies support greater clarity with respect to ESG disclosure, but they are also concerned that mandatory reporting could become unduly expensive and burdensome, and could elicit disclosure that may not be material to investors.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	California recently introduced new disclosure rules on the sale and purchase of carbon offsets, which target greenwashing. In addition, the Federal Trade Commission is currently revising its 'Green Guides' which provide guidance to consumers on the marketing of products that purport to be 'green'.
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	The SEC has continued to emphasise its focus on taking enforcement action against greenwashing and has announced a handful of recent enforcement actions. For example, in September 2023, the SEC charged an asset manager with making misstatements about its ESG investment process. The asset manager agreed to pay a US\$19m penalty to settle the charges.
22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	Yes, as noted above, the SEC has announced a handful of enforcement actions related to greenwashing in recent years. Consumer class actions and state attorneys general actions on greenwashing have also been filed with increased frequency.

23.	<p><b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b></p>	<p>The SEC's climate-related disclosure rule will require, if it becomes effective, assurance for certain GHG emissions disclosures (as noted in question 12 above). The California climate regulations also require disclosure as to whether there was third-party verification on carbon offsets and third-party verification on GHG emissions data.</p>
24.	<p><b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b></p>	<p>Boards of directors have continued to integrate oversight of ESG issues into board and committee agendas, and investors and proxy advisers have continued to push for board oversight of ESG-related issues as part of the board's formal responsibilities.</p>
25.	<p><b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b></p> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	<p>Companies are beginning to assess and take steps to comply with the CSRD. Large institutional investors are also calling on companies to look to complying with the ISSB standards.</p>
26.	<p><b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b></p>	<p>Small- and medium-sized companies may struggle with the growing reporting obligations, particularly requirements originating from the EU.</p>
27.	<p><b>Is it mandatory for companies to set climate-related targets?</b></p>	<p>No.</p>
28.	<p><b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b></p>	<p>Certain companies have set science-based targets, and many continue to face pressure to do so. Companies that will become subject to the SEC's climate-related disclosure rule if it becomes effective should be cautious about setting climate-related targets, as such targets would need to be disclosed under the rule.</p>

29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	We expect to continue to see growing convergence in market-led disclosures around ISSB and ongoing contention over efforts by federal agencies, including the SEC, to expand ESG-related rulemaking.
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	Nicholas Pellicani, Debevoise & Plimpton. Trevor Norwitz & Carmen Lu, Wachtell, Lipton, Rosen & Katz.

# ESG survey regarding the disclosure regime and capital market transactions

## Questionnaire for Vietnam

### Vietnam

1.	Which jurisdiction are you covering?	Vietnam
2.	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Yes, for public companies (see below).
3.	If ESG disclosures are required, is there a distinction between the type and nature of the entity that is required to make ESG disclosures?	Yes.
4.	If there is a distinction, are any of these types of entities not required to make ESG disclosures or only limited disclosures are required depending on whether they are, for example, private or public unlisted companies? Are there any thresholds that need to be met before mandatory disclosure requirements are triggered?	<p>Private companies are not required to make ESG disclosures. Any company that satisfies the below criteria for becoming a 'public company' is required to disclose certain information in relation to ESG standards in its annual reports in compliance with Circular No 96/2020/TT-BTC of the Ministry of Finance of Vietnam dated 16 November 2020 providing guidelines on disclosures of information on the securities markets ('Circular 96').</p> <p>A 'public company' is defined as a joint stock company that: (1) has contributed equity of at least VND 30bn (about US\$1.2m) and at least 10 per cent of its voting shares are held by at least 100 minority shareholders; or (2) has successfully completed its IPO in compliance with securities regulations. The shares of a 'public company' may or may not be listed on an exchange.</p> <p>Exemptions are applied to public companies engaging in the finance, banking, securities, and insurance sectors, by which they are not mandatorily required to provide ESG reports on: (1) environmental impact; (2) raw material management; or (3) energy consumption.</p>
5.	What are the circumstances in which such ESG disclosures are triggered? That is to ask, are ESG disclosures triggered in case of certain transactions only, or are ESG disclosures required to be made on a continuous annual reporting basis or both?	Under Circular 96, ESG disclosures are triggered based on the legal status of the companies (whether they are private or public companies), and ESG disclosures are required to be made on a continuous annual reporting basis. No ESG disclosures applicable to any specific transaction under Vietnamese laws are necessary.
6.	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	No, disclosures are not required to be made in the form of separate ESG reports. They are parts of the annual reports made by public companies. However, public companies may, at their own discretion, prepare separate ESG reports called 'Sustainability Development Reports', and are encouraged to apply the globally accepted reporting and disclosure standards when preparing such reports.
7.	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports, company website)?	Public companies are required to publish their annual reports, which include ESG disclosures, on their websites and on the website of the State Securities Commission of Vietnam (SSC), the Vietnamese securities market regulatory authority.

8.	<b>In the case that there is no mandatory disclosure requirement, do you nevertheless find that corporates are voluntarily making ESG disclosures in your jurisdiction as a result of investor expectations?</b>	Yes, we have seen cases in which private companies need funding that requires ESG compliance and hence voluntarily prepare such reports.
9.	<b>What is the name of the regulator in your jurisdiction that monitors ESG disclosure compliance and what are the penalties for non-compliance with mandatory ESG disclosures, if applicable? Are there any grace periods?</b>	The Ministry of Finance and SSC are the regulators that monitor the reporting regimes of public companies, which include ESG disclosures. Non-compliance with mandatory ESG disclosures is subject to a monetary fine of up to VND 100m (about US\$4,000). No grace periods are applicable.
10.	<b>What are the penalties for false or misleading ESG disclosures? Will your answer change depending on whether the ESG disclosure was mandatory or voluntary?</b>	Providing false or misleading ESG disclosures would incur a monetary fine of up to VND 200m (about US\$8,000) for the disclosing company. As a remedial measures, the disclosing company must delete or correct the false or misleading ESG disclosure. Our answer remains unchanged, regardless of whether ESG disclosure is mandatory or voluntary.
11.	<b>Is there a tiered disclosure system in your jurisdiction and are there any further ESG disclosure requirements expected in your jurisdiction in the near future?</b>	No, we are not aware of any such system.
12.	<b>Is there a system of ESG certification or benchmarks that need to be met to have an 'ESG Approved/Compliant' status? For example, is there a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable?</b>	No.
13.	<b>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</b>	<p>In Vietnam, the framework with regard to ESG disclosure is relatively new for businesses.</p> <p>Pursuant to Circular 96, Vietnamese public companies are required to disclose their ESG report in their annual report, including greenhouse gas emissions, energy consumption, water consumption, compliance with the law on environmental protection, policies concerning employees, responsibility for the local community, investments and other community development activities.</p> <p>In parallel with developments in legislation, numerous state bodies, especially the SSC, as well as non-governmental organisations (NGOs) in Vietnam, have worked gradually to introduce guidance and policies to raise awareness and enhance the ESG practice of Vietnamese businesses. On 1 October 2021, the Prime Minister of Vietnam issued Decision No 1658/QĐ-TTg approving the National Strategy on Green Growth for the 2021–2030 period, with a vision to 2050, that lists some objectives aimed at the development of green growth and a carbon neutral economy for Vietnam in response to Vietnam's 2021 UN Climate Change Conference (COP26) commitments.</p> <p>The Ministry of Industry and Trade of Vietnam is responsible for setting out incentives for enterprises that provide green products and services for the market.</p> <p>In addition, the Ho Chi Minh Stock Exchange (HOSE) fostered sustainability reporting by launching the Vietnam Sustainability Index (VNSI) in July 2017. The VNSI includes 20 listed companies shortlisted from the VN-100 index basket with the highest sustainability scores. Accordingly, the VNSI shall provide a list of good companies to investors and enhance the practice of the sustainable development of listed companies.</p>

14.	<b>Is there a specific emphasis on climate change-related disclosures as part of the ESG disclosure regime, if so, how does your jurisdiction require entities to make specific Climate Change disclosures?</b>	Yes, the ESG report must include an environmental impact assessment related to: (1) total direct and indirect greenhouse gas emissions; and (2) measures and initiatives to reduce greenhouse gas emissions. Separate from the annual report disclosure, this climate change disclosure shall be made periodically.
15.	<b>Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?</b>	There are no ESG disclosure standards in Vietnam. Vietnamese public companies are encouraged to follow the globally accepted reporting and disclosure standards when preparing their sustainability reports.
16.	<b>Is there clear guidance and a definition of what applicable law envisages in terms of ESG disclosures, that is to ask, does applicable law clearly define the scope of what is included in Environmental, Social, and Governance?</b>	Please see question 13.
17.	<b>How are cross impacts between ESG goals measured or taken into account as part of applicable law? For example, is an investment in a coal mining company ESG compliant if the coal mining company has effective gender diversity policies? Or are these goals taken into account as a whole when measuring ESG compliance?</b>	N/A
18.	<b>In your view, has ESG disclosure regulation in your jurisdiction aided investor value creation, or has it created a greater compliance burden for companies without creating investor value? Or does the answer lie somewhere in the middle?</b>	In our view, ESG disclosure regulation creates both value to corporates and investor value.
19.	<b>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</b>	In general, our clients would like to see greater, more transparent and quantitative reporting from companies about their ESG efforts.
20.	<b>Are there any specific mandatory ESG disclosure requirements, including rules aimed at preventing greenwashing, in connection with securities issues imposed by law or regulators (ie, other than regular disclosures in connection with financial reports and/or sustainability or similar reports)?</b>	ESG disclosure is a part of the annual report of the public companies as required by law, mainly on standard and regular disclosures. The required disclosures include (1) environmental impact; (2) management of raw materials (including the percentage of materials recycled to produce products and services of the organisation); and (3) energy consumption (including energy savings through initiatives of efficiently using energy, the report on energy saving initiatives (providing products and services to save energy or use renewable energy), and the report on the results of these initiatives).
21.	<b>Have you seen any development with regard to ESG disclosures in connection with securities issues or the regulatory authority's approach towards such disclosures, in particular with regard to greenwashing issues?</b>	There have not been many recent developments, but the directives of the SSC aim to improve the quality of the ESG sections in the annual reports of public companies.



22.	<b>Are you aware of any claims brought, eg, by investors or regulatory authorities, due to incorrect/incomplete/misleading ESG disclosures in connection with securities issues in your jurisdiction (eg, in relation to greenwashing)?</b>	No cases have come to our attention recently. The typical cases in Vietnam involve the SSC imposing monetary administrative sanctions on public companies that fail to submit their annual reports, delay the submission, or submit incomplete annual reports – but such cases are not related to the ESG part of the annual report.
23.	<b>If there is a regular ESG disclosure requirement for companies in your jurisdiction, such as a sustainability report, what are the mandatory external certification/assurance requirements in connection with such a sustainability report or in connection with any other ESG disclosures that are required to be made (or have been voluntarily disclosed) in your jurisdiction as part of the company's annual reporting obligations? Which party can perform the assurance or give such certification?</b>	ESG or sustainability reports are part of the annual report required by law to apply to public companies. The law mentions that 'Public companies are encouraged to apply the globally accepted reporting and disclosure standards in preparing their sustainability reports'. There is no required mechanism for certification/assurance in terms of ESG report/sustainability reports at the moment by law.
24.	<b>What kind of developments have you seen in relation to board oversight and governance of ESG matters?</b>	In recent years, board oversight and governance of ESG matters have seen gradual advancements. Boards are increasingly integrating ESG considerations into their fiduciary duties, establishing dedicated ESG committees, and expanding the mandate of existing audit and risk committees to include ESG oversight. There is a growing emphasis on appointing directors with expertise in ESG issues and providing ongoing education and training. Boards are also enhancing stakeholder engagement, ensuring compliance with emerging regulations, and aligning ESG goals with corporate strategy. Additionally, many companies are adopting international ESG standards and frameworks, reflecting a broader commitment to sustainability and long-term value creation.
25.	<b>How are the following standards affecting the companies in your jurisdiction or how do you see your clients planning for them in the future:</b> <ul style="list-style-type: none"> <li>• the sustainability disclosure standards published by the International Sustainability Standards Board (ISSB) in June;</li> <li>• the first set of European Sustainability Reporting Standards (ESRS) published by the European Commission in July (against which communities must report under the EU Corporate Sustainability Reporting Directive (CSRD));</li> <li>• the final supporting additional guidance published by the Taskforce on Nature-related Financial Disclosures (TNFD) in September; and</li> <li>• the final disclosure framework published by the UK Transition Plan Taskforce (TPT) in November.</li> </ul>	The law mentions that 'Public companies are encouraged to apply the globally accepted reporting and disclosure standards in preparing their sustainability reports'.  Some companies (typically larger ones or public companies) refer to and/or apply these criteria in their operations and annual reports. While this trend is not yet strong, it is gradually progressing.
26.	<b>In your view, do the companies subject to disclosure requirements have the necessary capability and resources to make the required disclosures?</b>	Yes, because they are all public companies that should have sufficient resources to fulfil the required disclosures.

27.	<b>Is it mandatory for companies to set climate-related targets?</b>	Recently, to fulfil the government's commitment to achieve net zero by 2050, the government has issued a list of businesses required to conduct greenhouse gas audits and implement emission reduction measures. These businesses are expected to commit to collaborating with the state authorities to undertake activities aimed at minimising greenhouse gas emissions as stipulated by law.
28.	<b>If not mandatory, is a voluntary commitment to climate-related targets, such as science-based targets (<a href="https://sciencebasedtargets.org/">https://sciencebasedtargets.org/</a> [sciencebasedtargets.org]) popular amongst the companies in your jurisdiction?</b>	No, companies still prioritise making commitments as required by law.
29.	<b>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</b>	Vietnamese law has undergone significant changes that have increased the obligations of state and public corporations regarding ESG practice. In line with the government's goal to enhance the sustainable development of businesses in Vietnam, the government has directed the relevant ministries and agencies to take action on ESG issues. In addition, Vietnamese regulators are trying to issue guidance on sustainability reporting standards for Vietnamese public companies. The policies of the Ministry of Finance and the SSC for the development of the Vietnamese stock market from now until 2030 share a common goal of enhancing the quality of ESG disclosures in the overall annual reports of listed companies.
30.	<b>Please provide your name, firm name, and a brief biography (optional) about yourself.</b>	Vinay Ahuja, Phong Anh Hoang, Dave Seibert – DFDL Vietnam Law Company Limited.



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