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International Bar Association

Capital Markets Forum and
Securities Law Committee

ESG survey 2022



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ESG survey 2022 regarding the disclosure regime in capital market transactions, conducted by the IBA Capital Markets Forum and the IBA Securities Law Committee

The Capital Markets Forum (CMF) and the Securities Law Committee (SLC) of the International Bar Association (IBA) conducted a joint survey in summer 2022 to assess how different jurisdictions regulate environmental, social and governance (ESG) disclosures in capital market transactions. The survey was prepared for the joint session of the CMF and SLC held on 3 November 2022 at the IBA Annual Conference in Miami, United States 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 survey was conducted in the form of a questionnaire with responses from among the officers of the CMF, the SLC and colleagues from other committees of the IBA from over 30 countries around the globe.

The responses to the survey showed several key takeaways. First, ESG disclosures are mandatorily required to be made in the vast majority of the jurisdictions reviewed. Second, most disclosures are required to be made by listed companies or large private businesses, with different jurisdictions having their own thresholds for what constitutes large corporations. Third, most of the ESG disclosures are to be made in annual reports for companies. Fourth, while most ESG reports are to be included in annual reports, we have noticed an increasing trend of mandatory disclosures being required in separate ESG reports as well. Fifth, a number of corporations are already making voluntary public disclosures, even where none are mandatory.

While monetary sanctions represent the bulk of penalties for false or misleading disclosures, criminal sanctions are also prevalent in some countries included in the survey, such as Colombia, Egypt, Finland, France, the Grand Duchy of Luxembourg, Ireland, Japan, Poland, Singapore and Turkey.

The survey also showed that most countries included have a classification system for environmentally sustainable activities based on certain basic minimum standards that are objectively ascertainable and transparently reportable. Moreover, most countries require some type of quantitative, or at least qualitative, climate change disclosures as part of the ESG disclosure regime.

Interestingly, the majority of survey respondents said that ESG disclosures were not standardised, and latitude was available in response frameworks. There is consensus that the regime is expected to continue evolving in the coming years. Finally, a small majority of the respondents said that there was no clear guidance on the definition of what applicable laws envisage in terms of ESG disclosures, and it is unclear whether ESG disclosure regulations in their respective jurisdictions have aided investor value creation or resulted in largely creating a greater compliance burden.

Overall, the survey 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 policy-makers 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 summer 2022 and reflect the state of the law in the respective jurisdictions only as then. 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 jurisdictions.

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 very fast developing topic, we are planning to update this survey from time to time.

Karachi, São Paulo, Zurich, 6 March 2023

Rabel Z Akhund, Capital Markets Forum, *Akhund Forbes, Karachi*

David Flechner, Securities Law Committee, *Allen & Overy, New York*

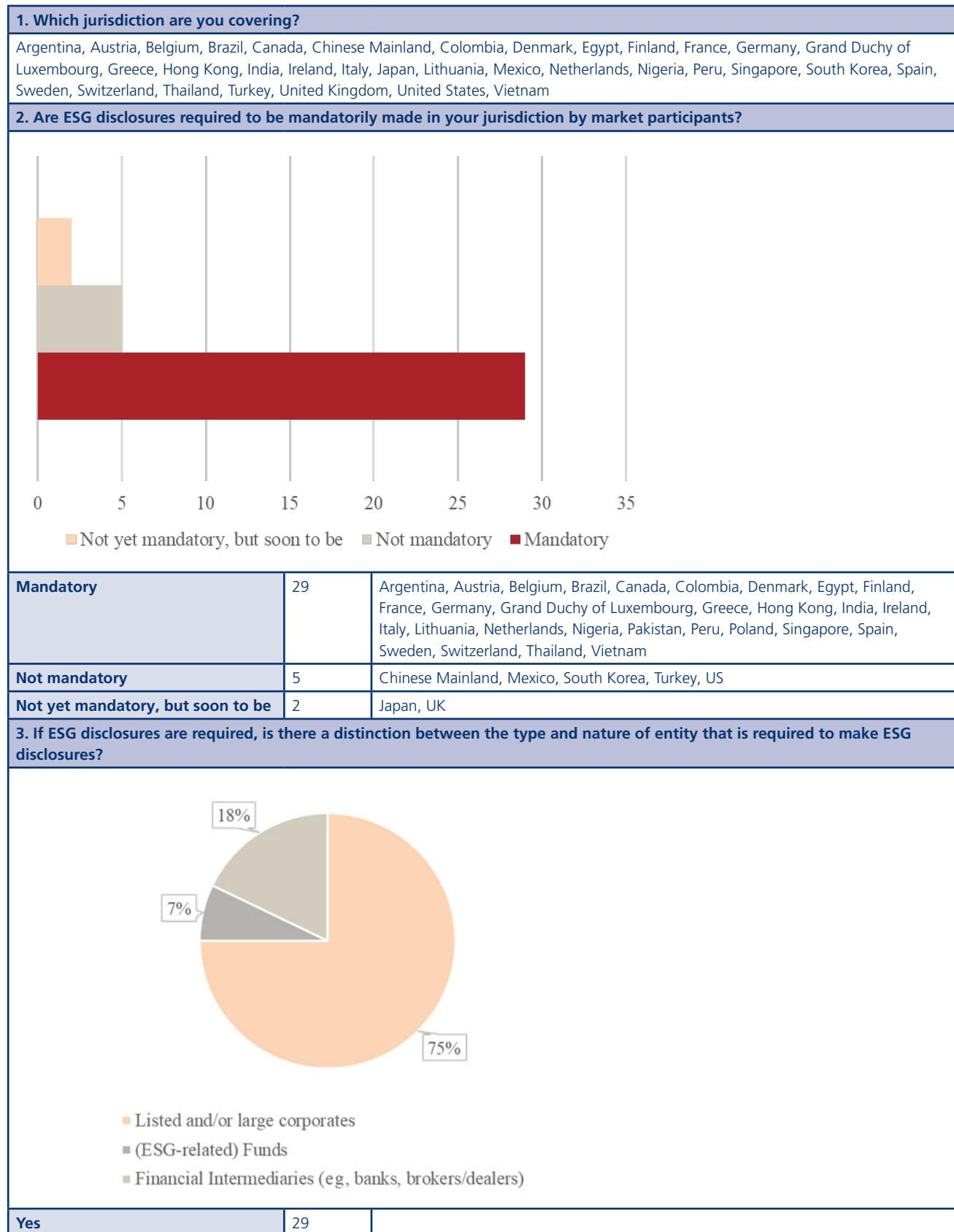
Patrick Schleiffer, Securities Law Committee, *Lenz & Staehelin, Zurich*

(Survey conducted in summer 2022.)

Law firms participating in the survey

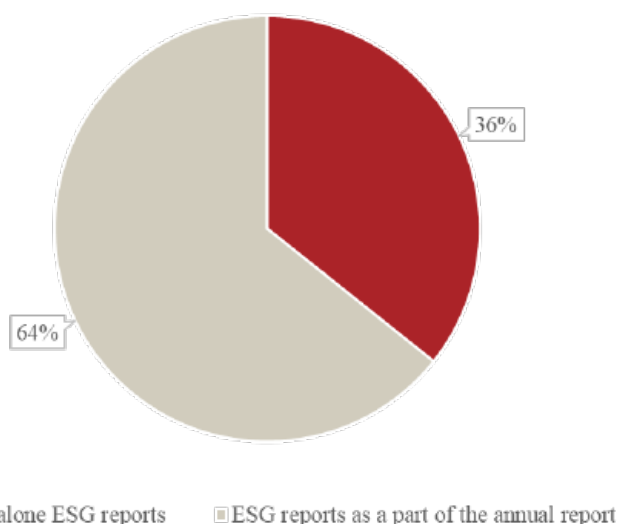
Participant	Law Firm and Contact Person
Argentina	Marval O'Farrell Mairal (Luciano Ojea Quinta and Pablo Gayol)
Austria	Binder Grösswang (Florian Khol and Philipp Tagwerker) and Schönherr (Christoph Moser)
Belgium	Stibbe (Jan Peeters and Willem Witters)
Brazil	BMA Advogados (Chico Müssnich) and TozziniFreire Advogados (Alexei Bonamin)
Canada	Borden Ladner Gervais (Philippe Tardif, Samantha Krol and Griffin Murphy)
Chinese Mainland	Fangda Partners (Kate Yin)
Colombia	Posse Herrera Ruiz – PHR Legal (Mariana Posse Velásquez)
Denmark	Gorissen Federspiel (Rikke Schiøtt Petersen and Yas Farah Bakhsh Akbatani)
Egypt	Zulficar and Partners Law Firm (Anwar Zeidan)
Finland	Krogerus (Tom Fagnäs)
France	Jeantet AARPI (Cyril Deniaud)
Germany	Gleiss Lutz (Michael Arnold) and Hengeler Müller (Simon Link)
Grand Duchy of Luxembourg	Elvinger Hoss Prussen (Katrien Verannemen and Caroline Bocklandt)
Greece	Elias Paraskevas Attorneys (Dimitris E Paraskevas)
Hong Kong	Paul Hastings (Vivian Lam)
India	Khaitan & Co (Suhana Islam Murshed)
Ireland	A&L Goodbody (Keavy Ryan)
Italy	BonelliErede (Massimiliano Danusso)
Japan	Mori Hamada & Matsumoto (Katsumasa Suzuki)
Lithuania	Ellex Valiunas (Leva Dosinaité)
Mexico	Bello, Gallardo, Bonequi y García (BGBG) (Miguel Gallardo Guerra)
Netherlands	Stibbe (Pieter Schütte, Eline Glazener, Loes van Dijk and Ingrid van der Klooster) and De Brauw Blackstone Westbroek (Davine Roessingh, Annabel van Schaik and Lisanne Baks)
Nigeria	Ajumogobia & Okeke (Patrick Osu)
Pakistan	Akhund Forbes (Rabel Z Akhund)
Peru	Rodrigo, Elías & Medrano Abogados (Nydia Guevara Villavicencio)
Poland	Wardynski & Partners (Marcin Pietkiewicz and Łukasz Szegda)
Singapore	Allen & Gledhill (Lee Kee Yeng)
South Korea	K1 Chamber (Ben B Hur and Sang Man Kim)
Spain	Uría Menéndez Abogados (Gabriel Núñez, Gorka Atutxa and Manuel Suero)
Sweden	Wigge & Partners Advokat (Fredrik Arvebratt and Marcus Arvidsson)
Switzerland	Homburger (Benjamin Leisinger), Lenz & Staehelin (Patrick Schleiffer) and Walder Wyss (Theodor Härtsch)
Thailand	DFDL (Vinay Ahuja)
Turkey	Çetinkaya Taktak Semiz Baltalı Yörükoğlu Avukatlık Ortaklığı-Attorney Partnership (Halide Çetinkaya)
United Kingdom	Macfarlanes (Robert Boyle)
United States	Wachtell, Lipton, Rosen & Katz (Trevor Norwitz)
Vietnam	DFDL Vietnam Law Company (Vinay Ahuja)

Analysis of the ESG survey



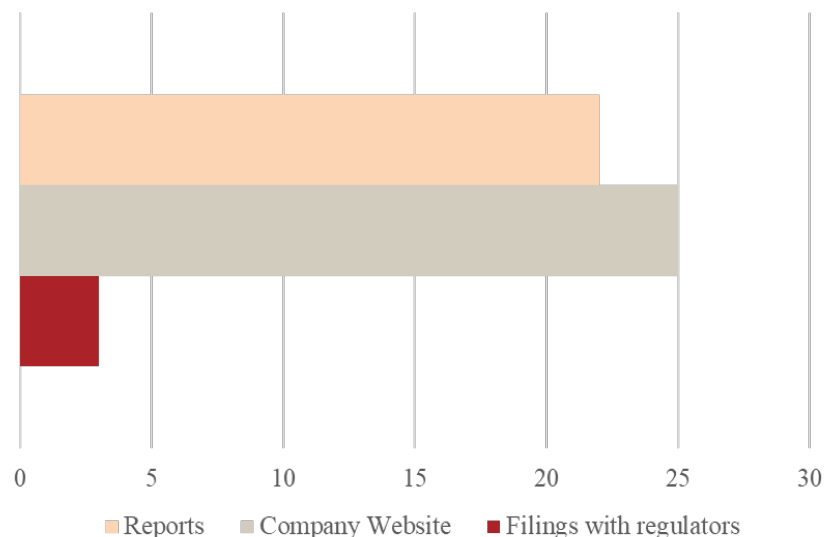
Listed and/or large companies	21	Argentina, Austria, Belgium, Brazil, Colombia, Denmark, Egypt, Finland, France, Grand Duchy of Luxembourg, Greece, Hong Kong, India, Ireland, Lithuania, Netherlands, Pakistan, Peru, Singapore, Sweden, Switzerland								
(ESG-related) Funds	2	Canada, Hong Kong								
Financial intermediaries (eg, banks, brokers/dealers)	5	Austria, Belgium, Egypt, Hong Kong, Lithuania								
Unspecified	6	Colombia, Germany, Italy, Poland, Spain, Thailand, Vietnam								
No	2	Nigeria, UK								
ESG are not required or N/A	6	Chinese Mainland, Japan, Mexico, South Korea, Turkey, US								
4. If there is a distinction, are any of these types of entities not required to make ESG disclosures or are only limited disclosures 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?										
<div><table><thead><tr><th>Circumstances</th><th>Count</th></tr></thead><tbody><tr><td>Periodic/Annual Report</td><td>29</td></tr><tr><td>Triggered based on investment, legal status of the companies, materiality threshold, transactions, etc</td><td>9</td></tr><tr><td>Both</td><td>10</td></tr></tbody></table></div>			Circumstances	Count	Periodic/Annual Report	29	Triggered based on investment, legal status of the companies, materiality threshold, transactions, etc	9	Both	10
Circumstances	Count									
Periodic/Annual Report	29									
Triggered based on investment, legal status of the companies, materiality threshold, transactions, etc	9									
Both	10									
Periodic/annual report	29	Argentina, Austria, Belgium, Brazil, Canada, Colombia, Denmark, Egypt, Finland, France, Germany, Grand Duchy of Luxembourg, Greece, Hong Kong, India, Ireland, Italy, Lithuania, Netherlands, Nigeria, Pakistan, Peru, Poland, Singapore, Spain, Switzerland, Thailand, UK, Vietnam								
Triggered based on investments, legal status of the companies, transactions, materiality threshold, transaction etc	9	Canada, Germany, Grand Duchy of Luxembourg, Hong Kong, Netherlands, Poland, Switzerland, Thailand, Vietnam								
Both	10	Canada, Germany, Grand Duchy of Luxembourg, Hong Kong, Netherlands, Poland, Sweden, Switzerland, UK, Vietnam								
ESG are not required or N/A	6	Chinese Mainland, Japan, Mexico, South Korea, Turkey, US								

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



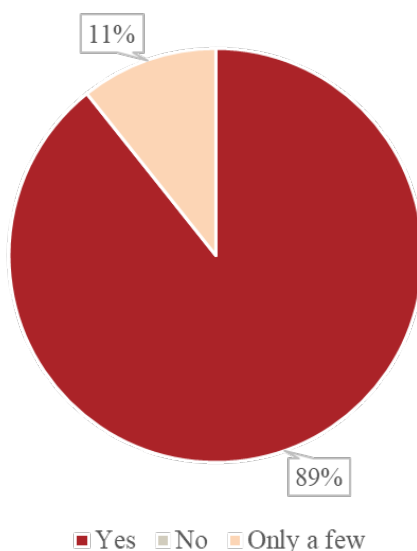
Standalone ESG reports	15	Austria, Brazil, Canada, Denmark, Finland, Germany, Italy, Nigeria, Poland, Spain, Sweden, Switzerland, Thailand, UK, Vietnam
ESG reports are included as part of the annual report	17	Belgium, Colombia, Denmark, Egypt, Greece, Hong Kong, India, Ireland, Lithuania, Nigeria, Pakistan, Poland, Singapore, Sweden, Switzerland, UK, Vietnam
ESG reports are a part of the management report (which is part of the annual report)	8	Austria, Finland, France, Germany, Grand Duchy of Luxembourg, Italy, Lithuania, Spain
Other	7	<ul style="list-style-type: none"> Financial statement: 1 (Argentina) Reference form: 1 (Brazil) Company's continuous disclosure documents (management information circular (MIC), management's discussion and analysis (MD&A) or annual information form (AIF)): 1 (Canada) Offering memorandum: 1 (Colombia) Business Responsibility and Sustainability Report: 1 (India) Corporate Sustainability Report: 1 (Peru) Board's statement in the annual report on non-financial performance indicators: 1 (Netherlands)
ESG are not required or N/A	8	Argentina, Chinese Mainland, Japan, Mexico, South Korea, Turkey, US

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



ESG are not required or N/A	6	Chinese Mainland, Japan, Mexico, South Korea, Turkey, US
Filings with regulators	2	Brazil, Thailand
Company website	25	Austria, Belgium, Brazil, Colombia, Denmark, Egypt, Finland, France, Germany, Greece, Hong Kong, India, Ireland, Italy, Lithuania, Netherlands, Peru, Poland, Singapore, Spain, Sweden, Switzerland, Thailand, UK, Vietnam
Reports		
Managing report	7	Argentina, Austria, Finland, Grand Duchy of Luxembourg, Lithuania, Nigeria, Pakistan
Sustainability report	3	Denmark, Greece, Sweden
Standalone ESG reports	9	Austria, Belgium, Denmark, Grand Duchy of Luxembourg, Hong Kong, Nigeria, Spain, Sweden, Switzerland
Section in the annual report	12	Belgium, Denmark, Hong Kong, India, Italy, Mexico, Netherlands, Peru, Singapore, Sweden, Switzerland, Vietnam
Annual financial statements	3	Argentina, Egypt, Greece

8. In the case in which 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?

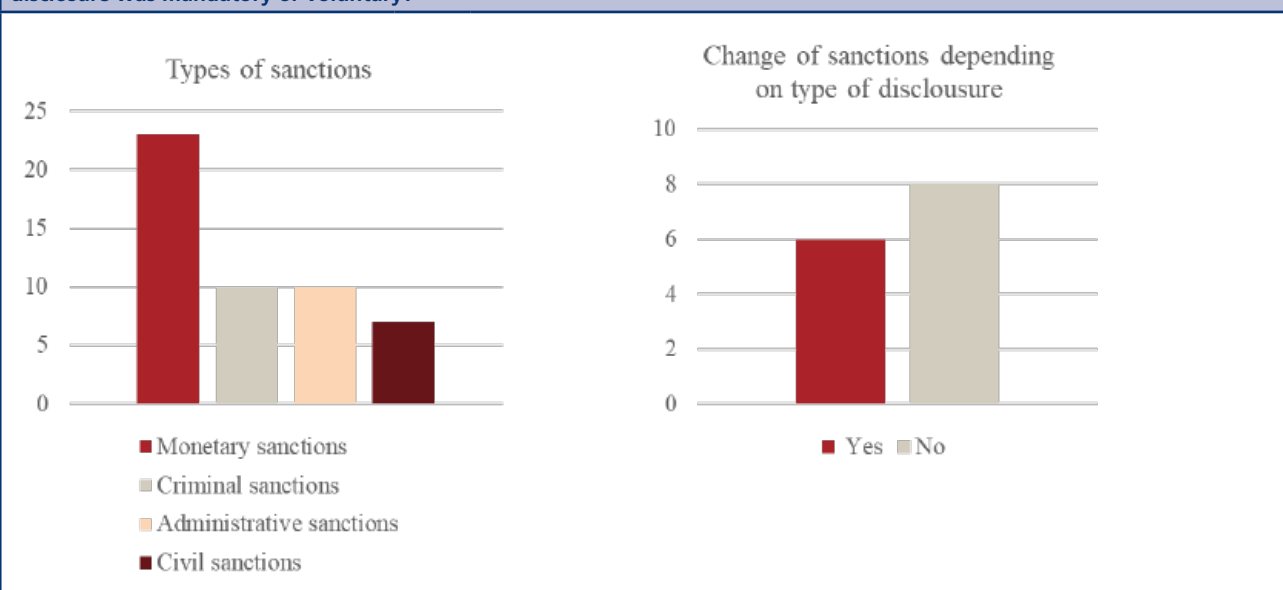


N/A	7	Belgium, Brazil, Denmark, Grand Duchy of Luxembourg, Poland, Sweden, Thailand
Yes	25	Argentina, Austria, Canada, Colombia, Greece, Germany, Finland, France, Hong Kong, India, Ireland, Japan, Lithuania, Mexico, Netherlands, Pakistan, Peru, Singapore, Spain, South Korea, Switzerland, Turkey, UK, US, Vietnam
No	0	
Only a few	3	Chinese Mainland, Egypt, Italy

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.

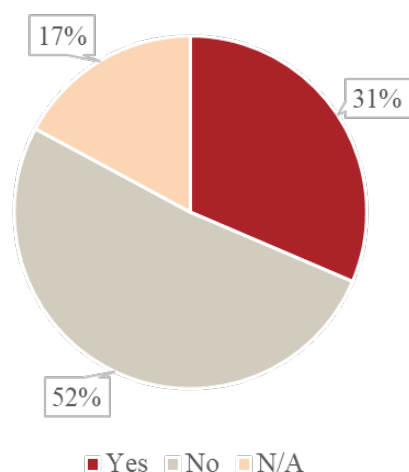
10. What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?



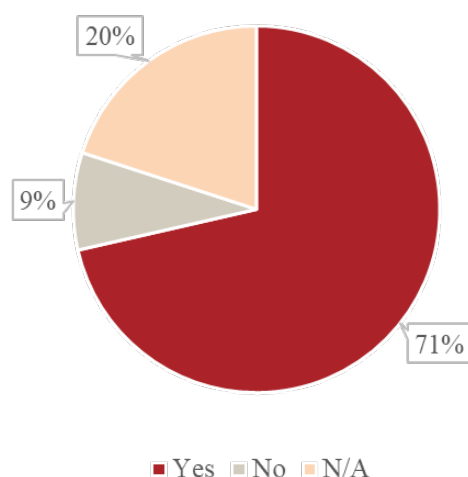
ESG are not required or N/A	8	Argentina, Chinese Mainland, Japan, Pakistan, Mexico, South Korea, Turkey, US
Penalties for false or misleading ESG disclosures		
Monetary sanctions	23	Belgium, Brazil, Canada, Denmark, Egypt, Finland, France, Germany, Grand Duchy of Luxembourg, Hong Kong, Ireland, Italy, Lithuania, Nigeria, Peru, Poland, Spain, Sweden, Switzerland, Thailand, Turkey, UK, Vietnam
Criminal sanctions	10	Colombia, Egypt, Finland, France, Grand Duchy of Luxembourg, Ireland, Japan, Poland, Singapore, Turkey
Civil sanctions	7	Canada, France, Grand Duchy of Luxembourg, Japan, Netherlands, Poland, Singapore
Administrative sanctions	10	Austria, Brazil, Colombia, Grand Duchy of Luxembourg, Hong Kong, Japan, Netherlands, Peru, Poland, UK
Change of penalties depending on whether the ESG disclosure was mandatory or voluntary		
Yes	6	Denmark, Egypt, Greece, Hong Kong, Spain, Thailand
No	8	Brazil, Germany, Lithuania, Netherlands, Peru, Singapore, UK, Vietnam

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?

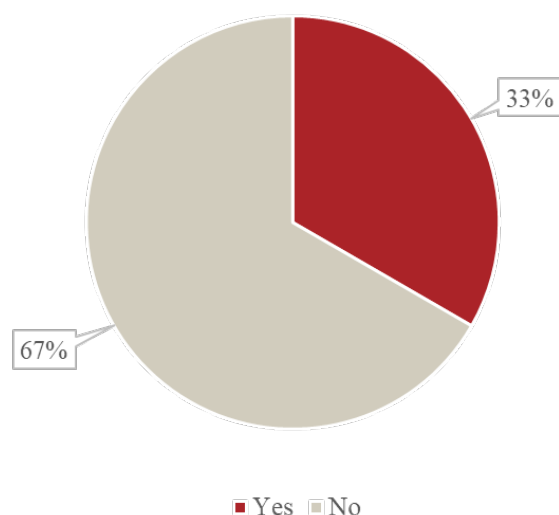
Yes	11	Brazil, Egypt, France, Hong Kong, India, Ireland, Lithuania, Poland, South Korea, Sweden, UK
No	18	Argentina, Belgium, Canada, Chinese Mainland, Finland, Grand Duchy of Luxembourg, Greece, Italy, Japan, Netherlands, Nigeria, Pakistan, Peru, Spain, Thailand, Turkey, US, Vietnam
N/A	6	Colombia, Germany, Denmark, Mexico, Singapore, Switzerland

Are more ESG disclosure requirements expected in the future?

Yes	25	Argentina, Belgium, Canada, Chinese Mainland, Denmark, Egypt, Finland, France, Germany, Grand Duchy of Luxembourg, Greece, Hong Kong, India, Italy, Japan, Lithuania, Netherlands, Pakistan, Peru, Poland, Singapore, Spain, Sweden, Switzerland, US
No	4	Colombia, Nigeria, Thailand
N/A	7	Austria, Brazil, Ireland, Mexico, Turkey, UK, 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?

N/A	3	Chinese Mainland, Ireland, Mexico
Yes	11	Argentina, Colombia, France, Germany, Grand Duchy of Luxembourg, Greece, Hong Kong, Lithuania, Netherlands, Poland, UK
No	22	Austria, Belgium, Brazil, Canada, Denmark, Egypt, Finland, India, Italy, Japan, Nigeria, Pakistan, Peru, Singapore, South Korea, Spain, Sweden, Switzerland, Thailand, Turkey, US, Vietnam

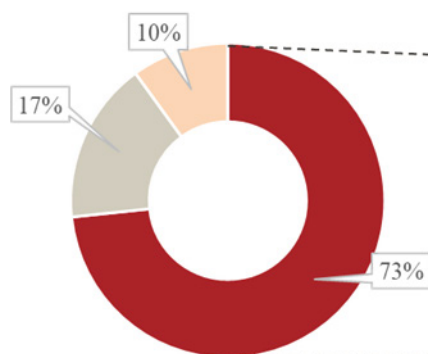


13. Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.

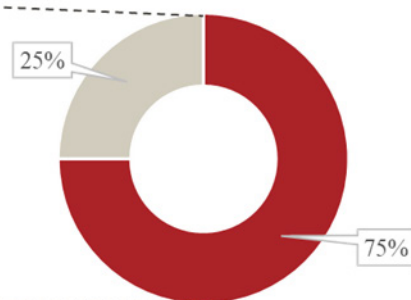
This question is omitted.

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?

Climate change related disclosures as a part of the ESG disclosure regime



If so, different types of climate change disclosures



■ Yes ■ No ■ Comply or explain

■ Reports (annual, periodic, sustainability report, etc)
■ Registration statement filed with regulatory filings

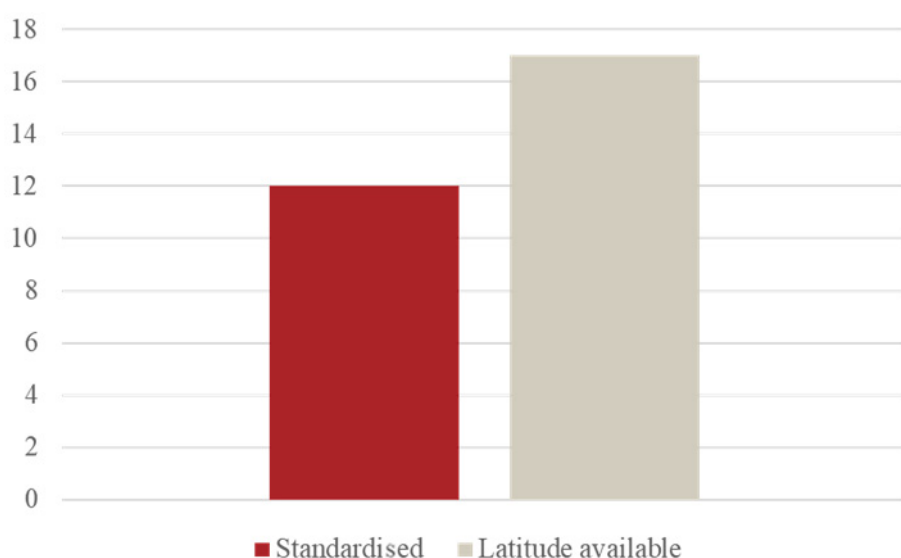
Climate change-related disclosures as part of the ESG disclosure regime

N/A	5	Austria, Mexico, Netherlands, Nigeria, Pakistan, South Korea
Yes	22	Brazil, Canada, Colombia, Chinese Mainland, Denmark, Egypt, Finland, France, Germany, Grand Duchy of Luxembourg, Hong Kong, India, Ireland, Lithuania, Peru, Spain, Sweden, Switzerland, Thailand, UK, US, Vietnam
No	5	Belgium, Greece, Italy, Poland, Turkey
Comply or explain	3	Argentina, Japan, Singapore

If so, different types of climate change disclosures

Reports (annual, periodic, sustainability report etc)	6	Colombia, Peru, Singapore, US, Thailand, Vietnam
Registration statements filed with the regulatory filings	2	Hong Kong, US
Others	6	Brazil, Denmark, Egypt, India, Switzerland, UK
N/A	12	Argentina, Canada, Chinese Mainland, Finland, France, Germany, Grand Duchy of Luxembourg, Ireland, Japan, Lithuania, Spain, Sweden

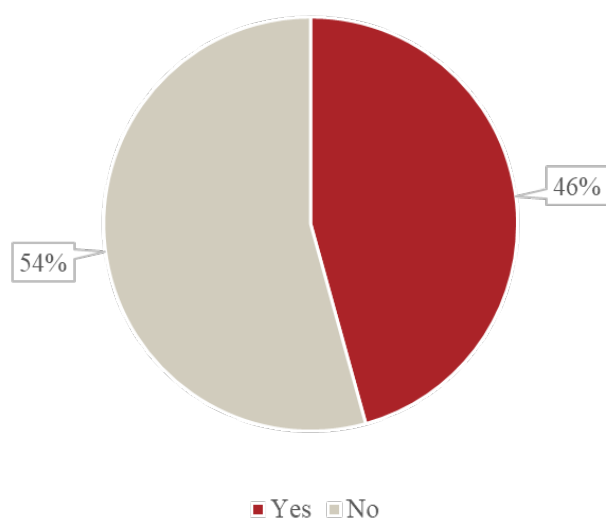
15. Are the ESG disclosures standardised in your jurisdiction or do companies have latitude in terms of the extent and manner of disclosures that they make?



■ Standardised ■ Latitude available

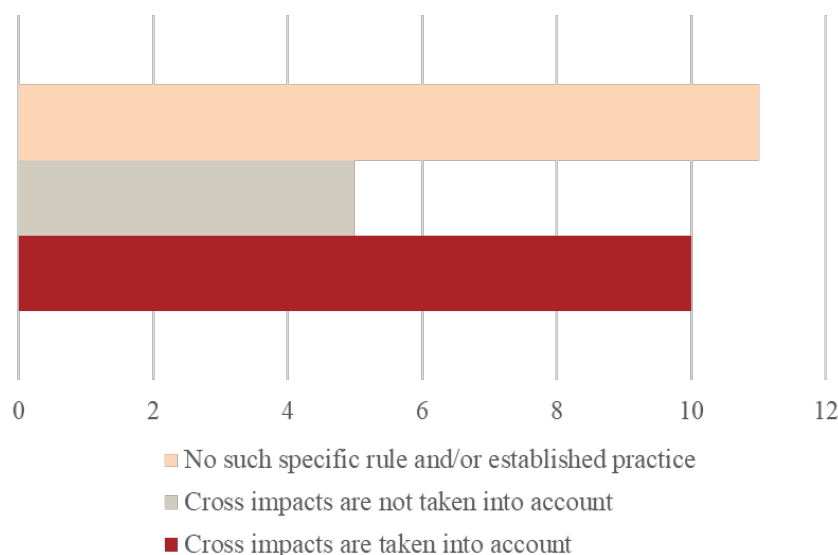
N/A	3
Standardised	12
Latitude available	17
Depends on the type of company	6

16. Is there a clear guidance and 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?



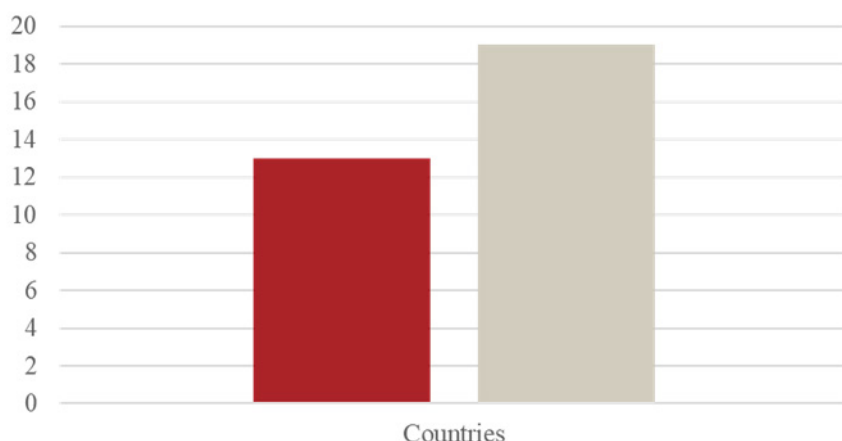
Yes	16	Argentina, Canada, Denmark, Germany, Grand Duchy of Luxembourg, Greece, India, Ireland, Lithuania, Nigeria, Peru, Poland, South Korea, Spain, Sweden, Vietnam
No	19	Colombia, Chinese Mainland, Belgium, Brazil, Egypt, Finland, France, Hong Kong, Italy, Japan, Mexico, Netherlands, Pakistan, Singapore, Switzerland, Thailand, Turkey, UK, US
Unclear	1	Austria

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?



N/A	10	Austria, Chinese Mainland, Denmark, Egypt, Japan, Mexico, Pakistan, South Korea, Thailand, Vietnam
Cross impacts are taken into account	10	Colombia, Grand Duchy of Luxembourg, Greece, Finland, France, Lithuania, Netherlands, Nigeria, Poland, Sweden
Cross impacts are <i>not</i> taken into account	5	Germany, Singapore, Spain, Turkey, US
No such specific rule and/or established practice	11	Argentina, Belgium, Brazil, Canada, Hong Kong, India, Ireland, Italy, Peru, Switzerland, UK

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?



- 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

N/A	4	Denmark, Egypt, Germany, Mexico
Mainly added value (positive impact on the market, high quality of ESG disclosure, increased focus on ESG issues etc)	13	Brazil, Chinese Mainland, Colombia, Greece, Italy, Nigeria, Singapore, South Korea, Switzerland, UK, Thailand, Turkey, Vietnam
Mainly an additional expense	0	
Unclear/answer lies somewhere in the middle	19	Argentina, Austria, Belgium, Canada, Finland, France, Grand Duchy of Luxembourg, Hong Kong, India, Ireland, Japan, Lithuania, Netherlands, Pakistan, Peru, Poland, Spain, Sweden, 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. What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?

N/A	0	Canada, France, Greece
Trends		<ul style="list-style-type: none"> • Development of (greater, more standardised) guidelines and other internal regulations (21 countries) • Promoting sustainable development in the corporate world (11 countries) • Alignment with global climate-related disclosures (eight countries) • Increase in voluntary disclosures (three countries) • Improvement of the quality of ESG information (two countries)

Survey completed by the participants: full text

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for 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-Forética, 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 do have a special regulation by the CNV, 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 adhesion 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 report.</p>
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	As mentioned above, all listed companies have the obligation to make ESG disclosures. In addition, mutual funds (fondos comunes de inversión or FCI), whose special investment purpose is constituted by marketable securities with ESG bonds, have a special regulation outside the regulation for all 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 prior to mandatory disclosure requirements being triggered?	N/A

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?	<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).</p>
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	<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 the totality 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 with a public offering 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, and provided the ESG bonds have not been fully redeemed, the issuer shall proceed with its remission.</p>
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	<p>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.</p>
8	In the case in which 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?	<p>As stated previously, 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 2020, 148 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> <p>In its previous report, which covered the period 2016–2017, Pacto Global found that approximately 30 per cent of the published reports mentioned the SDGs. In the 2019–2020 report, that number reached 70 per cent, which signals that more companies are interested in aligning their business to the SDGs.</p>

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?	<p>The CNV is in charge of monitoring listed companies and ESG mutual funds. In addition, the Office for the Coordination of Human Rights, Memory, Truth and Justice Policies 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 social, green and sustainable 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"> • it does not comply with the use of funds criteria; • it does not comply with its reporting obligations; and • it does not comply with the issues stipulated in the market regulations created for this purpose. <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	What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?	The penalties are not specified.
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?	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 the last two years and will continue to do so.

12	<p>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?</p>	<p>The CNV issued General Resolution 896, through which it published guidelines for the issuance of social, green and sustainable 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 social, green and sustainable 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 social, green and sustainable 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>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</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>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?</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	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?	Companies are free as to the scope and form of the disclosures they make, within the provisions of question 12.
16	Is there a clear guidance and 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?	<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 not only lead to an improvement in the profitability of investment portfolios but also to 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	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?	This is not regulated in Argentina.
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?	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	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	<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 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	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	<p>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.</p> <p>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.</p>
21	Please provide your name, firm name and a brief biography about yourself (optional).	Luciano Ojea Quinta and Pablo Gayol, partners at Marval O'Farrell Mairal.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Austria

1	Which jurisdiction are you covering?	<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 European Union 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.</p> <p>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>
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>ESG-related disclosures about non-financial issues are, in particular, required for large corporations (section 221 paragraph 5 of the UGB) with a public interest (section 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.</p> <p>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>
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<p>Large corporations with a public interest are obliged to make certain ESG-related (non-financial information) disclosures either in the management report (Lagebericht) 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.</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 prior to mandatory disclosure requirements being triggered?	<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	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?	<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	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	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 (Lagebericht) or a separate report.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	<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 (Lagebericht) or a separate report. In any case, a listed company needs to publish information on its website.</p> <p>In relation to issuers of ESG-related financial instruments, ESG disclosure must be undertaken within the offering document (prospectus).</p>
8	In the case in which 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?	<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.</p> <p>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. It can be assumed that future European standards, such as an EU Green Bond Standard (EU GBS), once in force, will further support the development of a standardised market approach for green financial instruments in the European Economic Area (EEA), including Austria.</p>

9	<p>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?</p>	<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"> • the auditor of the financial statements (Abschlussprüfer) pursuant to section 269 paragraph 3 of the UGB; • the competent commercial court (Firmenbuchgericht) according to section 282 of the UGB; • the Austrian Ministry of the Interior (in particular, for the protection of human rights); • 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); • the Austrian Ministry of Agriculture, Forestry, Environment and Water Management (for general environmental affairs); • the Austrian Ministry of Transport, Innovation and Technology (in particular for environmental impact assessment procedures); • several organisations and NGOs (responsible for the protection and the promotion of nature, animals and the environment, as well as employees' rights); and • the Austrian Financial Market Authority (FMA). <p>Regarding disclosures on ESG-related financial instruments, the FMA analyses disclosures for 'completeness, comprehensibility and consistency' pursuant to Article 20 (4) of Regulation (EU) 2017/1129 (Prospectus Regulation) during the approval process for the relevant prospectus. Failing the fulfilment of such requirements, the approval of the prospectus may be denied.</p>
10	<p>What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?</p>	<ul style="list-style-type: none"> • Mandatory penalties (Zwangsstrafen) pursuant to section 283 of the UGB could be imposed. • Poor ESG standards may be detrimental to the reputation of a company, in particular for listed companies. • Reputational risk and potential litigation (lawsuits), in particular regarding false or misleading disclosure in prospectuses, are two of the main risks.
11	<p>Is there a tiered disclosure system in your jurisdiction and are any further ESG disclosure requirements expected in your jurisdiction in the near future?</p>	<p>N/A</p>

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?	<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 will decide whether to commit themselves to the EUGBS to use the 'EU green bond' designation. This designation will only be available if issuers comply with the designated 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	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<p>Under the reporting obligation pursuant to section 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"> • environmental issues; • social and employee issues; • respect for human rights; and • the fight against corruption and bribery. <p>In addition, a brief description of the business model and the due diligence processes applied are required.</p>
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?	N/A
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?	See the answers above.
16	Is there a clear guidance and 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?	<ul style="list-style-type: none"> • Yes, in sections 243 and 243b of the UGB. • No, there is no clearly defined scope for disclosure.
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?	N/A

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?	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. On the other hand, following the Russian invasion of Ukraine, the green use of proceeds has marginally slipped out of the focus of investors. Hence, the increased burden of disclosure for issuances, as well as ongoing disclosure, may not equally pay off in the current environment and with dramatically increasing energy prices. However, in the medium- and long-term, this development may further support energy transition to low or zero-carbon sources.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	<p>The current disclosure regime is market-driven, for example, by lower prices for financial instruments, increased consumer attention and reputational benefits, and therefore, clients undergo a cost-benefit analysis as to whether they will take on the additional disclosure burden.</p> <p>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.</p>
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	Future trends are most likely to be guided by harmonisation by EU-wide applicable regulations, such as the currently contemplated EU standard for green bonds.
21	Please provide your name, firm name and a brief biography about yourself (optional).	<p>Florian Khol is a partner at Binder Grösswang Attorneys at Law's Corporate/M&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&A transactions, capital markets, capital market compliance, market abuse subjects and takeover law. He was listed in <i>Chambers Global Guide</i> 2022 as one of the leading lawyers in Corporate/M&A and Capital Markets and was listed as a 'highly regarded lawyer' in the 2021 edition of 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 senior associate in Binder Grösswang Attorneys at Law's Corporate/M&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 disclosure regulations and capital market transactions

Questionnaire for Belgium

1	Which jurisdiction are you covering?	Belgium
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>Yes, the NFRD and the Accounting Directive (2013/34/EU) (the 'Accounting Directive') have been transposed into Belgian law and require entities in scope (including listed companies) 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 applies.</p> <p>In addition, 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> <p>The Belgian Financial Services and Markets Authority (FSMA) has issued non-binding recommendations for listed companies to improve non-financial regulatory reporting. In addition, Euronext Brussels has also issued non-binding recommendations for issuers.</p>
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<p>NFRD-related ESG disclosures are mandatory for public interest entities (PIEs), which covers:</p> <ul style="list-style-type: none"> • listed companies; • credit institutions; • (re)insurance companies; and • central securities depositories; • which are also 'large undertakings', which means that they: <ul style="list-style-type: none"> – had more than 500 employees on average in the last fiscal year; and – exceeded one of the following thresholds in the last fiscal year: balance sheet total of €17m and annual revenue of €34m (excluding VAT). <p>As an exception: (1) all large listed companies (in respect of which the 500-employee requirement is not taken into account) must report on their diversity policy (including the goals, measures taken and their results); and (2) all listed companies (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, supervisory board and management board are of a different gender to the other members.</p> <p>Additional ESG disclosures are mandatory for PIEs and 'large undertakings' that are active in the extractive industry or logging of primary forests.</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 prior to mandatory disclosure requirements being triggered?	The same disclosure requirements apply to the entities in scope.
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?	ESG disclosures are required to be made on a continuous annual reporting basis.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	ESG disclosures are included in, or filed together with, the annual report.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	Companies are required to file their annual report (as part of their annual accounts) with the NBB, which publishes the accounts on its website. Listed companies are required to publish their annual report and specific ESG disclosures on their website.
8	In the case in which 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?	N/A

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?	ESG disclosure requirements are included in the Belgian Code on Companies and Associations. In the case of non-compliance, the directors of the company can be sanctioned with a criminal fine between €50 and €10,000, and in the case in which 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).
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?	See the answer to question 9.
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?	<p>There is no tiered disclosure system.</p> <p>Additional requirements are expected following initiatives at the EU level, such as the transposition of the Corporate Sustainability Reporting Directive (the 'CSRD') (expected to apply to Belgian listed companies as of 1 January 2024), the Whistleblowing Directive, and further interpretation and specification of the general wording in the NFRD and EU Taxonomy Regulation by means of Delegated Level 2 Regulations (Delegated Regulation 2021/2139 of 4 June 2021 and Delegated Regulation 2021/2178 of 6 July 2021).</p> <p>Under the CSRD, the scope of companies subject to ESG disclosure requirements will significantly expand. All 'large' companies (and groups), whether listed or non-listed, will be required to report on sustainability information. 'Large' companies will be those that exceed at least two of three criteria on their balance sheet date: (1) a balance sheet total of €20m; (2) net turnover of €40m; and (3) 250 employees on average over the financial year.</p> <p>The CSRD will also expand the content of companies' non-financial disclosures. Once adopted and transposed, companies will also need to 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 in line with the Paris Agreement, and how these take into account the interests of their stakeholders. In addition, the annual report will need to describe: (1) the targets related to sustainability matters set by the company and the progress made in achieving these targets; (2) the role of the administrative, management and supervisory bodies with regard to sustainability matters; and (3) the process carried out to identify the information included in the annual report, which shall take into account short-, medium- and long-term horizons.</p> <p>As part of the above disclosures, companies will need to include forward-looking and retrospective information, as well as qualitative and quantitative information.</p> <p>The CSRD will apply a strict reporting requirement for all companies that fall within the directive's scope, and therefore no longer on a 'comply or explain' basis. Furthermore, the statutory auditor will need to provide assurances on ESG disclosures on a 'limited assurances engagement'.</p>
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?	The legislator has not created a system of ESG certification or benchmarks. Listed companies that follow the Euronext Brussels recommendations may include the statement 'We follow the Euronext guidance on ESG reporting' in their annual report.

13	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<p>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 rights and the fight against corruption and bribery, the annual report must contain a statement with the following information:</p> <ul style="list-style-type: none"> i. a brief description of the company's activities; ii. a description of the policy pursued by the company with regard to these matters, including the due diligence procedures applied; iii. the results of this policy; iv. 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 v. non-financial key performance indicators (KPIs) relevant to the specific business activities. <p>Where deemed appropriate, the non-financial statement must also contain relevant references to additional explanations regarding the financial amounts in the financial statements.</p> <p>If the company does not pursue a policy with regard to one or more of these matters, the non-financial statement must contain 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 the effects of its activities are not hindered.</p> <p>In their corporate governance statement, large listed companies must describe the diversity policy they pursue with regard to the members of the board of directors, members of the executive committee, other leaders and 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> <p>In their corporate governance statement, all listed companies must provide an overview of the efforts made to ensure that at least one-third of the members of the board of directors/supervisory board and management board are of a different gender to the other members.</p> <p>Public interest entities and large undertakings that are active in the extractive industry or logging of primary forests should disclose material payments made to governments in the countries in which they operate.</p> <p>Credit institutions and (re)insurers must report on the energy-efficiency of their real estate investments.</p>
14	<p>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?</p>	<p>There is no specific emphasis at this stage (except if this would constitute a non-financial KPI for a company), but this will be part of the changes introduced by CSRD.</p> <p>The EU Taxonomy Regulation can be considered as an encyclopaedia for determining when an economic activity qualifies as 'ecologically sustainable' (Article 3). The EU Taxonomy Regulation is thus primarily focused on climate change (see the 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. The regulation came into force on 12 July 2020, but its application depends on the adoption of Level 2 delegated regulations by the European Commission.</p>

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?	Currently there is no standardised approach. Companies use different models, such as the model of the GRI, the UN SDG model or the UN Global Compact model.
16	Is there a clear guidance and 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?	No
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?	Currently the Belgian approach is based on 'comply or explain'. ESG compliance is therefore a matter to be assessed by investors.
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?	While ESG disclosure regulation has certainly imposed a greater compliance burden, it has also compelled issuers to carefully rethink the ESG aspects of their business. In certain sectors (eg, real estate), issuers increasingly attach importance to being 'best in class', which is a trend that is predominantly driven by sophisticated investors (who may be subject to ESG disclosures and/or ESG-related investment principles). As far as retail investors are concerned, we believe that interest in ESG disclosures has remained rather limited to date.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	See our answer to question 18. We expect sophisticated investors to continue to attach importance to ESG disclosures.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	The CSRD and its implementation will certainly be the major challenge for Belgian companies in the near future. Long-term developments will be driven by increasing focus at the EU level.
21	Please provide your name, firm name and a brief biography about yourself (optional).	<p>Jan Peeters specialises in M&A (of both public and private companies), capital market operations (IPOs, public takeover bids and public-to-private transactions) and corporate finance relating thereto. He is also active in the regulation of activities of domestic and foreign credit institutions, investment firms and insurance companies active in Belgium. Peeters is the Corporate Counsel Forum Liaison Officer of the SLC of the 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>He holds a degree in law from the University of Antwerp in 1986. He also holds a Master of Laws (LLM) degree from UC Berkeley School of Law (1987). Peeters 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&A practice, and specialises in public and private M&A, private equity and ECM transactions (including IPOs, direct listings, special purpose acquisition companies (SPACs), secondary public offerings and private placements). Witters 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 disclosure regulations and capital market transactions

Questionnaire for Brazil

1	Which jurisdiction are you covering?	Brazil
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<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 has expanded the ESG information required to be disclosed. 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. In addition, the Brazilian Corporation Law requires the disclosure of certain information to shareholders that may fall under the ESG category.</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>In addition, 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	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<p>ESG disclosure requirements are directed to publicly traded companies, which, in Brazil, take the form of stock corporations.</p> <p>Private companies are not required to disclose periodic information determined in CVM Resolution 80, including the Reference Form. 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.</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	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 prior to mandatory disclosure requirements being triggered?	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.
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?	ESG disclosures must be made on the basis of continuous annual reports, as applicable.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	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.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	Information is made available through filings with the CVM and information must also be made available on the respective investor relations website.
8	In the case in which 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?	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	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?	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	What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?	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, and 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	Is there a tiered disclosure system in your jurisdiction and are any further ESG disclosure requirements expected in your jurisdiction in the near future?	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	<p>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?</p>	<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 'socio-environmental fundo de investimento em direitos creditórios (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>
13	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<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. In addition, as mentioned above, certain companies are required to present a specific disclosure on governance-related issues.</p> <p>The aforementioned ESG disclosures are non-financial disclosures. However, it is expected that the CVM will regulate financial disclosures in the near future in order to incorporate the sustainability-related disclosure standards to be issued by the International Sustainability Standards Board (ISSB) into Brazilian regulations, namely, the International Financial Reporting Standards (IFRS) S1 General Requirements for Disclosure of Sustainability-related Financial Information and the IFRS S2 Climate-related Disclosures.</p>
14	<p>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?</p>	<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	<p>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?</p>	<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	Is there a clear guidance and 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?	<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 also not issued guidelines on how to fill in the new information that was required by the Reference Form as of January 2023.</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	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?	We do not have any normative/regulatory information in this regard yet.
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?	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.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	<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, even greater care is needed to ensure that excessive information is not disclosed that could harm companies in their course of business.</p>

20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	<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 regulate: (1) ESG financial disclosures for publicly traded companies; (2) the creation of other types of ESG funds, such as private equity funds; and (3) ESG disclosures will be applicable to fund managers.</p>
21	Please provide your name, firm name and a brief biography about yourself (optional).	<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&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 41 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 (Orquestra Sinfônica Brasileira or OSB) 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 & Venture Capital and Investment Fund areas. He is partner of TozziniFreire Advogados in the Capital Markets, Banking & Finance, Private Equity & Venture Capital, ESG, Sustainable and Impact Investing groups. He holds an LLM 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 a Senior Vice-Chairman 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 disclosure regulations and capital market transactions

Questionnaire for Canada

1	Which jurisdiction are you covering?	Canada
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<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), public federal business corporations (otherwise known as ‘distributing corporations’ under the Canada Business Corporations Act (RSC, 1985, c C-44) (the ‘CBCA’)) and investment funds.</p> <p>Reporting issuers (excluding investment funds)</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 an 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 (CSA Staff Notice 51-333, Environmental Reporting Guidance; CSA Staff Notice 51-358, Reporting of Climate Change-Related Risks).</p> <p>Additionally, reporting issuers, excluding venture issuers (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), are required to make the following governance disclosures:</p> <ul style="list-style-type: none"> i. director term limits or other mechanisms of board renewal; ii. policies relating to the identification and nomination of women directors; iii. consideration of the representation of women in the director identification and nomination process, and in executive officer appointments; iv. targets for women on boards and in executive officer positions; and v. the number of women on the issuer’s board of directors and in executive officer positions (National Instrument 58-101, Disclosure of Corporate Governance Practices). <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> <p>Distributing corporations</p> <p>In connection with the social and governance spheres, distributing corporations must disclose information to shareholders relating to diversity among the directors and members of senior management (CBCA, s 172.1). This goes beyond the diversity disclosure requirements concerning women on boards (National Instrument 58-101, Disclosure of Corporate Governance Practices).</p> <p>Investment funds</p> <p>In Canada, the CSA recommended best practices to enhance ESG-related fund disclosure (Staff Notice 81-334, ESG-Related Investment Fund Disclosure (ESG-Related Investment Fund Disclosure)). 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> <ul style="list-style-type: none"> i. National Instrument 51-102, Continuous Disclosure Obligations; ii. CSA Staff Notice 51-333, Environmental Reporting Guidance; CSA Staff Notice 51-358, Reporting of Climate Change-Related Risks; iii. 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 of 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; iv. National Instrument 58-101, Disclosure of Corporate Governance Practices; v. CBCA, s 172.1; vi. National Instrument 58-101, Disclosure of Corporate Governance Practices; and vii. Staff Notice 81-334, ESG-Related Investment Fund Disclosure (ESG-Related Investment Fund Disclosure).

3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	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	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 prior to mandatory disclosure requirements being triggered?	<p>While ESG disclosure is becoming normal practice for many Canadian public companies, currently, private companies are not required to make mandatory ESG disclosures in Canada. Public unlisted companies that are 'reporting issuers' are subject to the requirements described under question 1.</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	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?	<p>Many of the aforementioned mandatory ESG disclosures, relating to reporting issuers and distributing corporations, are required to be made on a continuous reporting basis.</p> <p>However, some mandatory ESG disclosures are triggered by a materiality threshold requirement. For instance, ESG disclosure obligations under National Instrument 51-102 are triggered where a 'material change' occurs. This includes 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' (National Instrument 51-102 Continuous Disclosure Obligations, s 1.1).</p> <p>The guiding principles for environmental materiality determinations are as follows:</p> <ul style="list-style-type: none"> • 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. • Context: The materiality of specific information should be considered in light of all the circumstances. • Timing: Issuers should evaluate whether the impact of an environmental matter might reasonably be expected to grow as time passes. • 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. • 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 (CSA Staff Notice 51-333 Environmental Reporting Guidance). <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 CSA Staff Notice 81-334.</p>
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	<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. Refer to question 7 for a breakdown of the documents in which ESG disclosures are required to be included.</p> <p>However, the proposed Bill S-216, if enacted, would require a separate ESG report. Please refer to question 11 for more information on the proposed Bill S-216.</p>

7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	<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. Refer to question 7 for a breakdown of the documents in which ESG disclosures are required to be included.</p> <p>However, the proposed Bill S-216, if enacted, would require a separate ESG report. Please refer to question 11 for more information on the proposed Bill S-216.</p>
8	In the case in which 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?	<p>Often, both public and private 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, as set out in securities legislation.</p>
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?	<p>The CSA monitors 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>Reporting issuers</p> <p>CSA National Instruments are enforced by each Canadian jurisdiction's securities regulatory authority. The penalties can vary, including orders, monetary sanctions and other 'disciplinary actions'.</p> <p>Distributing corporations</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 (CBCA, s 243).</p> <p>Investment funds</p> <p>Each province's securities regulator monitors ESG disclosure pursuant to the CSA's Staff Notice 81-334 ESG-Related Investment Fund Disclosure. 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 (Ontario Securities Commission (OSC) compliance review) 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:</p> <p>i. CBCA, s 243; and</p> <p>ii. 11 (www.osc.ca/en/industry/registration-and-compliance/ongoing-requirements/osc-compliance-reviews).</p>
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?	<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 (Securities Act, RSO 1990, c S.5 (the 'OSA'), Parts XXII, XXIII and XXIII.1; and CBCA, Parts XIX, XIX.1 and XX).</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 (OSA, s 138.3 and CBCA, s 250(2)).</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 (Competition Act, RSC 1985, c C-34).</p>

11	<p>Is there a tiered disclosure system in your jurisdiction and are any further ESG disclosure requirements expected in your jurisdiction in the near future?</p>	<p>Although a 'layered' (or 'tiered') approach to disclosure is not mandatory in Canada, it may be considered to address the disclosure obligations described above.</p> <p>Regarding future requirements:</p> <p>Reporting issuers</p> <p>The CSA published a proposed instrument which will, if adopted in its current form, require all reporting issuers, including venture issuers, to disclose certain climate-related information in compliance with the TCFD recommendations (National Instrument 51-107, Disclosure of Climate-Related Matters).</p> <p>Distributing corporations</p> <p>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 (Bill C-97, Budget Implementation Act, 1st Sess, 42nd Parl, 2019, cl 143(3) (assented to 21 June 2019)).</p> <p>Canadian-linked entities</p> <p>According to proposed federal legislation, every entity producing goods in Canada and/or importing goods into Canada would have to provide the Minister with a report that sets out the steps taken during that year to prevent and reduce the risk that forced labour or child labour is used at any step of the goods' production (Bill S-216, An Act to enact the Modern Slavery Act and to amend the Customs Tariff, 2nd Sess, 43rd Parl, 2020, cl 5 (first reading 29 October 2020)).</p>
12	<p>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?</p>	<p>There is currently no mandatory system of certification or required benchmarks for ESG in Canada.</p>
13	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<p>Please refer to question 2 for an overview of the nature and extent of ESG disclosures required to be made in Canada.</p>

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?	<p>Reporting issuers</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 TCFD recommendations. For example, the instrument would require issuer disclosure of greenhouse gas emissions.</p> <p>Federally regulated banks, insurers and pensions</p> <p>The federal government announced in Budget 2022 that the Office of the Superintendent of Financial Institutions (OSFI) is currently consulting with banks and insurers on developing climate disclosure guidelines that adhere to the TCFD framework. The goal is to gradually phase in reporting requirements for financial institutions beginning in 2024. OSFI will also expect financial institutions to collect and assess information on climate risks and emissions from their clients. Furthermore, Budget 2022 announced plans to require federally regulated pensions to disclose the ESG considerations they use in their portfolio construction, including climate-related risks.</p>
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?	<p>ESG disclosures are not currently fully standardised in Canada. There is increasing pressure to develop better methodology and frameworks for ESG-related disclosure in Canada (Environmental, Social & Governance Law and Regulations Report 2022 Canada (iclg.com)).</p> <p>Reporting issuers</p> <p>Reporting issuers must make standardised governance disclosures that are prescribed by Form 58-101F1 (Form 58-101F1, Corporate Governance Disclosure). Furthermore, reporting issuers are required to disclose material information in their continuous disclosure documents. However, whether a reporting issuer must disclose an event may be subject to interpretation. ESG disclosure obligations are triggered where a 'material change' occurs, and although the CSA has released guidance on how to determine whether a matter is material, this assessment is subjective and disclosure is thus left to the discretion of the reporting issuer (National Instrument 51-102 Continuous Disclosure Obligations, s 7.1).</p> <p>Distributing corporations</p> <p>The requirements for disclosing diversity in senior management is prescribed by the Canada Business Corporations Regulations (Canada Business Corporations Regulations, SOR/2001-513, s 72.2). On the 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> <p>Investment funds</p> <p>The extent of ESG disclosure for investment funds is standardised as ESG disclosure is required in certain parts of a fund's AIF and/or management report of fund performance (MRFP) (ESG-Related Investment Fund Disclosure, supra note 6). However, and with notable exceptions, investment funds have more leniency in the manner and language of how they may disclose ESG information. For example:</p> <ul style="list-style-type: none"> • 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 • 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.

16	Is there a clear guidance and 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?	<p>CSA 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> <p>Environmental: air and water pollution, biodiversity, climate change and carbon emissions, deforestation, energy efficiency, waste management and water scarcity.</p> <p>Social: community relations, data protection and privacy, diversity, employee engagement, human rights, indigenous inclusion and reconciliation, and labour standards.</p> <p>Governance: audit committee structure, board diversity, bribery and corruption, executive compensation, lobbying, political contributions and whistleblower schemes (ESG-Related Investment Fund Disclosure, supra note 6, part C).</p> <p>ESG-Related Investment Fund Disclosure, supra note 6, part C.</p>
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?	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.
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?	While the disclosure regime may result in increased compliance requirements, the enhanced transparency can be considered to have contributed to an enhanced corporate response to ESG factors.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	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.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	See question 11.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Philippe Tardif, Samantha Krol and Griffin Murphy, Borden Ladner Gervais.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Chinese Mainland

1	Which jurisdiction are you covering?	Chinese Mainland
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>No.</p> <p>There is no mandatory requirement for market participants to make ESG disclosures as a whole. That said, certain types of entities are required to disclose specific categories of ESG-related information (as opposed to ESG disclosures as a whole). For example, listed companies are required to disclose information relating to certain social and governance topics in their annual reports or interim reports. Companies (including listed companies) whose business operations involve the significant discharge of pollutants or excessive energy use and companies that had a record of significant environmental-related violations in the previous year are required to disclose certain environmental-related information.</p> <p>However, we note that the Shanghai Stock Exchange (SSE) internally issued a notice to companies listed on the Star Market (a Chinese science and technology-focused equities market) regarding the disclosure requirements of 2021 annual reports in January 2022. According to the notice, companies listed on the Star Market shall disclose ESG information in their 2021 annual reports. However, the SSE has not made the notice public and the notice only concerns the requirements of 2021 annual reports.</p>
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	N/A
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 prior to mandatory disclosure requirements being triggered?	N/A
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?	N/A
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	For companies listed on the Star Market of the SSE, generally, they are required to make an ESG disclosure in their annual reports. Companies can also choose to make an ESG disclosure in the form of separate ESG reports.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	Companies that voluntarily make ESG disclosures or are required to disclose specific categories of ESG-related information usually disclose ESG-related information on their company websites or in annual reports (for listed companies).
8	In the case in which 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. There is an increasing number of companies that voluntarily make ESG disclosures in order to improve their corporate image and attract investments.

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?	<p>Again, there is no mandatory requirement for market participants to make ESG disclosures as a whole. In terms of certain specific categories of ESG-related topics that are required to be disclosed by certain types of companies, the following is the case:</p> <ul style="list-style-type: none"> For listed companies, the disclosure of specific categories of ESG-related information is generally regulated by the China Securities Regulatory Commission. Non-compliance with mandatory disclosure requirements may subject a company to a fine of RMB 500,000 to 5m. If the failure to disclose such information constitutes a significant omission, a listed company may face more severe monetary penalties (a fine of RMB 500,000 to 5m). For companies that are required to disclose certain types of environmental-related information, as mentioned in question 2, such a disclosure is regulated by the Ministry of Ecology and Environment. Non-compliance with the mandatory disclosure requirement may subject a company to a fine of RMB 10,000 to 100,000.
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?	<p>For listed companies, if the disclosure is found to contain a false record, be a misleading representation or constitute a significant omission, the company may be subject to a fine of RMB 1m to 10m by the China Securities Regulatory Commission, regardless of whether the disclosure was mandatory or voluntary. Companies that are required to disclose certain types of environmental-related information may also be subject to a fine of RMB 10,000 to 100,000 by the Ministry of Ecology and Environment in the case of a false or misleading disclosure.</p>
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?	<p>To the best of our knowledge, there is no tiered disclosure system on the Chinese Mainland.</p> <p>According to a public statement made by the vice-chair of the China Securities Regulatory Commission in 2022, Chinese regulators are planning to explore mandatory ESG disclosure requirements and policies for listed companies.</p>
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?	N/A
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<p>Again, there is no mandatory requirement for market participants to make ESG disclosures as a whole. Certain types of companies are required to disclose specific categories of ESG-related information; for listed companies, the information required to be disclosed mainly concerns the following topics:</p> <ul style="list-style-type: none"> environmental: environmental-related licences held by a company; environmental protection tax and insurance; pollutant generation, treatment and emission; carbon emission; legal and regulatory compliance; and emergency plan for environmental events and so on; social: material production and safety accidents; any improper use of science and technology; poverty alleviation – related activity; and CSR reports and so on; and governance: governance structure; basic information of directors, supervisors and senior managers; information regarding the holding of shareholders' meetings and board of directors' meetings; and internal control system and so on.

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?	Yes. For companies that are required to disclose certain environmental-related information mentioned in question 2, carbon emissions is one of the required topics; companies are required to disclose the carbon emission volume and facilities/activities that generate such emissions.
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?	No. There is no general mandatory ESG disclosure requirement or standards issued by the regulatory authorities. Regarding certain specific categories of ESG-related information required to be disclosed, companies shall comply with the relevant regulations and guidelines issued by the China Securities Regulatory Commission and stock exchanges or the Ministry of Ecology and Environment. When making voluntary disclosures, companies have discretion in terms of the extent and manner of disclosure that they make.
16	Is there a clear guidance and 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?	No. There is no People's Republic of China (PRC) law that clearly defines the scope of what is included in ESG.
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?	N/A
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?	To the best of our knowledge, the ESG-related information disclosure regulation plays a positive role in creating value for investors. In addition, such regulations are helpful for guiding companies to integrate ESG factors into their business operations.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	To the best of our knowledge, the market has split views regarding whether a greater, more transparent, clear and effective ESG disclosure regime should be established. Certain investors may look forward to such an ESG disclosure regime because they may benefit from more and higher-quality ESG disclosures when making investment decisions. Some large/well-known companies are already voluntarily making ESG disclosures following market best practices, and therefore they may not deem a greater ESG disclosure regime to be necessary for them. In addition, for some small and startup companies, a strengthened ESG disclosure regime may create more compliance burden for them.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	The number of listed companies that disclose ESG information will increase. It is worth mentioning that the State-owned Assets Supervision and Administration Commission of the State Council ('the SASAC') recently published several policies to encourage state-owned entities (SOEs) to make ESG disclosures. The SASAC plans to achieve the goal of ESG disclosure by all central government-controlled enterprises by 2023. The quality of ESG information disclosed is likely to improve. To achieve the SASAC's aforementioned goal, the SASAC may publish an integrated ESG disclosure standard for SOEs. It is also anticipated that various guidance on corporates' ESG disclosures will be published by industry associations and/or societal groups in the near future. In addition, the various regulators mentioned in question 9 may also introduce more mandatory ESG disclosure requirements in the future.

21	<p>Please provide your name, firm name and a brief biography about yourself (optional).</p>	<p>Kate Yin, partner at Fangda Partners.</p> <p>Yin is a recognised leader in complex government enforcement, data protection, internal investigation and regulatory compliance, especially challenging cross-border matters.</p> <p>She established and led the Regulatory Compliance and Government Enforcement Practice of Fangda, which has been consistently ranked as a band 1 PRC firm for 'Corporate Investigation/Anti-Corruption' and 'Regulatory/Compliance' by Chambers Asia and Legal 500, respectively. With deep insights into both US and Chinese government enforcement, and market practices, Yin is highly sought after for the most challenging government enforcements and corporate investigations (particularly those involving multiple jurisdictions). She has successfully defended clients in government enforcements, and helped clients to avoid hefty penalties and headline stories.</p> <p>Yin participated in various high-profile cases, such as the GSK Chinese commercial bribery prosecution and Siemens FCPA monitorship. Highly regarded as a leader in the compliance field, she has been engaged by the CLA (Commission for Legislative Affairs) under the Ministry of Justice as an expert on compliance to author the Annual Blue Book on Compliance in China for the last six years. She is also an expert for TC260 responsible for drafting implementation measures for the Cybersecurity Law.</p> <p>Anti-corruption and multilateral bank sanctions are among Yin's areas of expertise. She has extensive experience in providing comprehensive legal services relating to anti-bribery and multilateral bank sanctions for multinational and Chinese companies, including establishing tailor-made compliance programmes, conducting complex internal investigations, evaluating compliance risks in cutting-edge business models and responding to government enforcement and crisis management.</p> <p>Data compliance is another practice area of Yin's expertise. She helps clients to establish global data protection programmes; conducts data compliance due diligence; and advises clients on challenging cross-border data transfers involving state secrets, important data and personal information reviews in connection with government enforcement and litigation, as well as daily operation.</p> <p>Yin also has extensive experience in export control and sanctions. She has represented a number of state-owned and private companies listed on the Entity List by the Bank for International Settlements (BIS); established a sanctions and export control compliance programme; and assisted clients in a wide range of industries on export control and sanction risks under PRC laws.</p>
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ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Colombia

1	Which jurisdiction are you covering?	Colombia
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>Yes. Recently the Colombian Financial Superintendency (CFS) issued External Circular 031 dated 22 December 2021 in order to provide instructions on the disclosure of information on social and environmental issues (including climate issues) following the principle of 'financial materiality' by adopting the international standards of the TCFD and the Sustainability Accounting Standards Board (SASB) Standards of the Value Reporting Foundation (VRF).</p> <p>Additionally, External Circular 005 dated 8 April 2022, issued by the CFS, advised on the Green Taxonomy plan launched by the past government in office, which aims to boost green finance in the country by demanding that participants in the public and private sectors identify and evaluate investments that can help to meet environmental objectives and are aligned with the country's commitments and policies.</p> <p>In this sense, it defines a green investment for Colombia, and which activities contribute to environmental objectives and can therefore be considered green or environmentally sustainable in Colombia.</p> <p>Finally, bear in mind that regulatory authorities, such as the CFS, and the Financial Regulation Unit (Unidad de Regulación Financiera or URF) have also developed guidelines aimed to meet ESG criteria for financial entities such as pension fund administrators, trust companies and banks.</p>
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<p>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. The distinction between issuers refers to their size and type of equity, with the aim of managing risks differently, as follows:</p> <ul style="list-style-type: none"> i. 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 3.8m legal monthly minimum wages in force (<i>salario mínimo mensual legal vigente</i> or SMMLV); (b) have annual revenue equal to or greater than 1.9m legal monthly minimum wages in force (SMMLV); or (c) have a payroll equal to or greater than 1,000 employees. ii. Group B: refers to autonomous assets' schemes, collective investment funds, private equity funds and securitisation schemes. iii. Group C: includes issuers that do not comply with the characteristics of Group A, Group B and Group D. iv. Group D: refers to the following: (a) issuers under temporary registration; and (b) issuers of pension bonds. <p>In any case, please note the recommendations adopted by Colombia regarding environmental, social and corporate governance matters have been developed by means of Decree 3341 of 2019 where the government in office issued instructions related to the disclosure of the social investment of entities belonging to the financial system, insurance and securities market. Furthermore, the CFS established Código Pais in order to implement a reporting scheme on recommendations and best practices for corporate governance, based on the 'comply or explain' principle, for issuers in the real and financial sectors.</p> <p>Additionally, the instructions provided by the CFS and Colombia Stock Exchange differ on the obligations regarding the entity and activity developed. For example, in June 2020, the Colombia Stock Exchange issued the Guide for the Preparation of ESG Reports for Issuers in Colombia, which elaborates on the content and other details of the ESG reports for issuers in Colombia. On its behalf, in November 2020, the CFS issued a guideline in order to provide standards and best practices for the investment management of pension fund managers.</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 prior to mandatory disclosure requirements being triggered?	<p>In all cases, market participants must disclose information, yet the amount of information and level of detail required in the submission differ as follows:</p> <ul style="list-style-type: none"> i. Thresholds, regarding the aforementioned issuer's group categories: Companies in Group A, for example, are obliged to disclose the environmental and social metrics provided for in the VRF SASB Standards, or any superseding standard or framework, along with a qualitative description including governance impacts, strategies and evaluation of risks. By contrast, companies in Groups C and D only have to include a brief description of the procedures implemented. In the case of companies in Group D, disclosure is optional. ii. Type of market participant: (a) issuers, that are listed companies; (b) asset managers; and (c) financial entities.
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?	<p>In general, information disclosure must be made in two scenarios: (1) as part of the periodic year-end report; and (2) as part of the quarterly periodic report, in order to report any material change. Additionally, please note that issuers must disclose ESG information in the case in which they issue ESG bonds (green, social or sustainable) as part of the offering memorandum required by External Circular 028 dated 7 September 2020.</p> <p>On the other hand, it is important to highlight that Law No 1328 of 2009 applicable to financial institutions requires that they must disclose information related to the different social programmes implemented for attending vulnerable sectors, and Article 2.36.8.1.1 of Decree 2555 of 2010 requires financial institutions to inform the general public about the social programmes that have been implemented and explicitly include programmes with a positive environmental impact. This regulation also allows entities to adopt their corresponding mechanisms to present the social balance report.</p>
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	<p>Yes. It depends on the type of market participant. Issuers must disclose information: (1) as part of the periodic year-end report; (2) as part of the quarterly periodic report, in order to report any material change; and (3) in the case of securities issuance, in the offering memorandum. On the other hand, financial institutions must submit information annually in a separate report according to Article 2 of Decree 3341 of 2009.</p> <p>According to a technical study developed by the CFS called 'Disclosure of information about sustainability or ESG in Colombia', in recent years, there has been a lack of homogeneity in the report model for ESG criteria due to flexibility in relation to the model required to complete ESG reports. The technical document identified that companies use well-known international report models for their ESG matters, of which the GRI is the most common.</p>
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	<p>As most ESG information requirements are mandatory for issuers registered in the Registro Nacional de Valores y Emisores (RNVE) of the CFS, reports that include ESG disclosure can be found on the CFS website and the companies' own webpage. Financial institutions issue reports through trade associations or on their own websites.</p>
8	In the case in which 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?	<p>Yes. In fact, certain Colombian issuers have pioneered disclosure and actively disclose sustainability information to the market on a voluntary basis.</p> <p>For example, since 2011, Grupo Nutresa, an issuer listed in the RNVE, has been conducting its materiality analysis to identify and confirm the subjects and trends that might have a major impact on its ability to generate value in the short, medium and long term. It also has an engagement model aligned with the guidelines of the international standard AA1000, which requires Grupo Nutresa to apply the essential principles of inclusiveness, materiality, impact and responsiveness to all relations with its stakeholders. This is constant and progressive work that enriches the materiality analysis and strengthens sustainability management efforts, as well as the resilience of the organisational strategy.</p>
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?	<p>The regulator that oversees compliance and regulatory matters regarding ESG disclosures is the CFS. Non-compliance with mandatory ESG disclosures can be classified as an offence against the securities market due to the fact that it affects the level of transparency of information that must be provided to the market. The penalties could be warnings, fines or suspension of activities. Bearing in mind that the regulation is fairly recent, we are not aware of sanctions imposed by the regulator regarding this matter. There are no established grace periods for non-compliance with mandatory ESG.</p>

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?	<p>Colombian regulators have a latent concern regarding false or misleading ESG information, commonly known as greenwashing. This matter was addressed in External Circular 005 of 2022 about green taxonomy in Colombia by defining useful criteria for issuers and other companies in order to identify sustainable financial instruments. Information submitted through clear, common and homogenous language increases transparency and helps to avoid greenwashing.</p> <p>In addition, bearing in mind that ESG disclosure information is required in the case of a securities issuance, any false information presented to the market through the RNVE could lead to an administrative investigation for possible breaches of securities law and further penalties, as well as other consumer claims regardless of any applicable criminal charges, such as fraud.</p>
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?	<p>We have no knowledge of any additional requirements expected in the near future.</p>
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?	<p>External Circular 031 of 2021, External Circular 005 of 2022 and External Circular 020 of 2022 include some specific benchmarks that the issuers must meet.</p> <p>In the first place, for companies listed in Group A, it is mandatory to meet the TCFD recommendations or any other similar framework. In addition, the SASB standards are made by VRF or another similar benchmark. The last one is also mandatory for Group C.</p> <p>On the other hand, in relation to the green taxonomy of green bonds, regulations state that issuers may use the taxonomy benchmark recognised in Colombia, which was recently issued by the CFS.</p> <p>External Circular 020 of 2022 requires that securities issuances in the second market have certification issued by their legal representative stating that the issue complies with the principles set forth by the International Capital Market Association (ICMA).</p> <p>Please note that all aforementioned regulations refer to basic minimum standards so that the issuers and financial entities can make an efficient disclosure of information and build reports that are verifiable and transparent.</p>

13	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<p>Colombia is transforming its financial system to achieve the goals of various international instruments Colombia has ratified, such as the Paris Agreement. In that sense, its newest regulation strives to ensure that financial risks and opportunities from climate and environmental factors are integrated into mainstream financial decision-making, and where transparency is one of its main building blocks.</p> <p>As a consequence, the CFS has issued several External Circulars for financial market participants offering financial products, where the relevant financial products contribute to an environmental objective. Particularly, External Circular 31 of 2021 is based on the principle of proportionality and gradualness, recognising the needs of different issuers but aligning the market with international practices, such as TCFD and SASB.</p> <p>Additionally, External Circular 031 of 2021 differentiates issuers and their obligations to disclose information on social and environmental issues, including climate issues, according to their size and type of equity, with the aim of managing risks differently, as follows:</p> <ul style="list-style-type: none"> i. 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 3.8m legal monthly minimum wages in force (SMMLV); (b) have annual revenue equal to or greater than 1.9m legal monthly minimum wages in force (SMMLV); or (c) have a payroll equal to or greater than 1,000 employees. ii. Group B: refers to autonomous assets' schemes, collective investment funds, private equity funds and securitisation schemes. iii. Group C: includes issuers that do not comply with the characteristics of Group A, Group B and Group D. iv. Group D: refers to the following: (a) issuers under temporary registration; and (b) issuers of pension bonds. <p>To summarise, the ESG disclosure obligation is based on the principle of financial materiality, which recognises the impacts of ESG issues on the financial situation of the issuer, and generates greater transparency and minimises the risk of greenwashing for products with the ESG denomination.</p>
14	<p>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?</p>	<p>Even though the general plans presented by the governments in office since 2002 included a sustainable pathway focused on environment preservation and climate change, currently, the only regulations that specifically refer to climate change and disclosure of information are External Circular 031 of 2021 and External Circular 005 of 2022.</p> <p>For the first one, the authority requires that the companies listed in Group A report, by means of the TCFD, recommendations or any other similar framework and the SASB standards made by VRF or another similar benchmark. The last one is also mandatory for Group C.</p> <p>Moreover, in relation to the green taxonomy of green bonds, the circular establishes that issuers could use the taxonomy benchmark recognised in Colombia. This standard was elaborated on by the CFS in a technical document called 'Green Taxonomy in Colombia', which introduced some criteria useful for identifying businesses compatible with low-carbon emission environmental resilience.</p>
15	<p>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?</p>	<p>Regardless of the mandatory standardised ESG disclosures present in the External Circular 031 of 2021 and External Circular 005 of 2022, there are no mandatory standards or benchmarks required by market participants.</p> <p>In any case, there are several international standards used by companies in Colombia, of which GRI is the most common.</p>

16	<p>Is there a clear guidance and 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?</p>	<p>Despite the development of ESG criteria in Colombia, and the different technical documents and guidelines elaborated on by diverse authorities, the definition of ESG is not fully incorporated into law and references to it are fragmented in the legal system.</p> <p>First, the law applicable to governance can be found in Código Pais 2014. Second, the environmental and climate ESG disclosures are divided into different External Circulars and the only mention of the social sphere is in Law No 1328 of 2009, regardless of the voluntary disclosure of companies on the social matter and the information leaflet in the social bonds issuance.</p> <p>It would be worthwhile for the regulatory authorities to gather all the information in order to issue a unique regulatory instrument that defines ESG, and incorporates its main elements and characteristics.</p>
17	<p>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?</p>	<p>External Circular 022 of 2022 issued by the CFS characterises the securities (bonds, commercial papers etc) that may be issued in Colombia according to their specific purpose, as follows:</p> <ul style="list-style-type: none"> i. 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. ii. 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. iii. 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. iv. 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. <p>In that sense, the cross-impact may only be measured once sustainable bonds are issued. As a result, if an investment in a coal mining company complies with the requirements of the green taxonomy, adequate disclosure of information on the issuance of sustainable bonds and the elaboration of specific reports on social and environmental issues according to the materiality analysis performed by the company, the investment is ESG compliant, even if the investment does not meet the goals in gender diversity policies.</p>

18	<p>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?</p>	<p>In the 1970s, the Colombian companies' network was only focused on the production and creation of economic resources. In the 1990s, with the creation of environmental institutionalisation and environment law, the focus has been changing to the enforcement of these norms. Finally, over the last 20 years, Colombia has ratified several international agreements on environment preservation, such as the Ecuador Principles, Principles of Responsible Investments and Kyoto Protocol.</p> <p>Hence, it is clear that consumers, investors and the government in office have incorporated ESG criteria into their market decisions, to some extent. The strategic advantages that the companies foresee are huge and drive them to comply, whether voluntarily or not, with ESG practices.</p> <p>Compliance with ESG criteria has proven that this not only generates reputational benefit but also contributes to the identification of risks and opportunities for companies. This is beneficial not only for the firms but also the regulatory authorities that could, with ESG criteria, identify potential risks and opportunities, and anticipate crisis events or financial stress scenarios.</p> <p>Furthermore, banks and the government are encouraging the creation of businesses that incorporate ESG criteria and SDG into their productive model by devoting funds and creating specific benefits in the form of low-interest rates or tax exemptions.</p> <p>We strongly believe that the use of ESG criteria and ESG disclosure regulation in Colombia has created added value for companies that introduce these practices. Value is not only in the form of revenue but also in social and environmental development, and these are increasingly valued by investors and consumers.</p>
19	<p>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</p>	<p>We consider that Colombia has developed a robust policy for the ESG framework that can foster green growth and stimulate the participation of the private sector, including the private financial sector. However, there is still a gap between regulation and the relatively low level of implementation of decisive measures from the private financial sector that aim towards a transition to a greener, more inclusive economy. This situation can stem from the fact that there has not been any relevant social or environmental matter that has caused a negative impact either reputationally or operationally, thus creating a sense of urgency and forcing the financial system to autonomously adopt more decisive measures. Nevertheless, the policy innovation towards green taxonomy is a significant lever for change.</p>
20	<p>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</p>	<p>We envisage the implementation of information disclosure measures and the incorporation of climate risk into the risk management strategies and methodologies of financial institutions. The challenge is to incorporate climate issues into the DNA of financial entities as a source of risk and opportunity, ensuring their management and promoting an organised transition.</p> <p>We are aware that the CFS has drawn up a roadmap to comply with the above, which will be supported by the EU, IDB and World Wide Fund for Nature (WWF), taking into consideration that it will require an organised transition to mitigate the costs of the measures implemented to reduce the impact of climate change on economic activity.</p>
21	<p>Please provide your name, firm name and a brief biography about yourself (optional).</p>	<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 disclosure regulations and capital market transactions

Questionnaire for Denmark

1	Which jurisdiction are you covering?	Denmark
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	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	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	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) and listed companies are required to report on non-financial social responsibility according to the Danish Financial Statements Act.
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 prior to mandatory disclosure requirements being triggered?	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	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?	ESG disclosures are required to be made on a continuous annual reporting basis.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	ESG disclosures must be a supplement to the management commentary of the annual report. However, disclosures can also be in the form of a separate 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	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	The annual report or a separate report, such as a sustainability report, must be uploaded to the website of the enterprise.
8	In the case in which 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?	N/A
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?	The Danish Business Authority is the relevant Danish regulator.
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?	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. If ESG disclosures are not mandatory, enterprises would not be penalised by fines for not fulfilling the reporting requirements.
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?	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.
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?	No.

13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<p>Enterprises must supplement the management commentary of the annual report (or include the report in the annual report as a supplement) 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:</p> <ul style="list-style-type: none"> i. the content of the enterprise's CSR policies; ii. how the enterprise turns its CSR policies into action, including any relevant systems or procedures; iii. due diligence processes if any such processes are applied by the enterprise; and iv. 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.
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?	Yes, enterprises must include information on how their activities impact the climate.
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?	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	Is there a clear guidance and 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?	Yes, the scope is defined in the Danish Financial Statements Act, and the Danish Business Authority has also provided guidelines on the requirements.
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?	N/A
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?	N/A
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	N/A
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	Danish enterprises focus on the future European Corporate Sustainability Due Diligence Directive and CSRD, and how these will impact enterprises.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Rikke Schjøtt Petersen and Yas Farah Bakhsh Akbatani, Gorrissen Federspiel.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Egypt

1	Which jurisdiction are you covering?	The Arab Republic of Egypt
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Yes. Companies conducting non-banking financial activities ('NBF Companies') and public companies listed on the Egyptian Exchange ('EGX') ('Listed Companies') are mandatorily required to provide ESG disclosures.
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<p>Yes. The types of companies mandatorily required to provide ESG disclosures are as follows:</p> <p>NBF Companies</p> <ul style="list-style-type: none"> NBF Companies are subject to a set of corporate governance rules. The Financial Regulatory Authority (FRA) issued Decree No 107 of 2021, which requires NBF Companies whose issued capital is greater than or equal to EGP 100m to include ESG disclosures in the annual report prepared by the company's board of directors (BoD) about the company's performance in a given financial year. This report is prepared alongside the company's annual financial statements and auditor's annual report. The financial statements, BoD report and auditor's report are all to be disclosed to the company's general assembly for approval within the three months following the end of a given financial year. FRA Decree No 107 of 2021 provides templates for such disclosures to be included in the company's annual BoD report. The same decree also requires NBF Companies whose capital exceeds EGP 500m to include disclosures related to the financial impact of climate change in the BoD annual report (TCFD). On the other hand, the FRA also requires NBF Companies to follow certain corporate governance rules that achieve some of the ESG indicators, such as the following: <ul style="list-style-type: none"> i. Licensing Decree No 53 of 2018 requires NBF Companies to have a quota for female BoD members of at least 25 per cent, with a minimum of two. This requirement is mandatory. EGX Listing Rules have the same quota requirement, which means it is also applicable to Listed Companies. ii. The FRA has issued Circular No 7 of 2021, in which it urges all NBF Companies, as well as Listed Companies, to abide by a moral code of conduct to prevent harassment in the workplace, including sexual harassment, violence and all types of intimidation. iii. The FRA Corporate Governance Regulations issued by virtue of Decree No 100 of 2020 set certain rules to prevent conflict of interest at the BoD level of NBF Companies and the Companies Law has general requirements to prevent conflict of interest in all other companies. iv. The FRA Corporate Governance Regulations also include a set of rules regarding anti-money laundering and terrorist financing. All NBF Companies are required to appoint a qualified anti-money laundering and terrorist financing officer. v. The FRA requires companies issuing green bonds to issue disclosure reports to investors regarding their sustainable environmental goals and the steps taken to conduct evaluation reports of projects aimed at creating a clean environment. The company issuing the green bonds should also disclose external follow-up reports on the extent to which it follows the required procedures as per the Executive Regulations of the Capital Market Law. <p>Listed Companies</p> <ul style="list-style-type: none"> According to FRA Decree No 108 of 2021, Listed Companies are also mandatorily required to adopt the aforementioned ESG and TCFD rules. <p>On the other hand, banks licensed in Egypt are encouraged to adopt ESG disclosures. On 18 July 2021, the Central Bank of Egypt (CBE) issued a paper on sustainable finance, as well as the basic non-binding guidelines for sustainable finance addressed to all banks that are subject to its supervision. In this paper, the CBE encouraged banks to consider ESG rules when providing finance and making investment decisions with the ultimate purpose of achieving sustainable benefits for all stakeholders and society as a whole, and to adopt the concept of sustainable finance and be more involved in social development, protecting the environment, and reducing environmental and social risks.</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 prior to mandatory disclosure requirements being triggered?	Please see the answer to question 3.
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?	<p>The requirement to adopt ESG disclosures is triggered in the following cases:</p> <ul style="list-style-type: none"> i. NBF Companies with capital that is greater than or equal to EGP 100m; or ii. the company is listed on EGX. <p>In both cases, companies are required to provide ESG disclosures on an annual basis, and they should be included in the company's BoD annual report according to a preset format or template starting with the BoD annual report issued for the financial year ending 2022, which will be issued by the end of the first quarter of 2023. However, starting 1 January 2022, companies are required to provide quarterly statements.</p>
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	ESG disclosures are to be included as part of the BoD annual report according to a specific template provided by the FRA.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	NBF Companies are required to file these reports with the FRA along with the annual financial statements; however, Listed Companies are also required to disclose their financial statements and BoD report on EGX screens and publish them on their websites.
8	In the case in which 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?	To the best of our knowledge, few companies, mostly major companies, used to issue such reports and publish them on their websites before FRA Decrees Nos 107 and 108 detailed above were issued.

9	<p>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?</p>	<p>The only entity that requires mandatory ESG disclosures is the FRA, and the penalty differs as follows:</p> <ul style="list-style-type: none"> • In the case of NBF Companies, according to Article 30 of Capital Market Law No 95 of 1992, the FRA has the authority to monitor companies for any regulatory violation. If a company violates any of the FRA decrees, the FRA can issue a notice requiring the company to comply with such regulations and remedy the violation within a certain timeframe. If the company does not comply within the specified timeframe, the FRA has the power to take measures against that company up to revoking its licence. As for the grace period, Decree No 107 of 2021 is mandatory and it gives NBF Companies a grace period to prepare such disclosures. ESG disclosures must be included in their BoD annual report for the financial year ending 2022. Hence, NBF Companies are expected to submit their 2022 financials along with the BoD report, which includes ESG disclosures, by the end of the first quarter of 2023 (unless the company's financial year does not end on 31 December every year). However, they are all required to provide quarterly statements to the FRA, with the steps they have taken in that regard starting 1 January 2022. • If the company is not a NBF Company but listed on EGX, the penalty may differ. EGX rules require companies to disclose their financial statements, the BoD annual report and the auditor's report together, and they authorise EGX to impose financial penalties on non-compliant companies. However, EGX rules do not tackle the extent to which the said reports comply with the FRA requirements as per Decree No 108 of 2021 (ie, the extent to which it includes ESG disclosures). Therefore, it is not clear whether the EGX would impose financial penalties on companies for not including ESG disclosures in the BoD report.
10	<p>What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?</p>	<p>With respect to both NBF Companies, Capital Market Law No 95 of 1992 stipulates that directors of companies that intentionally record false or incorrect information about the company in official reports or company records are liable to a penalty of imprisonment for a period not exceeding five years and/or a fine that is not less than EGP 50,000 or the amount of profit realised/losses avoided due to the violation, whichever is higher and not exceeding EGP 20m or double the profit realised/losses avoided due to the violation, whichever is higher.</p> <p>In addition, if the company is listed on EGX, recording false or misleading information may be considered a market manipulation crime also liable to a penalty of imprisonment for a period not exceeding five years and/or a fine that is not less than EGP 50,000 or the amount of profit realised/losses avoided due to the violation, whichever is higher, and not exceeding EGP 20m or double the profit realised/losses avoided due to the violation, whichever is higher. The said penalties do not depend on whether the dissemination of false information in the ESG disclosures is mandatory or not.</p> <p>Furthermore, as a general rule applicable to all companies in Egypt, Companies Law No 159 of 1992 stipulates that recording false information (any piece of information) in company reports and presenting fraudulent or falsified information before the general assembly are crimes sanctioned by law and liable to a penalty of a minimum of two years of imprisonment and a fine that ranges from EGP 2,000 to EGP 10,000.</p> <p>As for banks, Banking Sector Law No 194 of 2020 stipulates that fraud, documenting false information or concealing facts in bank documents or reports shall be liable to a penalty of imprisonment for a period not exceeding five years and/or a fine that ranges from EGP 500,000 to EGP 1,000,000.</p>
11	<p>Is there a tiered disclosure system in your jurisdiction and are any further ESG disclosure requirements expected in your jurisdiction in the near future?</p>	<p>Please see the answer to question 3.</p> <p>Because the FRA has started to take steps towards imposing ESG disclosures and the CBE has taken steps to encourage banks to adopt them, we believe there is a good chance that other regulators will follow suit, most notably, the General Authority for Investment and Free Zones ('GAFI'). There is also a possibility that the CBE may – one day – start imposing such disclosures on banks, not only encouraging them. There are no guarantees that they would be mandatory; however, there is a trend towards encouraging and promoting sustainable development in the corporate world.</p>

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?	Decree No 108 of 2021 issued by the FRA includes a template for the disclosure; however, nothing in the regulations requires the FRA to issue any ESG status certification or any benchmark against which compliance is measured. Furthermore, we are not yet aware of what would happen in practice because companies are still in the grace period phase. Companies should have submitted their 2022 financials along with the BoD report that includes ESG disclosures by the end of the first quarter of 2023.
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	As mentioned in the answer to question 3, NBF Companies and Listed Companies are mandatorily required to provide ESG disclosures. The FRA template for ESG disclosures includes questions and disclosures on carbon emissions and greenhouse gases; use of renewable energy; waste management; risks associated with climate change and how to manage these risks; short-, medium- and long-term risks and opportunities related to climate change; and the extent to which a given company invests in building infrastructure that is capable of withstanding changes in the environment. Disclosures also focus on data protection, gender diversity and equality, employee turnover, policies and measures adopted to fight corruption, discrimination and harassment. They also include policies and measures adopted to protect labour rights and ensure the health and safety of workers. Companies are also required to disclose policies put in place to ensure diversity in the BoD composition.
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?	Yes. The FRA template for ESG disclosures includes questions and disclosures on carbon emissions and greenhouse gases; use of renewable energy; waste management; risks associated with climate change and how to manage these risks; short-, medium- and long-term risks and opportunities related to climate change; and the extent to which a given company invests in building infrastructure that is capable of withstanding changes in the environment. Both FRA Decree Nos 107 and 108 of 2021 detailed above require NBF Companies and Listed Companies whose capital exceeds EGP 500m to include disclosures related to the financial impact of climate change in the BoD annual report as well (TCFD).
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?	NBF Companies and Listed Companies are to follow certain templates for ESG disclosures as per the FRA decrees.
16	Is there a clear guidance and 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?	Apart from the FRA-determined templates referred to above, there is no clearly defined scope of what is included in the ESG disclosures.

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?	N/A
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?	N/A as the ESG disclosure regime has not yet been put to the test.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	We are of the view that an increasing number of clients would be encouraged to adopt ESG disclosures as adopting good governance practices would increase the investment efficiency of managerial decisions and reduce information asymmetry. They also improve external monitoring, and peer reporting would help other companies to learn from each other. In fact, some major companies used to voluntarily publish the projects they are part of on their websites or steps they have taken to improve governance and protect the environment before the said decrees were issued.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	Because the FRA has started to take steps towards imposing ESG disclosures and the CBE has taken steps to encourage banks to adopt them, there is a good chance that other regulators will follow suit most, notably GAFI. There is also a possibility that the CBE may – one day – start imposing such disclosures on banks, not only encouraging them. There are no guarantees that the ESG disclosures would be mandatory; however, there is a trend towards encouraging and promoting sustainable development in the corporate world.
21	Please provide your name, firm name and a brief biography about yourself (optional).	<p>Anwar Zeidan is a founding partner and head of Zulficar and Partners Law Firm Procedures and Capital Market Departments. He specialises in several legal areas, which mainly include capital market transactions, M&A, investment banking, taxes and employment.</p> <p>Zeidan has participated in a number of major transactions and complicated legal issues with a significant number of clients in Egypt and abroad. He has extensive experience in conducting due diligence proceedings, and legal audits involving public and private Egyptian companies and banks.</p> <p>Zeidan is a leading expert in matters related to capital markets and advises clients on tender offer, rights issues, swaps and IPOs, stock exchange rules and disclosure requirements. In late 2009, together with a team of experts at the firm, he successfully closed the first mixed tender offer by Ahli United Bank Bahrain (in consideration of either cash or a combination of shares and global euro notes). He also handled the first series of employee stock option plans (ESOP) in Egypt and is recognised as the leading Egyptian expert in this field, setting the models for the market.</p>

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Finland

1	Which jurisdiction are you covering?	Finland
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Yes. EU law requires certain large companies to disclose information on the way they operate and manage social and environmental challenges under the EU Accounting Directive (2013/34/EU), as amended by the NFRD. The EU directive has been implemented into Finnish national law in chapter 3a of the Finnish Bookkeeping Act (1336/1997, as amended) (kirjanpitolaki) (the 'Finnish Bookkeeping Act'). In addition, the EU Taxonomy Regulation and Regulation (EU 2019/2088) on sustainability-related disclosures in the financial services sector impose additional mandatory disclosure obligations.
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<p>EU rules on non-financial reporting currently apply to PIEs that are large undertakings whose average number of employees during the financial year has exceeded 500. Pursuant to the Finnish Bookkeeping Act, PIEs include:</p> <ul style="list-style-type: none"> i. entities whose shares, bonds or other securities are admitted to trading on a regulated market; ii. credit institutions; and iii. insurance companies. <p>Further, pursuant to the Finnish Bookkeeping Act, a large undertaking is defined as a reporting entity exceeding at least two the following three thresholds on the balance sheet date of the last financial year and the one immediately preceding it:</p> <ul style="list-style-type: none"> i. total assets €20m; ii. net turnover €40m; and iii. average number of employees during the financial year is 250.
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 prior to mandatory disclosure requirements being triggered?	Pursuant to the Finnish Bookkeeping Act, if the reporting entity is a parent undertaking of a group, the parent undertaking shall issue a statement regarding the group. Subsidiaries whose information is included in the parent undertaking's statement does not need to issue a separate statement.
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?	ESG disclosures are required to be in connection with the annual financial statements.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	ESG disclosures are a part of the management report required in connection with the annual financial statements. However, the reporting entity may disclose the information in a report separate from the management report, provided 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 the management report includes a reference to this separate report to be published later on the website.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	The location is as part of the management report or on the reporting entity's website.
8	In the case in which 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. 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 reports.

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?	<p>The Finnish Financial Supervisory Authority supervises compliance with the Finnish Bookkeeping 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). Further, the auditor of the reporting entity shall check whether the ESG disclosures required under the Finnish Bookkeeping Act have been provided.</p> <p>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>
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?	<p>Disclosing false or misleading ESG information is not, in and of itself, subject to specific penalties. However, the EU Market Abuse Regulation ((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>
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?	<p>There is no tiered disclosure system. With respect to expected future requirements, the European Commission has adopted a proposal for the CSRD, which would amend the existing reporting requirements of the NFRD. The proposal extends the scope to all large companies and all companies listed on regulated markets (except listed micro-enterprises), requires the audit (assurance) of reported information, introduces more detailed reporting requirements and a requirement to report in accordance with mandatory EU sustainability reporting standards, and also requires companies to digitally 'tag' the reported information so that it is machine-readable and feeds into the European single access point.</p> <p>As to the EU Taxonomy Regulation, non-financial undertakings will need to disclose their taxonomy alignment from 1 January 2023 and financial undertakings from 1 January 2024. Currently, the undertakings are obligated to disclose their taxonomy eligibility.</p>
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?	<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 NFRD have to disclose how and to what extent their activities are associated with economic activities that qualify as environmentally sustainable under the EU Taxonomy Regulation. By and large, 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 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>

13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<p>As a short description, the disclosure must contain information regarding 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'). The information shall be disclosed to the extent necessary to understand the implications of the reporting entity's activities. Further, the disclosure must contain a brief description of the reporting entity's business model, a description of the policies pursued by the reporting entity in relation to ESG Matters, including the due diligence processes implemented, the outcome of such policies, a description of the principal risks related to ESG Matters, taking into consideration the reporting entity's business relationships, products or services and otherwise, the nature and extent of its activities, the realisation of which is likely to cause adverse impacts on its activities and an explanation of how the reporting entity manages those risks, and non-financial KPIs relevant to the reporting entity's business.</p> <p>When preparing the disclosure, the reporting entity may rely on national, EU or international frameworks. If it does this, it shall specify which frameworks it has relied on.</p> <p>In addition, the ESG disclosures must 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>
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?	<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>Moreover, in June 2019, the European Commission published guidelines on the reporting of climate-related information under the NFRD. However, the guidelines are not mandatory and reporting companies may decide to use international, EU or national guidelines.</p>
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?	<p>Legislation concerning ESG disclosures does not contain comprehensive and well-defined provisions on what information should be disclosed and how. Reporting companies are left with a fairly wide margin of discretion regarding the scope of sustainability information to be disclosed. The European Commission has published guidelines regarding the methodology for the reporting of non-financial information and a supplement on reporting climate-related information. However, the guidelines are non-binding and reporting companies may decide to use international, EU or national guidelines.</p>
16	Is there a clear guidance and 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?	<p>There is no such clear guidance or definition of what is included in ESG according to Finnish legislation.</p>
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?	<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 other sustainable activity.</p>

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?	The answer lies somewhere in the middle. 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.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	There seems to be no one right answer. Some companies find value in ESG reporting, whereas others consider it to be an unnecessary burden.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	The CSRD will also 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.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Tom Fagernäs, Krogerus.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for 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 mandatory (please refer to question 13 for further details).
3	If ESG disclosures are required, is there a distinction between the type and nature of 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.
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 prior to mandatory disclosure requirements being triggered?	<p>Yes, there is a distinction.</p> <p>A statement of non-financial performance must be included in the management report of: (1) public limited 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 that employ an average number of permanent employees exceeding 500 during the financial year; and (2) public limited companies 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.</p>
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?	ESG disclosures are required to be made on a continuous annual reporting basis.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	Listed companies shall include their ESG disclosure in their management report.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	The ESG disclosure is located on the website of issuers that are required to make such a 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), investors may also find the ESG disclosure on this website (https://bdf.amf-france.org/fr).
8	In the case in which 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?	Corporate executives of listed companies increasingly tend to make ESG disclosures on a voluntary basis (especially for green technology companies) as a result of market practice and investor expectations. For example, the integration of ESG criteria into executive remuneration is a growing practice, with a study showing that, in 2020, out of 365 issuers of the main indices in Europe, 68 per cent had at least one ESG measure in their incentive plans.
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?	<p>The Autorité des Marchés Financiers is the French regulator that monitors ESG disclosures from listed companies and management companies (<i>sociétés de gestion</i>).</p> <p>In addition to monitoring by the Autorité des Marchés Financiers, the most important 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 reasoned opinion on the compliance and sincerity of the disclosure, it being specified that such a report is transmitted to the shareholders.</p> <p>To the best of our knowledge, French regulations do not provide for any 'grace periods'.</p>

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?	<p>Civil and/or criminal liability of issuers may be engaged for false and/or misleading mandatory ESG 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 a 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 publicity materials) in the event of a contractual breach.</p>
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?	<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 CSRD will replace the NFRD.</p>
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?	<p>In terms of sustainable finance, there are three labels in France: (1) the ISR Label; (2) GreenFin Label; and (3) Finansol Label. All management companies 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 to 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 orientated towards financing energy and ecological transition. This label has the particularity of excluding funds that invest in companies operating in the nuclear and fossil fuel sectors.</p> <p>The Finansol Label exclusively concerns solidarity savings products, that is, those that finance activities to fight exclusion, social cohesion or sustainable development (housing, employment, environment, international solidarity etc).</p> <p>The following can also be quoted:</p> <ul style="list-style-type: none"> • 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', which designates a company that is known to have a beneficial impact on the world while being profitable. Today, there are more than 200 French companies granted with the B Corp certification; and • EthiFinance, which is a European rating, research and advisory group that serves 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.

13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<p>In a nutshell, under French law, two types of ESG disclosures may be identified:</p> <ul style="list-style-type: none"> • On the one hand, public limited companies 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 a plan shall include reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, and 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. • On the other hand, a statement of non-financial performance must be included in the management report of: (1) public limited companies 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) public limited companies 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. 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 to declare extra-financial performance has been further developed: since 1 January 2022, companies in the non-financial sector falling within its scope have been obliged to publish sustainability indicators, such as 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. Although the implementation of this text is gradual, the first indicators on eligible activities were nevertheless expected to be published in the 2022 annual publications on the basis of 2021 data.
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?	<p>The Autorité des Marchés Financiers expects issuers whose securities are admitted to trading on a regulated market to implement the European Securities and Markets Authority's (ESMA's) guidelines, it being specified that ESMA stresses the importance of issuers communicating 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, on 16 December 2021, the Autorité des Marchés Financiers published 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 a report, the Autorité des Marchés Financiers focuses on the following matters:</p> <ul style="list-style-type: none"> • 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 and floods); and • the communication made by issuers that have made voluntary commitments to carbon neutrality (intelligibility of such commitments, level of ambition, levers for action and operational implementation).
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?	<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 the policies pursued by the company.</p>

16	Is there a clear guidance and 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?	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).
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?	<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 and 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 risk of corruption, embargoes, international economic sanctions or human rights abuses affecting the value chain.</p>
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?	From our end, compliance with ESG disclosure regulations has become a competitive and attractive feature for green technology companies (ie, innovative companies whose business model benefits the environment and the fight against global warming) because investors will consider such compliance when it comes to making an investment or financing decision on such companies. Moreover, ESG disclosure regulations tend to fight 'greenwashing', so compliance with ESG disclosure regulations 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' orientated.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	We believe that our clients would like to see clearer and harmonised (ie, a unified corpus and not a patchwork of regulations), but not greater, ESG disclosure regulations.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	<p>First, it should be noted that 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 social and environmental challenges shows that the French regulations on ESG matters are tending to increase.</p> <p>The obligation to draw up a vigilance plan is likely to be strengthened and broadened since a proposal for a directive on corporate duty of vigilance was published by the European Commission on 23 February 2022 providing for lower thresholds than those currently applicable in France. Subject to amendments, this proposal for a directive provides for the creation of a supervisory authority responsible for monitoring and sanctioning non-compliance with the obligations imposed on companies. The final text should be adopted by autumn 2023. With an implementation period of two years, the European corporate duty of vigilance would therefore become fully effective by autumn 2025, at the latest.</p> <p>We also anticipate that more and more investors and proxy advisers will challenge issuers through 'say on climate' and 'say on pay' resolutions to make sure that ESG components constitute part of the business model of issuers. Challenged by shareholders of TotalEnergies, in 2022, the Autorité des Marchés Financiers declared 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>Moreover, as from financial years beginning on or after 1 July 2022, information on the consequences of the activity on climate change shall include the items of direct and indirect greenhouse gas emissions related to upstream and downstream transport activities, and be accompanied by an action plan to reduce these emissions, in particular through the use of rail and river modes, as well as biofuels with a virtuous energy and carbon balance, and electromobility. The content of the action plans to be established, in particular the emission reduction targets and monitoring by means of indicators, will be set by a decree not yet published on the date of this survey.</p>

21	<p>Please provide your name, firm name and a brief biography about yourself (optional).</p>	<p>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 a partner four years later (in January 2018). Deniaud is a recognised practitioner regarding public M&A and ECM transactions.</p>
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ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Germany

1	Which jurisdiction are you covering?	Germany
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<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 'CSR-Reporting Directive' or 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 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>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.</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>The new Act on Corporate Due Diligence in Supply Chains (Lieferkettensorgfaltspflichtengesetz or LkSG) will apply as of 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. 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>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"> • the EU Taxonomy Regulation; • section 289b of the German Commercial Code (Handelsgesetzbuch) that requires certain companies to publish an annual non-financial statement (<i>nicht-finanzielle Erklärung</i>) implementing the European CSRD; • the LkSG, which will apply as of 2023; and • 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 (the 'SFDR') applicable to 'financial market participants' and 'financial advisers'.
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<p>German and European law stipulates certain prerequisites and thresholds for the respective disclosure requirements.</p> <ul style="list-style-type: none"> • 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 regulated market, be it equity or debt. These prerequisites will change once the CSRD is implemented in Germany. • As another example, the SFDR provides for mandatory ESG disclosures that only apply to 'financial market participants' and 'financial advisers'.

4	<p>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 prior to mandatory disclosure requirements being triggered?</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"> • meets two of three requirements relating to the balance sheet total, turnover and number of employees; • is 'capital market-orientated', that is, its transferable securities are admitted to trading on a regulated market; and • has an annual average of more than 500 employees. <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.</p> <p>Similarly, the LkSG will, as of 2023, apply 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. As of 2024, the act will apply to companies with 1,000 or more employees.</p>
5	<p>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?</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; 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&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.</p>
6	<p>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</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 CSRD becomes effective, 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. 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. The LkSG stipulates that the non-financial statement and LkSG report must be two separate reports, even though the content may overlap, to some extent.</p>
7	<p>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?</p>	<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 has to be submitted to the competent authority (Bundesamt für Wirtschaft und Ausfuhrkontrolle or BAFA).</p>

8	In the case in which 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?	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 in the future; companies have already started to voluntarily publish ESG-related information as an opportunity to familiarise themselves with the future requirements.
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?	<p>Which regulator monitors ESG disclosure compliance is dependent on the relevant regulation, directive or implemented national law. On a European level, 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. 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>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	What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?	<p>An incorrect description of the company's circumstances in the non-financial statement 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 she or he acts intentionally or with gross negligence.</p> <p>Please note that the relevant sections of the German Commercial Code specifying the penalties do not distinguish between voluntary and mandatory ESG disclosure.</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>
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?	<p>The European Commission is expected to further develop existing regulations and directives, such as the EU Taxonomy Regulation and CSRD. A certain dynamic is already ensured by the fact that these legal acts contain provisions requiring a review of their effectiveness after a certain period of time. As mentioned above, the CSRD will amend the existing CSRD reporting requirements and, inter alia, extend the scope to all companies that are either large or listed on a regulated market.</p> <p>The introduction of further ESG disclosure requirements can also be observed at a national level. For example, the recently enacted Corporate Governance Code (Deutscher Corporate Governance Kodex or DCGK) in Germany includes (for the first time) various provisions including ESG disclosure. While the code is legally non-binding, listed companies must disclose any deviations from the standards.</p> <p>Another example is the LkSG, which will come into force in 2023.</p>

12	<p>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?</p>	<p>As mentioned in question 2, 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.</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; (6) and 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 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 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 now 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 not a comparable system in Germany.</p>
13	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<p>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 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. Because the transparency obligation only applied from 1 January 2022 or 1 January 2023 (depending on the environmental objective), there have not been any disclosures yet.</p> <p>The disclosures in the corporate governance statement, as well as in the non-financial statements, 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). However, it has to be noted that there are no direct consequences depending on the content that is reported.</p> <p>Additional disclosure requirements result from the recently enacted new Corporate Governance Code in Germany, which includes several ESG-related provisions. For example, the supervisory board from now on must also have expertise regarding sustainability. The Corporate Governance Code sets out standards, but in the event of non-compliance, there is no sanction other than the obligation to disclose any deviations from the standards.</p>

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?	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, and it is now necessary to disclose if and to what extent activities qualify as environmentally sustainable pursuant to the EU Taxonomy Regulation. However, even the EU Taxonomy Regulation does not require a specific climate change disclosure.
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?	<p>Although there is no mandatory standardised form, undertakings may rely on national, EU-based or international frameworks according to section 289d of the German Commercial Code (on the basis of the CSRD). The statement has to contain information about whether a framework was used, and if so, which framework or why no framework was used.</p> <p>In German practice, the GRI Standards of the GRI have become the most frequently used framework.</p>
16	Is there a clear guidance and 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?	<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:</p> <ul style="list-style-type: none"> i. environmental concerns: for example, greenhouse gas emissions, water consumption, air pollution, use of renewable and non-renewable energy, and protection of biodiversity; ii. workforce concerns: for example, measures taken to ensure gender equality, working conditions, implementation of the fundamental conventions of the International Labour Organization, respect for workers; rights to be informed and consulted on; social dialogue; respect for trade union rights; health protection or safety at work; iii. social concerns: for example, dialogue at the municipal or regional level or measures taken to ensure the protection and development of local communities; iv. respect for human rights: for example, prevention of human rights violations; and v. fight against corruption and bribery: for example, instruments in place to fight corruption and bribery.
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?	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 EU Taxonomy Regulation primarily takes into account the environmental aspect. In addition, the minimum social safeguards also need to be met.

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?	As the ESG disclosure regime of the EU Taxonomy Regulation has not been applied in practice to date, it remains to be seen whether it will create value for investors. Given strong interest by institutional investors in ESG information about the activities of listed companies, a standardised framework for ESG disclosure may improve investor information as it makes disclosure by individual companies comparable.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	Clients currently face the challenge of implementing the requirements of the EU Taxonomy Regulation and would therefore not be expected to wish for additional regulation that needs to be digested.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	<p>The European Commission is currently pursuing further legislative projects with regard to ESG disclosures and ESG compliance. First, the CSRD needs to be mentioned, which shall provide for expanded non-financial 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. In 2022, the European Commission also proposed a directive on Corporate Sustainability Due Diligence (COM (2022) 71), which stipulates the obligation for all EU Member States to ensure that companies conduct human rights and environmental due diligence. This directive would 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>These 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 amendments to the Corporate Governance Code in Germany (as described above) point in the same direction.</p> <p>In addition, it is expected that stricter and broader disclosure requirements will be developed both in terms of content and manner, and with less discretion for the undertaking.</p>
21	Please provide your name, firm name and a brief biography about yourself (optional).	<p>Michael Arnold, Gleiss Lutz.</p> <p>Simon Link, Hengeler Müller.</p>

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Grand Duchy of Luxembourg

1	Which jurisdiction are you covering?	Grand Duchy of Luxembourg
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>The term 'market participants' is understood to mean issuers of financial instruments as defined in Directive 2014/65/EU of 15 May 2014 on markets in financial instruments ('MiFID II').</p> <p>In Luxembourg, ESG disclosures are mandatory pursuant to the law dated 23 July 2016 that transposes the NFRD (the 'NFRD Law').</p> <p>ESG disclosures by market participants 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 (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 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 instruments, 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>
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<p>Under the NFRD Law, ESG disclosures are required for large PIEs (credit institutions, insurance companies and entities listed on regulated markets in the EEA) exceeding:</p> <ul style="list-style-type: none"> • 500 employees; • total assets of €20m and/or a net turnover of €40m. <p>Article 8 of the EU Taxonomy Regulation applies to the same type of entities. However, it provides for a phased implementation, with different rules for financial and non-financial entities. Financial entities are defined as asset managers, credit institutions, investment firms, insurance undertakings and re-insurance undertakings as defined in Article 8 of the Disclosures Delegated Act.</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 prior to mandatory disclosure requirements being triggered?	<p>All entities that are in scope under the NFRD Law and/or EU Taxonomy Regulation (see question 3 for further details), need to make the same types of ESG disclosures. Hence, unlisted companies (other than credit institutions or insurance companies) do not have any disclosure obligations under the current Luxembourg legal framework. No thresholds are applicable.</p>
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?	<p>ESG disclosures are not triggered in the case of certain transactions only, but are required to be made on a continuous annual reporting basis in a management report, consolidated management report or separate report (as applicable).</p>

6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	As mentioned above, disclosures do not necessarily have to be in the form of separate ESG reports. They can also be included in the management report or consolidated management report (as applicable).
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	ESG disclosures can either be found in management reports, consolidated management reports or separate reports (see questions 5 and 6).
8	In the case in which 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?	As mentioned above, under the NFRD Law and 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.
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?	<p>In Luxembourg, the Commission de Surveillance du Secteur Financier (CSSF), the financial sector regulator, 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.</p> <p>With respect to disclosure obligations resulting from the NFRD Law, the following specific sanctions/liabilities apply:</p> <ul style="list-style-type: none"> • 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 Luxembourg law and, where applicable, in accordance with international accounting standards; and/or • criminal liability, that is, a fine of €500–€25,000 for managers and directors who have failed to publish the non-financial statement referred to in the NFRD Law. <p>With respect to disclosure obligations resulting from Article 8 of the EU Taxonomy Regulation, there is currently no specific sanctions framework. The NFRD Law sanctions apply <i>mutatis mutandis</i>.</p>
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?	<p>See above with respect to mandatory disclosure obligations.</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	Is there a tiered disclosure system in your jurisdiction and are any further ESG disclosure requirements expected in your jurisdiction in the near future?	<p>With respect to the NFRD Law, there is no tiered disclosure system. As for the EU Taxonomy Regulation, there is a phased implementation for financial and non-financial undertakings (see question 13 for further details).</p> <p>A draft for an EU CSRD exists, which will amend and expand the scope of the NFRD. It will impose more detailed reporting aligned with the EU Taxonomy Regulation and more entities (including smaller entities) will be covered. The directive will have to be transposed into Luxembourg law. It is expected to apply as of 2024 for reports covering the financial year 2023.</p>

12	<p>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?</p>	<p>As mentioned above, the EU Taxonomy Regulation introduces harmonised standards for ESG reporting 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"> • EU CTB, which brings the resulting benchmark portfolio onto a decarbonisation trajectory; and • 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 1.5C° compared to pre-industrial levels. <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"> • 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 • 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 • 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. <p>Finally, an EU GBS is currently under discussion at EU institutional level and will take the form of a directly applicable EU regulation. It is meant to create a high-quality voluntary standard for bonds financing sustainable investments that are EU Taxonomy Regulation-aligned.</p>
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13	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<p>Under the NFRD Law, obliged companies shall include in the management report, consolidated management report or separate report (as applicable) a non-financial statement containing information to the extent necessary for an understanding of the undertaking's or group'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, including:</p> <ul style="list-style-type: none"> i. a brief description of the undertaking's or group's (as applicable) business model; ii. a description of the policies pursued by the undertaking or group (as applicable) in relation to those matters, including the due diligence processes implemented; iii. the outcome of those policies; iv. the principal risks related to those matters linked to the undertaking's or group's (as applicable) 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 undertaking or group (as applicable) manages those risks; and v. non-financial KPIs relevant to the particular business. <p>Where the undertaking or group (as applicable) does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so.</p> <p>The non-financial statement shall also, where appropriate, include references to, and additional explanations of, the amounts reported in the annual financial statements.</p> <p>Information relating to impending developments or matters in the course of negotiation may be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking or the group (as applicable), provided that such an omission does not prevent a fair and balanced understanding of the undertaking's or group's (as applicable) development, performance, position and the impact of its activity.</p> <p>Undertakings may rely on national, EU-based or international frameworks, and if they do so, they shall specify which frameworks they have relied upon.</p> <p>Under the EU Taxonomy Regulation, from 1 January 2022 until 31 December 2022, non-financial undertakings shall disclose:</p> <ul style="list-style-type: none"> i. the proportion of EU Taxonomy Regulation-eligible activities (being economic activities included in the delegated acts on the environmental objectives of the EU Taxonomy Regulation, that is, at this stage, the Commission Delegated Regulation (EU) 2021/2139 (the 'Climate Delegated Act')) and EU Taxonomy Regulation-non-eligible economic activities in their total turnover, capital and operational expenditure; and ii. certain qualitative information referred to in the Disclosures Delegated Act relevant for this disclosure, including, but not limited to a description of the nature of their EU Taxonomy Regulation-eligible economic activities, by referring to the Climate Delegated Act. <p>it contributes substantially to one or more of the following environmental objectives:</p>
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14	<p>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?</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. 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>
15	<p>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?</p>	<p>See above about the exhaustive disclosure regime introduced by the EU Taxonomy Regulation and NFRD Law.</p>
16	<p>Is there a clear guidance and 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?</p>	<p>Reference should be made to the concepts defined in the EU Taxonomy Regulation and the delegated acts. There is otherwise no definition of scope of the term ESG under Luxembourg law.</p>
17	<p>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?</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>

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?	<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. 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.</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 only platform of its kind worldwide, where issuers and investors can come together to fulfil their green objectives. In 2016, the LGX opened a new segment dedicated to the listing of social and sustainable projects.</p>
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	<p>In general, further work is needed to standardise reporting and data used in the ESG field.</p> <p>The EU Taxonomy Regulation is a significant step forward and includes a much-needed harmonised approach, but its great technicality and complexity, together with its interactions and partial overlaps with the SFDR, make the EU sustainable finance framework difficult to read and apply, which is regrettable.</p> <p>In addition, harmonisation and standardisation of ESG standards beyond the EU will be key to ensure fair and sustainable global financial markets.</p>
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	<p>ESG disclosures are still developing in Luxembourg and in the EU, in general.</p> <p>Reference can be made to the proposal for an EU GBS (see question 12).</p> <p>Furthermore, the proposed CSRD aims to address shortcomings in existing rules on the disclosure of non-financial information and expand the scope of the NFRD.</p> <p>Regarding the EU Taxonomy Regulation, technical screening criteria are expected in further delegated acts with regard to the other environmental objectives of 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>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 European Commission's proposal for a directive on corporate sustainability due diligence. The proposal aims to foster sustainable and responsible corporate behaviour throughout global value chains. 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>
21	Please provide your name, firm name and a brief biography about yourself (optional).	Katrien Verannemen and Caroline Bocklandt, Elvinger Hoss Prussen.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Greece

1	Which jurisdiction are you covering?	Greece
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Yes, ESG disclosures are mandatory for certain entities based on Law No 4403/2016 (which transposed the NFRD) and based on Law No 4548/2018 (regarding <i>societes anonymes</i> or SAs).
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	Yes, mandatory ESG disclosure currently only applies 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 prior to mandatory disclosure requirements being triggered?	Mandatory disclosure only applies to large and listed companies. Large companies are of public interest and employ more than 500 employees.
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?	ESG disclosures are mainly triggered on a continuous annual reporting basis as part of the annual obligation of SAs is to publish their financial data (Articles 151 and 150, paragraph 2 of Law No 4548/2018).
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	Mandatory disclosures are mainly required 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 and company website)?	ESG disclosures are located in ATHEX filings, on the company website, in sustainability reports and in annual financial reporting filings to Geniko Emporiko Mitroo ('GEMH'), the companies registry.
8	In the case in which 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 allow a better understanding of the company.
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?	For listed enterprises, the regulator is the Capital Markets Committee, and for the rest, mainly GEMH.
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?	For mandatory ESG disclosures, penalties apply for the non-reporting of financial data. Non-mandatory penalties depend on the targeted audience of the false statements.
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?	A taxonomy disclosure system will apply, also based on the CSRD that was expected to be transposed in Greece by the end of 2022 for large enterprises and listed enterprises, and shall include enforcement steps for large enterprises for financial year 2024 (published 2025) and listed enterprises for financial year 2025 (published 2026).
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?	Certification systems are applicable that are offered by certified companies.
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	ESG disclosures are required for environmental topics, social engagement and workforce respect, and the listed corporate governance system in place.
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?	Generally, N/A
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?	ESG disclosures are standardised for listed enterprises.
16	Is there a clear guidance and 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?	Applicable law clearly defines the scope of ESG for listed enterprises that non-listed enterprises can also follow, as published in 2022 by the Athens Stock Exchange ('ATHEX').

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?	In principle, goals are taken into account as a whole.
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?	For the time being, it is difficult to say because of upcoming legislative changes to the transposition of the CSRD, and mindset changes are also expected. However, based on research, both investors and consumers, irrespective of whether mandatory measures apply, have started to pay attention to the ESG footprint of a company, but the parameters of ESG are still not very clear.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	There is no doubt that clients would like to see this.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	There is not enough information to make an accurate forecast.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Dimitris E Paraskevas is the Executive Chairman of the Paraskevas Group, which includes a leading Greek law firm, consulting companies, investment vehicles and a charitable foundation that has been funding projects in education, poverty and the arts. Paraskevas Law Firm was established in Athens in 1933 by his father, who was widely referred to as the Dean of Greek lawyers, and is the only Greek law firm that has been listed as one of the 50 most innovative law firms in Europe by the <i>Financial Times</i> . Paraskevas has 30 years of experience in transactions and litigation that exceed \$400bn in 70 countries. He has provided services to more than 50 major banks and 70 international law firms, and has advised governments, international organisations and over 250 major corporations. Additionally, he has authored several articles on banking, competition, investments, policies, privatisation and restructuring, and is a regular speaker at conferences and in the media. For his work as the Secretary for Privatisation of three Greek Governments during 1993–1999, he was named Super Salesman by the <i>Financial Times</i> . He is the Conference Quality Officer of the Banking Law Committee and Membership Officer of the Art, Cultural Institutions and Heritage Law Committee of the IBA, and serves as board member of various companies and committees. He holds a first class honours degree in law from the University of Athens, an LLM from the London School of Economics (LSE) and several professional qualifications, including from Harvard Business School. He is based in London and is regularly present in Monaco, Paris and Athens, where he maintains bases. He practises in banking, finance and capital markets, M&A and privatisation, including restructuring and insolvency, ultra-high-net-worth individuals (UHNWI)/family offices, and complex commercial and insolvency litigation.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Hong Kong

1	Which jurisdiction are you covering?	Hong Kong Special Administrative Region ('Hong Kong')
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>Yes. The main ESG disclosure requirements in Hong Kong include the following:</p> <ul style="list-style-type: none"> i. All companies incorporated in Hong Kong: The Companies Ordinance (Cap 622 of the Laws of Hong Kong) (the 'CO') requires all companies incorporated in Hong Kong (whether private or public), unless exempted, to include the following in the business review section of their annual directors' reports, to the extent necessary for an understanding of the company's business: (a) a discussion on the company's environmental policies and performance, and the company's compliance with the relevant laws and regulations that have a significant impact on the company; and (b) an account of the company's key relationships with its employees, customers and suppliers, and others that have a significant impact on the company and on which the company's success depends. ii. Listed companies: Listed companies in Hong Kong are subject to the ESG disclosure requirements under the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the 'Listing Rules'). The relevant requirements are mainly contained in the Environmental, Social and Governance Reporting Guide (the 'ESG Reporting Guide'), which covers the environmental and social aspects and the Corporate Governance Code which covers the corporate governance aspect. iii. Fund managers of collective investment schemes/ESG funds: The Securities and Futures Commission (SFC) has introduced obligations on fund managers of collective investment schemes through amendments to the Fund Manager Code of Conduct (FMCC) requiring them to take climate-related risks into consideration in their investment and risk management processes and make appropriate disclosures (including entity-level or product-level disclosures for funds under management). <p>In addition, with a view to improve the disclosure standard of ESG funds, the SFC has also imposed enhanced disclosure obligations on SFC-authorised funds that incorporate ESG factors as their key investment focus.</p> <ul style="list-style-type: none"> iv. Authorised institutions ('Als') as licensed by the Hong Kong Monetary Authority: AI refers to a bank, restricted-licence bank or deposit-taking company under the Banking Ordinance (Cap 155 of the Laws of Hong Kong), and the supervisory authority is the Hong Kong Monetary Authority (the HKMA). Als are required to formulate ESG-related strategies and assessments according to HKMA's Supervisory Policy Manual GS-1 ('GS-1') and full ESG disclosures will be required by 2023.
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	Please refer to our response to question 2 for the different types and nature of entities that are required to make ESG disclosures.
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 prior to mandatory disclosure requirements being triggered?	The content and extent of disclosures vary depending on the requirements of the relevant regulators. Please refer to our response to question 2 for a brief summary of such disclosures.

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?	<p>Circumstances that trigger ESG disclosures vary depending on the requirements of the relevant regulators. From our observations, ESG disclosures are required to be made on both a transaction-triggered basis and continuous annual reporting basis.</p> <p>Examples of transaction-triggered disclosure include the following:</p> <ul style="list-style-type: none"> i. an ESG fund is required to make appropriate ESG disclosures in its offering documents; and ii. fund managers are required to review disclosures at least annually and update disclosures where appropriate, and inform fund investors of any material changes as soon as practicable. <p>Examples of annual disclosures include the following:</p> <ul style="list-style-type: none"> i. ESG discussion in directors' reports for all Hong Kong incorporated companies as required by the CO; ii. ESG discussion for listed companies as required by the Listing Rules; iii. annual assessments and reporting by ESG funds on how they have attained their respective ESG focus as required by the SFC; and iv. annual climate-related disclosures for AIs as required by the HKMA.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	Separate ESG reports are not required in Hong Kong.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	<ul style="list-style-type: none"> i. All companies incorporated in Hong Kong: Environmental discussions will be incorporated into the company's annual directors' report. ii. Listed companies: ESG disclosures may be made either in a separate ESG report or be part of the annual report, which shall be published on the Stock Exchange of Hong Kong Limited's ('HKEx's') website and listed companies' websites. iii. Fund managers of collective investment schemes/ESG funds: Fund managers should make appropriate disclosures to investors via various channels, such as websites, newsletters or reports, and ensure investors' attention is drawn to the information. ESG funds should make ESG disclosures in their offering documents and annual reports. iv. AIs as licensed by the HKMA: The public shall have access to ESG disclosures by the AIs, which may be published through sustainability reports, the AIs' websites, annual reports or a combination of them.
8	In the case in which 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?	Both regulatory requirements and increasing investor demands have attributed to increased ESG disclosures in Hong Kong.

9	<p>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?</p>	<p>The Companies Registry, HKEx, SFC and HKMA are the principal regulators of ESG disclosure compliance. Penalties for non-compliance are as follows:</p> <ul style="list-style-type: none"> i. All companies incorporated in Hong Kong: The Companies Registry in Hong Kong is responsible for handling non-compliance cases under the CO. A director of a company failing to take all reasonable steps to make the required ESG disclosures would commit an offence under the CO and may be liable to a fine, while a director who wilfully fails to do so may be additionally liable to imprisonment. CO does not provide for a grace period with respect to such a disclosure requirement. ii. Listed companies: HKEx serves as the regulator for monitoring listed companies' ESG disclosure compliance in Hong Kong. Non-compliance with the applicable disclosure requirements would constitute a listed company's breach of the Listing Rules, and HKEx may, as a result, take disciplinary action against the relevant listed company and its officers. There is no grace period applicable with respect to such disclosure requirements. iii. Fund managers of collective investment schemes/ESG funds: The relevant ESG disclosure requirements are mainly set forth in the FMCC and circulars issued by the SFC. ESG funds that are unable to meet the requirements in the relevant circular will be removed from the list of ESG funds on the SFC's webpage. In addition, SFC may take appropriate regulatory action for compliance breaches, such as issuing a private or public reprimand, imposing a fine or suspending a licence. The availability of a grace period, if any, would be set out in the relevant code, guideline or circular. iv. Als as licensed by the HKMA: GS-1 is a guidance note that serves as a best practice guide that sets out the HKMA's recommendations to Als in respect of climate risk management. The HKMA monitors Als' compliance with guidance notes as part of its regular supervision, and failure to comply with GS-1 may result in a breach by an AI of its licensing conditions and impact its authorisation under the Banking Ordinance.
10	<p>What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?</p>	<ul style="list-style-type: none"> i. All companies incorporated in Hong Kong: It is an offence under the CO if a person knowingly or recklessly makes a statement that is misleading, false or deceptive in any material particular in any return, report, financial statement, certificate or other document required by or for the purposes of any provision of the CO. Such a person would be liable to a fine and/or imprisonment. ii. Listed companies: False or misleading ESG disclosures by listed companies would constitute a breach of the Listing Rules and may result in HKEx taking disciplinary action. iii. Fund managers of collective investment schemes/ESG funds: The failure of fund managers to disclose accurate information would constitute a breach of the FMCC and attract disciplinary measures. iv. Als as licensed by the HKMA: False or misleading disclosure by Als may similarly result in a breach by AI of its licensing conditions and impact its authorisation under the Banking Ordinance. <p>Whether the ESG disclosure was mandatory or voluntary does not make a difference in terms of penalties for false or misleading ESG disclosures.</p>

11	<p>Is there a tiered disclosure system in your jurisdiction and are any further ESG disclosure requirements expected in your jurisdiction in the near future?</p>	<p>i. Listed companies: All listed companies are required to abide by the ESG disclosure requirements set out in the Listing Rules. For details, please refer to our response to question 13.</p> <p>ii. Fund managers of collective investment schemes/ESG funds: Pursuant to the circular to licensed corporations on management and disclosure of climate-related risks by fund managers issued by the SFC in August 2021 (the 'Fund Manager Circular'), all fund managers managing collective investment schemes are required to meet the baseline requirements on four key elements, namely governance, investment management, risk management and disclosure, while fund managers with collective investment schemes under management that equal or exceed HK\$8bn in fund assets for any three months in the previous reporting year ('Large Fund Managers') have to meet the enhanced standards.</p> <p>iii. Als as licensed by the HKMA: Recognising that there is no 'one-size-fits-all' approach given the differences among Als in terms of size, structure and business, the HKMA adopts a proportionate approach when applying the guidance set out in GS-1. For instance, the climate risk management of small Als does not need to be as sophisticated as that of Als with complex operations. However, all Als have to demonstrate that certain minimum requirements are implemented as set out in GS-1.</p> <p>To enhance Hong Kong's competitiveness as the preferred ESG investment hub in the region, the Green and Sustainable Finance Cross-Agency Steering Group (the 'ESG Steering Group'), which is co-chaired by the HKMA and SFC, was established in May 2020. It coordinates the management of climate and environmental risks to the financial sector, accelerates the growth of green and sustainable finance in Hong Kong, and supports the government's climate strategies. The ESG Steering Group has announced that it is making progress towards mandating climate-related disclosures aligned with the TCFD framework by 2025 across relevant sectors. SFC and HKEx will continue to collaborate with stakeholders with a view to evaluate and potentially adopt the IFRS Foundation's Sustainability Disclosure Standards, which will be built on the TCFD framework.</p>
12	<p>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?</p>	<p>Depending on the sectors or products involved, different ESG certifications or benchmarks have been used by market participants in Hong Kong. For instance, green bond issuers in Hong Kong mainly rely on external reviewers, such as Sustainalytics, Refinitiv and the Hong Kong Quality Assurance Agency, to provide conformity assessment and certification. For real estate in Hong Kong, the Hong Kong Green Building Council has developed BEAM Plus, which offers the independent assessment of building sustainability performance.</p> <p>In the finance sector, the ESG Steering Group has also been engaging with the industry and other relevant stakeholders to better understand the features and challenges of the local green classification framework. Following the publication of the updated Common Ground Taxonomy (CGT) report by the International Platform on Sustainable Finance, the ESG Steering Group will work towards proposing the structure and core elements of the local green classification framework for consultation.</p>

13	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<ol style="list-style-type: none"> 1. All companies incorporated in Hong Kong: Please refer to our response to question 2 for details. 2. Listed companies: Listed companies are required to comply with mandatory disclosure requirements and 'comply or explain' provisions as set out in the ESG Reporting Guide: <ol style="list-style-type: none"> (a) 'Mandatory disclosure requirements' shall include: <ul style="list-style-type: none"> • a statement from the board containing the board's ESG management approach and strategy; the board's oversight of ESG issues; and how the board reviews progress made on ESG-related goals and targets; • a description of the application of reporting principles in terms of materiality, quantity and consistency; and • a narrative explaining the reporting boundaries of the ESG report and describing the process used to identify which entities or operations are included in the ESG report. (b) 'Comply or explain' provisions cover aspects such as emissions, use of resources, climate change, health and safety, and listed companies shall demonstrate how they have performed in these areas. 3. Fund managers of collective investment schemes/ESG funds: <ol style="list-style-type: none"> (a) Fund managers of collective investment schemes: Under the Fund Manager Circular, the ESG requirements cover four key elements: <ul style="list-style-type: none"> • Governance: The board shall oversee the incorporation of climate-related considerations into investment and risk management processes and monitor progress against goals. Management shall be assigned roles and responsibilities for climate-related risks management, and report to the management regularly about the status and progress of efforts. Fund managers should establish internal controls and written procedures to ensure compliance. • Investment management: Fund managers should identify relevant and material physical and transition climate-related risks for each investment strategy and fund it manages, and factor those risks into the investment management process. • Risk management: Fund managers should take climate-related risks into consideration in risk management procedures and ensure that appropriate steps have been taken to identify, assess, manage and monitor such risks for each investment strategy and fund it manages. Appropriate tools and metrics shall be applied to assess and quantify climate-related risks. Large Fund Managers are subject to enhanced standards in this regard. • Disclosure: Appropriate disclosures should be made to investors in writing via various channels. Disclosures on governance, investment management and risk management are expected from fund managers and such disclosures can be made at entity level or fund level. Enhanced standards on disclosures will apply to Large Fund Managers. (b) ESG funds: Under the circular to management companies of SFC-authorized unit trusts and mutual funds/ESG funds issued by SFC in June 2021, ESG funds have to make prescribed disclosure in their offering documents, including the ESG focus of the fund, its investment strategy, asset allocation and reference benchmark. Further, ESG funds are required to disclose the following additional information regarding the fund's offering on the fund manager's website or by other means: <ul style="list-style-type: none"> • how the ESG focus is measured and monitored throughout the ESG fund's lifecycle and the related internal or external control mechanisms; • the methodologies adopted to measure the ESG focus and the fund's attainment of the ESG focus; and • due diligence carried out in respect of the ESG-related attributes of the fund's underlying assets; • engagement (including the proxy voting) policies; and • sources and processing of ESG data or description of any assumptions made where relevant data is not available. 4. Als as licensed by the HKMA: Als are required to make climate-related disclosures aligned with TCFD recommendations that focus on four thematic areas, namely governance, strategy, risk management, and metrics and targets used by Als to assess and manage climate-related risks.
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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?	Climate change is one of the core focuses in the overall ESG disclosure regime in Hong Kong. HKEx, SFC and HKMA have each placed significant emphasis on climate change in their respective ESG disclosure policies. Please refer to our response to the above questions for details.
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?	There are currently no standardised ESG disclosures in Hong Kong.
16	Is there a clear guidance and 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?	The level of detail and guidance on what is expected from ESG disclosures depends on the requirements of the regulators and the policies concerned. Please refer to our responses above for details.
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?	ESG compliance obligations in Hong Kong focus mainly on disclosure, enhanced governance and risk management of the ESG reporting entities. Currently, the measurement of ESG goals is not covered by Hong Kong's existing legal framework.
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?	We believe that, nowadays, investors expect more visibility, accessibility and transparency of ESG reporting, and enhanced ESG disclosure would facilitate communication with investors and aid investors in their investment decision-making. That said, we also acknowledge that some small to medium-sized companies may be struggling to understand the essence of ESG reporting as they lack the resources to comprehend the overwhelming number of compliance standards and principles.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	Yes. Clients are expecting ESG data of better comparability and materiality to facilitate their investment decision-making process.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	To answer the call for ESG disclosures of better quality, the ESG Steering Group has committed to developing, adopting and maintaining a uniform set of ESG reporting standards. In March 2022, the ESG Steering Group announced that HKEx and SFC would engage with industry practitioners and other key stakeholders to evaluate and gather feedback on how the proposed general requirements for the disclosure of sustainability-related financial information and the climate disclosure requirements published by the ISSB can be applied in Hong Kong. We believe that unifying the ESG reporting standard will remain one of the major tasks of regulators in the near term.

21	<p>Please provide your name, firm name and a brief biography about yourself (optional).</p>	<p>Vivian Lam is a partner in the corporate practice of Paul Hastings and is based in the firm's Hong Kong office. She practises primarily in the areas of financing, debt issues, cross-border acquisitions and investments, and general corporate restructuring, with a particular focus on advising financial institutions and PRC companies. She has advised on numerous high-profiled and award-winning transactions in China, and has a particular strength in, and understanding of, this key market. Lam is one of the lead pro bono partners for the firm, and is active in promoting diversity and gender equality within the firm and the broader community. She also works with organisations such as the American Chamber of Commerce and the Women's Foundation, and speaks at various diversity events.</p>
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ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for India

1	Which jurisdiction are you covering?	India
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Yes, ESG disclosures are required to be mandatorily made by the top 1,000 listed entities by market capitalisation in India for each financial year (FY) commencing from FY 2022–2023. For other listed or unlisted companies, ESG disclosures are voluntary.
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	ESG disclosures are mandated for the top 1,000 listed companies (based on market capitalisation) in India. For other listed or unlisted companies, ESG disclosures are voluntary.
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 prior to mandatory disclosure requirements being triggered?	<p>As set out in our response to questions 2 and 3, ESG disclosures are mandated only for the top 1,000 listed entities (by market capitalisation) in India.</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.</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. The Securities Exchange Board of India (SEBI) published a circular (Operational Circular for Issue and Listing of Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper) on 10 August 2021, pursuant to which issuers of green debt securities are required to make certain ESG-related disclosures in their offer documents and also certain prescribed continuous annual disclosures. A debt security is considered as a ‘green debt security’ if the funds raised through the issuance of such debt securities are to be utilised for projects or assets that fall under the categories mentioned in the prescribed circular.</p>
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?	As set out in our response to questions 2 and 3, ESG disclosures are mandated only for the top 1,000 listed entities (by market capitalisation) in India. ESG disclosures are required to be made annually.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	With effect from FY 2022–2023, following a recent amendment to the law, the top 1,000 listed companies are required to make ESG disclosures by reporting them in the prescribed format: the Business Responsibility and Sustainability Report (BRSR). Prior to the amendment, companies were required to make disclosures in a report called the Business Responsibility Report (BRR). The BRR was a much truncated and less quantitative version of the BRSR. The BRSR (and earlier, the BRR) forms part of the annual report and is required to be disclosed by every eligible company and published on the website of the eligible company.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	<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	In the case in which 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?	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 and stakeholder expectations.
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?	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 ('SEBI LODR'). 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 (the 'SEBI Act'), contains a residual provision that prescribes a minimum penalty of INR 100,000 (approximately \$1,265). Such a penalty may extend to INR 100,000 each day that failure continues subject to a maximum of INR 10,000,000 (approximately \$12,650). 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 of certain offences is permissible under law.
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?	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. 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).
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?	Please see our responses to question 15. In terms of future developments, in its report dated 8 May 2020, the Committee on Business Responsibility Reporting recommended the adoption of a truncated form of the BRSR called BRSR Lite, which may be used by smaller unlisted companies on a voluntary basis to begin reporting on sustainability-related issues. We expect to see some movement on this in the future.

12	<p>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?</p>	<p>Presently, there is no concept of 'ESG approved/compliant' status under Indian law. The BRSR, however, requires eligible reporting companies to disclose quantitative data in relation to their internal operations and structure to ascertain the standard of ESG compliance. 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. However, the process followed by these ERPs in arriving at the ratings is not uniform and these ratings/ERPs are not presently regulated. In January 2022, SEBI released a consultation paper on ESG Rating Providers for Securities Markets wherein the introduction of a regulatory framework for ERPs was proposed to facilitate standardisation in and better monitoring of the process of ESG ratings in India.</p>
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13	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<p>As mentioned in our responses to earlier questions, the top 1,000 listed companies by market capitalisation have to mandatorily make ESG disclosures from FY 2022–2023 by reporting them in the prescribed BRSR 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"> Businesses should conduct and govern themselves with integrity in a manner that is ethical, transparent and accountable. Businesses should provide goods and services in a manner that is sustainable and safe. Businesses should respect and promote the wellbeing of all employees, including those in their value chains. Businesses should respect the interests of and be responsive to all their stakeholders. Businesses should respect and promote human rights. Businesses should respect and make efforts to protect and restore the environment. Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent. Businesses should promote inclusive growth and equitable development. Businesses should engage with and provide value to their consumers in a responsible manner. <p>Further, the ESG disclosures required to be made are summarised below:</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, water withdrawal, air emissions (including for greenhouse gas emissions), waste management and sustainable sourcing, as well as compliance with extended producer responsibility.</p> <p>Social</p> <p>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 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</p> <p>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.</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>
14	<p>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?</p>	<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 further clarified that while undertaking BRSR disclosures, entities already preparing and disclosing sustainability reports based on internationally accepted reporting frameworks (eg, GRI and Integrated Reporting TCFD) may 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. 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	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?	Yes, ESG disclosures are standardised and must be mandatorily disclosed in the prescribed BRSR format by all reporting companies. Apart from the leadership indicators under section C of the BRSR, data must be disclosed by all reporting entities in the prescribed format. The BRSR 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.
16	Is there a clear guidance and 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?	Yes, there is a clear format and guidance note prescribed by SEBI with respect to the ESG disclosures under the BRSR. In our view, the scope is well laid out.
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?	Indian law currently does not provide for the concept of 'ESG approved or ESG compliant' assessment or certification. That said, we understand that several ERPs do weigh cross impacts in their rating methodologies to arrive at their scores/ratings.
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?	We believe that the answer lies somewhere in the middle. While ESG disclosure regulation has certainly aided investor value creation in India, its net impact is yet to be assessed because the ESG regime is at a very nascent stage in India. However, it has also increased the compliance burden for companies.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	The ESG regime is very nascent in India and there are various nuances that demand greater clarity. Given that the mandatory disclosure regime will only take effect from the present financial year (and corresponding reports published in 2023), we are yet to fully witness the effectiveness of such disclosures. Having said that, we note that many clients are already signatories to global benchmarks and reporting frameworks, whose efficacy has already been tested.

20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	<p>Regulators may adopt a truncated form of the BRSR called BRSR Lite, which may be used by unlisted companies or large public companies on a voluntary basis to begin reporting on sustainability-related issues. We also 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>Additionally, as mentioned in our response to question 12, we expect SEBI to issue guidelines or regulations to govern ERPs in an attempt to bring about transparency and consistency in their methodologies and boost investor sentiment. Generally speaking, we expect SEBI to become more active and involved in the ESG space as we move forward. In our view, key focus areas for SEBI are to ensure greater transparency in disclosures, enhanced corporate governance and data symmetry.</p>
21	Please provide your name, firm name and a brief biography about yourself (optional).	<p>Suhana Islam Murshedd is a partner in the Corporate and Commercial Practice Group in Khaitan & Co. She has 15 years of work experience as a transactional lawyer. Her core expertise includes private equity investments, M&A, business transfers, joint ventures and foreign investments. She advises several multinational clients on their India entry strategies, inbound investments and foreign exchange laws. She also regularly advises on corporate law and other allied commercial laws.</p> <p>Her work experience in M&A and private equity spans several sectors, such as healthcare, electric vehicles/e-mobility, fast-moving consumer goods (FMCG), retail, manufacturing, IT and IT-enabled services. She also specialises in corporate governance and is a core member of her firm's ESG practice, where she advises companies on various aspects of ESG regulations and compliance, including ESG-specific due diligence in M&A transactions.</p> <p>She has been recognised as a Notable Practitioner in the prestigious IFLR1000 2021 Rankings, as well as the 2020 and 2019 rankings.</p>

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Ireland

1	Which jurisdiction are you covering?	Republic of Ireland
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Irish corporates are currently subject to the NFRD. The EU CSRD will build upon the current regime under the NFRD and extends: (1) the scope of the information currently required to be reported under the NFRD; and (2) the companies to which the disclosure regime applies.
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<p>The NFRD was transposed into Irish law by the EU (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017, which requires 'applicable companies' to make certain non-financial disclosures, with additional disclosures required for 'large traded companies'. These regulations require 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 statement should include consideration of the risks to the business connected to these matters. Reports are also required to include statements as to business practices and supply chains. Each statement is to be provided on a 'comply or explain' basis. Large traded companies are also required to include a statement setting out the company's policy in respect of the diversity of its board of directors, addressing various items.</p> <p>Some Irish companies will be familiar with the existing SFDR and EU Taxonomy Regulation, which aimed to establish an EU-wide classification system (or taxonomy) for environmentally sustainable economic activities. The CSRD goes further than these existing regulations, as set out in more detail below.</p> <p>Under the SFDR, there is a distinction between the two different types of funds that fall under the mandatory periodic disclosure templates that were due to come into effect on 1 January 2023.</p> <p>The two types of funds are classified as light green and dark green.</p> <p>Light green funds mainly promote environmental and social characteristics, provided that the companies invested in maintain good governance practices.</p> <p>Dark green funds focus on sustainable investment. The SFDR defines sustainable investments as:</p> <ul style="list-style-type: none"> • investments in economic activity that contributes to an environmental objective; • investments in economic activity that contributes to a social objective and, in particular, an investment to tackle inequality, and foster social cohesion, social integration or labour relations; and • investments in human capital or economically and socially disadvantaged communities, provided that such investments do not harm any of those objectives, and the investee follows good governance practices with respect to sound management structures. <p>In the current proposal, the CSRD will apply to:</p> <ul style="list-style-type: none"> • all large companies governed by the law of, or established in, an EU Member State; • all publicly listed SMEs, except for listed micro-enterprises, as of 1 January 2026; and • all SMEs, non-listed, who choose to use the standards on a voluntary basis. <p>Further detail is set out below.</p>

4	<p>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 prior to mandatory disclosure requirements being triggered?</p>	<p>Under the CSRD, the following will be required to report sustainability information (implemented in stages):</p> <ul style="list-style-type: none"> • large public companies already subject to the NFRD (publicly listed companies, banks and insurance companies with at least 500 employees); • all large EU companies, whether listed or not; • SMEs with securities listed on an EU-regulated market (excluding listed micro-enterprises); and • certain non-EU companies with significant activities in the EU. <p>For the purposes of the CSRD, a large company is one that meets at least two of the following criteria: (1) a balance sheet of more than €20m; (2) net turnover of more than €40m; 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 €4m and €20m; (2) net turnover of between €8m and €40m; and/or (3) an average of between 50 and 250 employees during the financial year.</p> <p>Non-EU companies that generate a net turnover of €150m or more in the EU and have at least one subsidiary or branch in the EU will be required to report under the CSRD.</p> <p>To ensure the proportionality of applying this regime to non-EU companies, it will only apply where the branch has a turnover of more than €40m or where a subsidiary is large or listed, and it is the branch or subsidiary that should make the report under lighter reporting standards.</p> <p>Under the NFRD, around 11,000 EU companies are required to file a report. The CSRD will reportedly increase the number of reporting entities to approximately 49,000 EU companies, which generate in excess of 75 per cent of the total turnover attributable to EU companies.</p>
5	<p>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?</p>	<p>As above.</p>
6	<p>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</p>	<p>N/A – see the next answer.</p>
7	<p>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?</p>	<p>This depends on the type of information being disclosed and what this information is in relation to. Some specific guidance has been provided to companies in the investment fund industry and is established in the Regulatory Technical Standards (RTS), which was developed by the European Supervisory Authorities.</p> <p>The regulations require that AIFMs and unit investment trust (UIT) management companies consider and disclose, in a consistent and harmonised manner, how ESG factors are adopted in their decision-making processes.</p> <p>The SFDR applies different requirements and implementation timeframes in respect of disclosures:</p> <ol style="list-style-type: none"> on websites; in prospectuses; and in periodic reports.
8	<p>In the case in which 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?</p>	<p>Yes, various surveys carried out by the Big Four evidence that a significant number of companies are reporting on ESG.</p>

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?	The regulator is the Central Bank of Ireland.
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?	The CSRD requires each 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.
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?	See above.
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?	At the heart of the CSRD is the introduction of mandatory European sustainability reporting standards (ESRS), which the European Financial Reporting Advisory Group (EFRAG) is currently developing. The CSRD will amend the NFRD, as well as the Audit Directive (2014/56/EU), Transparency Directive (2013/50/EU) and relevant regulations. Companies that are required to report under the CSRD will be required to provide a range of information in compliance with the ESRS, which will include information on: (1) environmental factors (eg, climate impacts of business activities); (2) social factors (eg, equal opportunities, gender equality and equal pay, working conditions and human rights matters); and (3) governance factors (eg, business ethics and culture, anti-bribery and corruption measures, internal controls and risk management systems).
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	See above.
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?	<p>Under the CSRD, climate change is included under the environmental disclosure requirement.</p> <p>It is also worth mentioning the EU Taxonomy on Sustainable Finance (the 'Taxonomy'), which is a classification system that enables the categorisation of economic activities/sectors that play key roles in climate change mitigation and adaptation.</p> <p>The Taxonomy established six environmental goals:</p> <ul style="list-style-type: none"> i. climate change mitigation; ii. adaptation to climate change; iii. the protection of water and marine resources; iv. the transition to a circular economy; v. pollution prevention and control; and vi. the protection and restoration of biodiversity and ecosystems. <p>To be included in the proposed Taxonomy, an economic activity must contribute substantially to at least one environmental objective and 'do no significant harm' to the other five environmental objectives. The classifications will work through technical screening criteria, methodology and regulatory guidance.</p>
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?	ESG disclosures are not standardised yet, but under CSRD information provided in the sustainability reports, they will have to be audited by a third party: an accredited independent auditor. Under the CSRD, audits may be conducted on a limited assurance basis initially, but by 1 October 2028, the European Commission will adopt standards for the reasonable assurance of sustainability reporting (following a feasibility assessment), which will then be the required audit standard.

16	Is there a clear guidance and 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?	<p>For the first time, in their financial statements, companies will be required to report the full range of ESG issues relevant to their business in accordance with mandatory EU sustainability reporting standards, which will build on indicators in the EU Taxonomy Regulation. These standards are being developed by EFRAG, and the first set of standards was due for adoption by 31 October 2022 (draft standards were published in April 2022). While the CSRD proposal does not substantially change the type of information that must be reported on, it significantly increases the level of detail required. It introduces new requirements for companies to provide information about their strategy, targets, the role of the board and management, the principal adverse impacts connected to the company and its value chain, intangibles and how they have identified the information they report on.</p> <p>It also clarifies the principle of double materiality, removing any ambiguity about the fact that companies should report information necessary to understand how sustainability matters affect them, and information necessary to understand the impact they have on society and the environment.</p>
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?	<p>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. An example is the war in Ukraine. The comment has been made that the war may have provoked a rethink of what ESG stands for, but the challenge is compounded by the fact that there is no universal, objective, rigorous framework for ESG investing. Additionally, the war in Ukraine is an incredible challenge for the world of ESG. This conflict is forcing the following questions: What is ESG investing? Does it really work? Can we afford it? Therefore, the measurement of goals is very difficult when goals may rapidly change as a result of geopolitical issues outside of the control of corporates.</p>
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?	<p>The answer lies somewhere in the middle as there appears to be conflicting data on value creation. There is certainly a greater compliance burden.</p>
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	<p>Yes, this is a very relevant topic right now, and clients are more concerned than ever about transparency and disclosure.</p>
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	<p>For some time now, Ireland has been putting ESG front and centre of its overall national strategic growth plan. Having strong policies and good governance in this area will be an important factor in continuing to attract foreign direct investment to Ireland.</p>
21	Please provide your name, firm name and a brief biography about yourself (optional).	<p>Keavy Ryan, A&L Goodbody.</p> <p>Ryan specialises in M&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>Ryan also manages the firm's equity benefits group. She advises on all aspects of share incentives, including the treatment of share incentives in M&A transactions and corporate governance, regulatory and shareholder issues arising from the establishment and operation of share plans, and executive remuneration programmes.</p>

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for 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 NFRD; and (2) the SFDR.</p> <p>It is noted, however, that the level of compulsoriness of the 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>
3	If ESG disclosures are required, is there a distinction between the type and nature of 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 prior to mandatory disclosure requirements being triggered?	<p>For example, the NFRD, as implemented in Italy by Legislative Decree No 254/2016, only applies to companies (including partnerships) that: (1) are EU 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. 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, 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>
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?	<p>Under the NFRD, as implemented by Legislative Decree No 254/2016, PIEs are required to draw up an annual, non-financial statement 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 the 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>
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	<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 the 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>

7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	<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>
8	In the case in which 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?	<p>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 2020 CONSOB report on the non-financial reporting of Italian listed companies, which reported that only three entities that could have benefited from an exemption due to size or business continuity issues decided to publish a non-financial statement in accordance with Legislative Decree No 254/2016.</p>
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?	<p>CONSOB 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 the 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, the 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 (European Banking Authority (EBA), ESMA and European Insurance and Occupational Pensions Authority (EIOPA)) 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	What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?	<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 the SFDR, please refer to the answer to question 9.</p>
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?	<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 in the near future. 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. Although, as mentioned, they are being discussed at the EU level, they will also have a direct impact on Italy once implemented.</p> <p>Reference is, in particular, to the proposal for a CSRD on which the European Council and the Parliament have recently reached a provisional agreement. It amends the NFRD by expanding its scope of application to all large companies (including private companies) and all listed companies (including SMEs). It also requires reporting to be certified by an accredited independent auditor or certifier and to be submitted in a standardised digital format.</p>

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?	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. It is also important to note that the EU Taxonomy Regulation goes hand in hand with both the SFDR and NFRD. Indeed, from January 2022, firms in scope for ESG disclosures under the NFRD must state how they are working to reduce climate change and will need to report against all six objectives by January 2023. Furthermore, the EU Taxonomy Regulation has also updated specific elements of the SFDR, introducing new financial disclosure requirements for products based on the EU Taxonomy Regulation.
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<p>As mentioned above, the areas that the reports must cover under the 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 the 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, the SFDR requires additional disclosures depending on how 'green' the product is considered to be.</p>
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?	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 the 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 the NFRD need to report against the environmental objectives set out in the EU Taxonomy Regulation, including climate mitigation, whereas, under the 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.
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?	Not yet, and this has been one of the main issues affecting ESG disclosures so far as it resulted in many idiosyncratic and often non-consistent formats. However, this is expected to change in the near future. Indeed, mandatory templates for required disclosures under the SFDR have been developed by the RTS drawn up by the European Commission; however, the RTS did not apply until January 2023. Furthermore, as mentioned, standardisation of ESG reporting is one the key areas of focus of the proposed CSRD.

16	Is there a clear guidance and 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?	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.
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?	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.
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?	<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	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	<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> <p>Such a demand is currently met only in part by the existing ESG disclosure regime in Italy. This is mainly due to a lack of standardisation and clarity as to what needs to be reported and how, as well as the consolidated and widespread application of disclosure requirements, resulting in clients often being in fear of falling into the well-known 'greenwashing trap'. However, we expect the aforementioned upcoming developments to better align disclosure requirements with both companies and investors' demands as they focus in particular on enhancing transparency and standardisation.</p>
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	We expect ESG disclosures to become more and more 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.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Massimiliano Danusso, BonelliErede.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Japan

1	Which jurisdiction are you covering?	Japan
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	ESG disclosures are not mandatory yet, but based on the report recently published by the Disclosure Working Group established in the Financial Services Agency of Japan, it is expected that certain ESG disclosures will become mandatory from the fiscal year ending 31 March 2023 in an annual securities report under the Financial Instruments and Exchange Law of Japan, which is publicly available via EDINET (Japanese EDGAR).
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	N/A
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 prior to mandatory disclosure requirements being triggered?	N/A
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?	N/A
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	N/A
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	N/A
8	In the case in which 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?	Making ESG disclosures on a voluntary basis has been widely seen among large Japanese companies.
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?	The regulator is the Financial Services Agency of Japan.
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?	False or misleading statements in an annual securities report might result in civil and criminal liability, and an administrative penalty.
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?	As stated for question 2, certain ESG disclosures will become mandatory and a tiered disclosure system might be adopted.
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?	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	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	At this moment, ESG disclosures are not required in an annual securities report.

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?	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	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?	Under the anticipated regulations, companies will have such latitude, at least at an early stage after enforcement.
16	Is there a clear guidance and 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?	There is not really any clear guidance or definition.
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?	Investors need to seriously examine how compliant with ESG each company is because there exists ESG incompliance more or less in every company.
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?	The answer lies somewhere in the middle. The anticipated regulations are expected to maintain, or even create, investor value for listed companies, but it is unclear whether it will be cost-effective in the long term.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	Yes, it seems that our corporate clients do not always welcome a detailed disclosure regime as it might deprive them of flexibility.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	I envisage that ESG disclosures in Japan will adopt stricter standards following some overseas trends, such as ISSB and SEC rules.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Katsumasa Suzuki, Mori Hamada & Matsumoto.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Lithuania

1	Which jurisdiction are you covering?	Lithuania
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	ESG disclosures are mandatory to some, but not all businesses in Lithuania. In this respect, Lithuania follows requirements stemming from EU law, including the NFRD, SFDR and EU Taxonomy Regulation, which establish mandatory ESG disclosure rules to large public interest companies with more than 500 employees, financial market participants and financial advisers.
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<p>Yes, according to ESG legislation, namely the NFRD, SFDR and/or EU Taxonomy Regulation, the following types of entities are required to make ESG disclosures:</p> <ul style="list-style-type: none"> i. large public interest companies with more than 500 employees, as defined under the NFRD, including: <ul style="list-style-type: none"> • listed companies; • credit institutions; • insurance companies; and • other companies designated as PIEs; ii. financial market participants, as defined under the SFDR, including: <ul style="list-style-type: none"> • insurance undertakings that make available insurance-based investment products (IBIPs); • investment firms and credit institutions that provide portfolio management; • institutions for occupational retirement provision (IORP); • manufacturers of pension products; • AIFMs; • pan-European personal pension product (PEPP) providers; • managers of qualifying venture capital funds or qualifying social entrepreneurship funds; and • undertakings for collective investment in transferable securities (UCITS) management companies; iii. financial advisers, as defined under the SFDR, including: <ul style="list-style-type: none"> • insurance intermediaries that provide insurance advice with regard to IBIPs; • insurance undertakings that provide insurance advice with regard to IBIPs; • investment firms and credit institutions that provide investment advice; • AIFMs that provide investment advice; and • UCITS management companies that provide investment advice.
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 prior to mandatory disclosure requirements being triggered?	<p>As noted in our answers to questions 2 and 3, ESG disclosures are mandatory only for large public interest companies with more than 500 employees, financial market participants and financial advisers.</p> <p>With respect to large public interest companies, these include listed companies, credit institutions, insurance companies and other companies designated as PIEs. Moreover, the NFRD applies a 'comply or explain' mechanism, meaning that if such a large public interest company is required to make ESG disclosures under the NFRD but does not do so, it must explain the reasons behind this.</p> <p>To some extent, the SFDR applies a similar threshold of 500 employees for financial market participants. As part of SFDR's 'comply or explain' mechanism, it requires financial market participants with more than 500 employees to consider the principal adverse impacts of investment decisions on sustainability factors, whereas participants with fewer employees may decide to not consider the principal adverse impacts and explain the reasons why.</p>

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?	<p>The specific type of required ESG disclosure depends on the type of disclosing entity and the legal basis for such a disclosure/report:</p> <ol style="list-style-type: none"> Large public interest companies with more than 500 employees are subject to continuous annual ESG reporting obligation (according to the NFRD and the EU Taxonomy Regulation). Financial market participants and financial advisers are subject to more extensive ESG disclosure obligations, which include: <ul style="list-style-type: none"> firm-level ESG disclosure obligations: firms are required to publish and continuously maintain up-to-date ESG information on their websites (according to the SFDR); and product-level disclosure obligations: includes both pre-contractual disclosures and continuous annual reporting requirements (pursuant to the SFDR and EU Taxonomy Regulation).
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	<p>The ESG legislation requires companies to make ESG disclosures in the form of ESG-related statements or annexes, which are not reported separately, but rather provided within or together with the relevant document or report covering a broader scope of content, that is, not limited to ESG-related information. For instance, according to the NFRD, large public interest companies with more than 500 employees have to make ESG disclosures in the form of non-financial statements included in management reports. For more information on the location of the ESG disclosures, please refer to our answer to question 7.</p>
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	<p>The location of ESG disclosures depends on the type of disclosure:</p> <ol style="list-style-type: none"> Large public interest companies with more than 500 employees should make their annual ESG disclosures in the form of non-financial statements in management reports. Financial market participants and financial advisers should make their ESG disclosures in the following locations: <ul style="list-style-type: none"> firm-level ESG disclosures: published and maintained on the firm's website; and product-level disclosure obligations: provided both in pre-contractual documents related to specific financial products and in the firm's annual reports.
8	In the case in which 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?	<p>As noted in our answers to questions 2 and 3, ESG disclosure requirements are still not mandatory for all businesses in Lithuania. We find that corporates in Lithuania that do not fall under the mandatory disclosure regime are starting to show interest in integrating long-term ESG objectives into their day-to-day operations and are closely watching market developments in the ESG area. This is often driven by investor expectations as investors are integrating the assessment of potential financial and reputational risks coming from ESG-related issues into their investment decision-making processes. While the focus on ESG objectives is growing both on the EU and international levels, businesses in Lithuania are likely to give more attention and resources in the future to voluntary ESG commitments, such as making ESG disclosures and/or otherwise introducing ESG goals into their business strategies.</p>
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?	<p>In Lithuania, ESG disclosure compliance is monitored by the Bank of Lithuania. The Bank of Lithuania is also authorised to impose sanctions for non-compliance with mandatory ESG disclosure requirements, with the strictest potential penalties being up to: (1) €5m; or (2) ten per cent of the annual turnover, whichever is higher. The laws do not establish any grace periods.</p>
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?	<p>The current ESG regime treats false and misleading ESG disclosures in the same manner as any other breaches of ESG legislation, that is, they can lead to penalties described in our answer to question 9.</p> <p>Formally, the answer is the same regardless of whether the ESG disclosure was mandatory or voluntary. EU legislators acknowledge the negative impact of 'greenwashing' and similar unfair practices, thus, the aim is that all ESG disclosures should be made in a compliant manner, especially if made by regulated financial market participants and financial advisers.</p>

11	<p>Is there a tiered disclosure system in your jurisdiction and are any further ESG disclosure requirements expected in your jurisdiction in the near future?</p>	<p>Yes, ESG disclosure requirements are being developed and imposed gradually. The key upcoming changes are described below:</p> <p>i. CSRD: the CSRD will amend the current NFRD regime, by introducing more detailed reporting requirements to a greater number of businesses. The application of new requirements is expected to take place in three stages:</p> <p>from January 2024, for companies already subject to the NFRD regime;</p> <p>from January 2025, for large companies that are not presently subject to the NFRD regime; and</p> <p>from January 2026, for listed SMEs, small and non-complex credit institutions, and captive insurance undertakings.</p> <p>ii. The SFDR and EU Taxonomy Regulation: from January 2023, the disclosure of the remaining four environmental objectives: (a) sustainable use and protection of water and marine resources; (b) transition to a circular economy; (c) pollution prevention and control; and (d) protection and restoration of biodiversity and ecosystems, will become mandatory.</p> <p>iii. The new RTS on ESG disclosures: from 1 January 2023, the European Commission's Delegated Regulation (EU) 2022/1288 of 6 April 2022 detailing the RTS on ESG disclosures made under the SFDR regime will enter into force. This will bring more standardisation to ESG disclosures and increase their comparability.</p> <p>Moreover, various implementing regulations and guidance are still in the pipeline of the European Commission and European Supervisory Authorities, that is, the EBA, ESMA and EIOPA.</p>
12	<p>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?</p>	<p>Current ESG legislation primarily differentiates two types of ESG approved/compliant financial products: (1) financial products, which advertise environmental or social characteristics; and (2) financial products, which explicitly have sustainable investment as their objective. ESG disclosures should provide information on how a specific financial product meets such characteristics/sustainable investment objectives.</p> <p>In addition, financial products can have – but this is not mandatory – an index designated as a reference benchmark. In such a case, product-level ESG disclosures should also contain information related to the designated index/indices.</p>

13	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<p>A brief overview of the nature and extent of different types of ESG disclosures is provided below:</p> <ol style="list-style-type: none"> i. The NFRD requires large public interest companies with more than 500 employees to include non-financial statements as an integral part of their annual public reporting obligations. Such non-financial statements must contain information on the company'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. In addition, pursuant to the EU Taxonomy Regulation, such non-financial statements should also include information on how and to what extent the company's activities are associated with economic activities that qualify as environmentally sustainable. ii. The SFDR requires financial market participants and financial advisers to make firm-level and product-level ESG disclosures: <ul style="list-style-type: none"> • Firm-level disclosures: This requires financial market participants and financial advisers to publish and maintain the following information on their websites: <ul style="list-style-type: none"> – Financial market participants: (a) where they consider principal adverse impacts of investment decisions on sustainability factors, a statement on due diligence policies with respect to those impacts; or (b) where they do not consider adverse impacts of investment decisions on sustainability factors (possible only for financial market participants with less than 500 employees), clear reasons for why they do not do so. – Financial advisers: (a) information as to whether they consider the principal adverse impacts on sustainability factors in their investment advice or insurance advice; or (b) information as to why they do not consider the adverse impacts of investment decisions on sustainability factors in their investment advice or insurance advice. • Product-level information in pre-contractual disclosures and annual reports: The scope and content of ESG disclosures depends on the type of product: <ul style="list-style-type: none"> – financial products that advertise environmental or social characteristics (Article 8 of the SFDR and, if applicable, Article 6 of the EU Taxonomy Regulation); – financial products that explicitly have sustainable investment as their objective (Article 9 of the SFDR and, if applicable, Article 5 of the EU Taxonomy Regulation); and – other financial products (Article 7 of the EU Taxonomy Regulation).
14	<p>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?</p>	<p>Yes, current ESG legislation has a specific emphasis on climate change-related disclosures. Such disclosures are made through climate-related benchmarks. In particular, the SFDR allows companies to designate various reference benchmarks to financial products which: (1) advertise environmental or social characteristics; or (2) explicitly have sustainable investment as their objective. Climate-change specific benchmarks are regulated by the EU Regulation on Climate Transition Benchmarks (2019). The regulation introduced two new categories of climate-related benchmarks that can be used to attract investors willing to reallocate their capital towards a low-carbon and climate-resilient economy:</p> <ol style="list-style-type: none"> i. EU CTB, which brings the resulting benchmark portfolio onto a decarbonisation trajectory; and ii. 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 1.5C°.

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?	<p>Currently, we see a strong focus on the standardisation of ESG disclosures; however, this process is not finalised yet. Therefore, particularly in respect of non-financial statements made by large public interest companies, there is still some latitude in terms of the extent and manner of disclosures made.</p> <p>It should be further noted that, in terms of SFDR disclosures, from 1 January 2023, the new RTS on ESG disclosures will enter into force (under the European Commission's Delegated Regulation (EU) 2022/1288 of 6 April 2022). The RTS will bring more standardisation to ESG disclosures made under the SFDR and increase their comparability.</p>
16	Is there a clear guidance and 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?	<p>Current ESG legislation aims to harmonise the definition and scope of ESG considerations within the EU. Article 2(17) of the SFDR defines the ESG objectives as follows:</p> <ul style="list-style-type: none"> i. environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land; on the production of waste and greenhouse gas emissions; or on the impact on biodiversity and the circular economy; ii. social objective, in particular, an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations; or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives; iii. governance objective, meaning that the investee companies follow good governance practices, in particular, with respect to sound management structures, employee relations, remuneration of staff and tax compliance. <p>Even though current legislation enhances transparency on what should be included in the scope of ESG matters, more guidance and clarity is still needed. EU legislators acknowledge the negative impact of 'greenwashing' and similar unfair practices that lead to undermining investor confidence and awareness of the true ESG impact of financial products.</p>
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?	<p>The current ESG regime measures and takes into account all three ESG goals, that is, ESG goals as sustainability factors. Accordingly, ESG disclosures should show how a financial product considers principal adverse impacts on all such sustainability factors. For example, it is likely that the ESG disclosure on a financial product allowing investors to invest in a coal mining company that has effective gender diversity policies would indicate that such a financial product considers social and governance objectives, but does not consider/meet environmental objectives.</p>
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?	<p>The answer lies somewhere in the middle. The ESG disclosure regime has significantly contributed to investor value creation and the transition to a more sustainable and resource-efficient economy. On the other hand, it is true that ESG-related regulations also create a greater compliance burden for businesses. It should be further noted that the quality and relevance of disclosed ESG information partially depends on how responsibly market participants approach ESG-related matters: their ESG strategies and standards, financial and human resources allocated to these matters and so on.</p>
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	<p>We see that clients are willing to include long-term ESG objectives into their investment decision-making processes and day-to-day operations, but sometimes find the current ESG disclosure regime quite complex and wish for a greater level of transparency. In particular, the market would welcome legislative changes that could help to improve the quality and comparability of ESG information and/or remove the grey areas that complicate and slow down business decisions and processes.</p>

20	<p>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</p>	<p>We can identify an increasing number of market participants in Lithuania currently shifting their focus to pursuing long-term sustainability and ESG objectives. ESG objectives are being pursued by the setting of respective criteria in business plans, establishing corporate governance measures or social responsibility initiatives, and introducing new business lines and products that might offer synergies between various market participants.</p> <p>From a regulatory perspective, we expect that the ESG disclosure regime will become more and more far reaching, with a greater number of businesses being bound to disclosure requirements in the near future. Companies that do not fall under the mandatory ESG disclosure regime are still likely to face pressure from investors and business partners to disclose ESG and sustainability metrics that could be used in making investment decisions, due diligence and risk management processes.</p>
21	<p>Please provide your name, firm name and a brief biography about yourself (optional).</p>	<p>Ieva Dosinaitė is a partner at Ellex Valiunas, and the head of their banking and finance practice. During the past 14 years of her professional career, she has represented many banking and financial institutions, insurance companies and trading companies, and has advised on complex financial transactions, as well as regulatory and capital market-related issues. She has significant experience in managing pan-Baltic legal projects and is noted for solving legal issues with international institutions. As a finance law expert, she is commended for her negotiating and analytical skills when representing clients in financing negotiations.</p> <p>Ellex Valiunas was formed in 1992 and is a member of Ellex, a circle of leading Baltic law firms. It has the largest specialised legal team in Lithuania, with a solid portfolio of cross-border experience both in international projects and landmark local deals. With nearly 200 legal professionals and a broad variety of practice areas, the firm is ideally positioned to provide each client with top expertise and in-depth specialised legal services. Ellex Valiunas is the exclusive member in Lithuania of Lex Mundi, the world's leading network of independent law firms with in-depth experience in 100-plus countries worldwide, and World Services Group (WSG), a global association whose members are among the top providers of professional business services.</p>

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Mexico

1	Which jurisdiction are you covering?	Mexico
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>No, ESG disclosures are not mandatory according to local regulations.</p> <p>Participants are only required to include a section in the annual report submitted to investors and to the stock exchange about the environmental performance of the issuer.</p> <p>Participants should mention if the issuer has an environmental policy, if it has or intends to install an environmental management system, if it has any environmental certificate or recognition either by the competent authority or duly accredited entity, and if it has any programme or project for the protection, defence or restoration of the environment and natural resources. Likewise, they must explain whether the activities of the issuer represent a considerable environmental risk.</p>
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	N/A
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 prior to mandatory disclosure requirements being triggered?	N/A
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?	<p>The only requirement is that participants disclose in the annual report whether the issuer has an environmental policy, if it has or intends to install an environmental management system, if it has any environmental certificate or recognition either by the competent authority or duly accredited entity, and if it has any programme or project for the protection, defence or restoration of the environment and natural resources. Likewise, they must explain whether the activities of the issuer represent a considerable environmental risk.</p> <p>Additionally, the relevant impacts, current or potential, derived from climate change in the issuer's business must be disclosed.</p>
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	N/A
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	There is a section in the annual report for environmental performance.
8	In the case in which 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, corporates in Mexico are more and more willing to make ESG disclosures.
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?	N/A
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?	There are only penalties in the case of environmental performance. If it's not included in the annual report, the National Banking and Securities Commission is authorised to impose applicable penalties, which can be a fine of 10,000 to 100,000 days of UMA (<i>unidad de medida y actualización</i>) (MXN\$962,00 to MXN\$9,622,000) or from five to ten years in prison.
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?	N/A

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?	N/A
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	Environmental performance: Participants should mention if the issuer has an environmental policy, if it has or intends to install an environmental management system, if it has any environmental certificate or recognition either by the competent authority or duly accredited entity, and if it has any programme or project for the protection, defence or restoration of the environment and natural resources. Likewise, participants must explain whether the activities of the issuer represent a considerable environmental risk. Additionally, the relevant impacts, current or potential, derived from climate change in the issuer's business must be disclosed.
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?	N/A
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?	N/A
16	Is there a clear guidance and 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?	There are no regulations on this matter. However, the Mexican Stock Exchange has issued Guidelines on Climate Change and Carbon Neutrality for issuers.
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?	N/A
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?	Currently, there isn't a strong legal framework on this matter in Mexico; therefore, there isn't enough and reliable information on ESG for investors.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	Yes, investors are looking for more and better information on ESG principles.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	ESG disclosures will become more important, and if there isn't legal reform soon on this matter, investors and market participants will require this information to be included, and will develop guidelines and other internal regulations to include this information, and make companies and issuers that include ESG disclosures more attractive.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Miguel Gallardo Guerra, Bello, Gallardo, Bonequi y García (BGBG).

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for the Netherlands

1	Which jurisdiction are you covering?	<p>The Netherlands</p> <p>For disclosure regulations in the Netherlands, EU law is particularly relevant. This includes the NFRD, which is part of the Directive on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (the 'Accounting Directive'), the SFDR, the EU Taxonomy Regulation and the Regulation on prudential requirements for credit institutions (the 'Capital Requirements Regulation').</p> <p>The Dutch Decree on the disclosure of non-financial information (Besluit bekendmaking niet-financiële informatie) implements the NFRD. Other relevant national instruments include the Decree publication diversity policy (Besluit bekendmaking diversiteitsbeleid) (the 'Diversity Decree'). The Child Labour Due Diligence Act (Wet Zorgplicht Kinderarbeid) is excluded from our response as this act is not currently in force and the timing thereof remains uncertain.</p> <p>The above is not an exhaustive list. Moreover, the proposed CSRD, as well as national legislation, are expected to significantly change and expand the ESG disclosure landscape in the Netherlands. For example, the CSRD, if adopted in its current form, will significantly broaden the scope of entities that must make ESG disclosures. Where appropriate, our answers also discuss any changes the CSRD will entail.</p>
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>ESG disclosures are mandatory under certain conditions for market participants in the Netherlands (see question 3 for further elaboration).</p>

3	<p>If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?</p>	<p>Current legislative instruments that include ESG disclosure obligations distinguish between the type and nature of entities that need to make ESG disclosures. In general, disclosures are only mandatory for large and public interest institutions. However, what is understood as a 'large' institution varies among the various legislative instruments.</p> <ul style="list-style-type: none"> • The NFRD applies to large PIEs, more specifically: (1) listed companies; (2) banks; (3) insurers; and (4) public interest organisations. Article 2:398(7) of the Dutch Civil Code (DCC) provides, in this respect, that the following entities qualify as PIEs: (1) legal entities that have issued securities that have been admitted to trading on a regulated market in a Member State; (2) credit institutions; (3) insurance undertakings; and (4) legal entities that have been designated by regulation because of their size or function in society. • As stated, the NFRD only applies to 'large' PIEs. Pursuant to the Accounting Directive, these organisations have: (1) at least 500 employees; and (2) a balance sheet total of more than €20m or net turnover of more than €40m (Article 19a sub 1 of the NFRD). • The SFDR applies to financial advisers and 'financial market participants' within the meaning of Article 2 sub 1 of the SFDR. Financial advisers employing fewer than three people are exempted (Article 17 of the SFDR). • Entities that fall within the scope of the NFRD and SFDR are entities that also have disclosure obligations pursuant to the EU Taxonomy Regulation. • The Capital Requirements Regulation applies to 'large institutions'. Article 4 sub 146 of that regulation provides that these are institutions: (1) that are Global Systemically Important Institutions; (2) Other Systemically Important Institutions; (3) within the EU Member State of establishment, one of the three largest institutions in terms of the total value of assets; or (4) have a total asset value of at least €30bn. • Last, the Diversity Decree requires ESG disclosures to be made by large listed companies, which are companies that meet at least two of the following three criteria: (1) balance sheet of more than €20m; (2) net turnover of more than €40m; and (3) average number of employees over the financial year of more than 250.
4	<p>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 prior to mandatory disclosure requirements being triggered?</p>	<p>As stated under question 3, the NFRD stipulates that the disclosure obligations thereunder only apply to large PIEs. Furthermore, if a large PIE does not pursue policies in relation to a prescribed ESG issue, the non-financial statement must provide a clear and reasoned explanation for not doing so (Articles 19a and 20a of the NFRD).</p> <p>The SFDR distinguishes between entity-related and product-related ESG disclosure rules. For example, Article 4 of the SFDR requires financial market participants to disclose more information on their websites compared to financial advisers. Moreover, some ESG 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> <p>In contrast to the NFRD and SFDR, the Capital Requirements Regulation does not distinguish between entities that need to make a full ESG disclosure and those for which limited disclosures suffice. Nor does the Capital Requirements Regulation work on a 'comply or explain' basis. Rather, if, for example, the company has certain ESG-related policies, it should disclose these. Only if a policy on which ESG disclosures should be made does not exist is the company required to explain why this is the case.</p>

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?	In general, ESG disclosures in the Netherlands are required on a continuous annual reporting basis. The SFDR also requires ESG disclosures prior to investments and on a more continuous basis. Article 3 of the 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 the 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 the SFDR – Articles 8 and 9 have not yet taken effect – pre-contractual ESG disclosures must be made. These disclosures concern financial products offered or manufactured (eg, alternative investment funds or managed portfolios). Finally, Article 11 of the SFDR and Articles 4, 5, 6 and 7 of the EU Taxonomy Regulation require ESG disclosures to be made in periodic reports.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	<p>In general, ESG disclosures must – except for SFDR disclosures – be included in the board's statement in the annual report on non-financial performance indicators. 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, it is not possible for Dutch entities to submit a separate report. In the event that an entity publishes a consolidated management report, ESG disclosures must also be presented in consolidated form (Article 2 sub 3 of the Decree on the disclosure of non-financial information).</p> <p>SFDR disclosures, depending on the activity and period in time, are required on an institution's website, as pre-contractual disclosure, and in the form of periodic reports.</p>
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	See question 6. ESG disclosures can be found in annual or periodic reports and on (financial) company websites.
8	In the case in which 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?	<p>We indeed see companies in the Netherlands voluntarily expand their disclosures on ESG-related issues. These companies often refer to the standards of the GRI and the recommendations of the TCFD on their websites and other official platforms, and report on their operations and policies.</p> <p>Specific sectors have also formalised voluntary additional reporting. For instance, many parties active in the pensions sector have committed to the 2018 Covenant for International Socially Responsible Investing (the 'IMVB'), which recognises the reporting obligations under the Occupational Pensions Directive ('IOPD II') and adds to them.</p> <p>We also note that voluntary ESG disclosures may, in part, also 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	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?	<p>The regulators that monitor compliance with ESG disclosures are the Dutch Authority for the Financial Markets (Autoriteit Financiële Markten or AFM), as a supervisory authority on accounting law, and for financial markets, the Dutch Central Bank (De Nederlandsche Bank or DNB), and public prosecutor.</p> <p>The AFM is the principal enforcement agency for ESG disclosures. It monitors the timely and complete deposition of financial statements, including ESG information that must be disclosed pursuant to the legal instruments discussed in the previous questions. The AFM may impose an administrative penalty (<i>bestuurlijke boete</i>) if the financial statement is submitted too late, in violation of the Financial Supervision Act (FSA). 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. In 2021, the AFM focused on preventative supervision on SFDR compliance, providing generic feedback (AFM 2021 Report Implementation SFDR).</p> <p>Furthermore, DNB monitors ESG disclosures by banks and pension funds.</p> <p>Recently, we have observed NGOs in the Netherlands requesting that the AFM enforce ESG disclosure obligations. For example, NGOs may find that a specific company has not made (all) required ESG disclosures and ask the AFM to enforce compliance in respect of that specific company.</p>
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?	<p>For false or misleading mandatory ESG disclosures, administrative penalties can be imposed. False or misleading ESG disclosures – also if non-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 of the DCC, intervention by the Dutch Advertising Committee (Reclame Code Commissie) or penalties by the Netherlands Authority for Consumers and Markets (the ‘ACM’) (Articles 6:139g and 6:193i of the DCC in conjunction with Article 2.15 of the Dutch Consumer Protection Enforcement Act).</p>
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?	<p>The current disclosure system requires large PIEs (see question 3) to report on sustainability or ESG aspects in their financial reporting by filing a non-financial information (NFI) statement.</p>

12	<p>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?</p>	<p>Green taxonomy</p> <p>The EU Taxonomy Regulation, which is already effective, is a classification system establishing a list of environmentally sustainable economic activities. Alongside the SFDR, NFRD and proposed CSRD, the EU Taxonomy Regulation complements the sustainable finance regulatory regime. The EU Taxonomy Regulation entered into force on 12 July 2020.</p> <p>The EU Taxonomy Regulation applies to:</p> <ul style="list-style-type: none"> • undertakings that are subject to the obligation to publish an NFI statement or consolidated non-financial statement pursuant to Article 19a or Article 29a of the Accounting Directive, respectively; • 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 of the EU Taxonomy Regulation and Article 16 of the SFDR); and • 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) of the EU Taxonomy Regulation). <p>At the core of the EU Taxonomy Regulation is the definition of sustainable economic activity. This definition is based on three criteria (Article 3 and Articles 9–16 of the EU Taxonomy Regulation). Sustainable economic activity satisfies the following:</p> <p>On 10 December 2021, a delegated act supplementing Article 8 of the EU Taxonomy Regulation was published in the Official Journal of the EU (the 'Disclosures Delegated Act'). The Disclosures Delegated Act was applicable from 1 January 2022. The delegated act specifies the content and presentation of information to be disclosed by undertakings subject to Article 19a or 29a of the Accounting Directive.</p> <p>It 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 and Articles 9–16 of the EU Taxonomy Regulation). Under the EU 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) of the EU Taxonomy Regulation).</p> <p>Two delegated acts on sustainable activities for climate change mitigation and the adoption objectives of the EU Taxonomy Regulation 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 Regulation ('Climate Delegated Act') was published in the Official Journal of the EU (the 'Climate Delegated Act'). The Climate Delegated Act was 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 Regulation, entered into force and applied as of 1 January 2023 (the 'Complementary Climate Delegated Act'). A third act delegated on the other four environmental objectives of the EU Taxonomy Regulation will be published in 2022.</p>
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13	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<p>In the NFI statement, large PIEs must include their policies on environmental, social and personnel matters, respect for human rights, and the fight against corruption and bribery. In order to give substance to these requirements, large PIEs are permitted to make use of national and international frameworks, such as the GRI, Integrated Reporting Framework ('IR Framework'), the recommendations of the TCFD or the non-binding guidelines on non-financial reporting of the European Commission.</p> <p>Pursuant to Article 8 of the EU Taxonomy Regulation, large PIEs 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.</p> <p>Moreover, Dutch legislation contains additional reporting requirements on social and governance 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 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 under the Diversity Decree, or if no policy is provided, an explanation why such a policy has been excluded from the statement (Article 3a sub d of the Diversity Decree on the content of the management report).</p> <p>Moreover, the Dutch Corporate Governance Code (the 'CGC') 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>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?</p>	<p>N/A</p> <p>This will change once the CSRD comes into force and the ESRS are adopted. The ESRS contain a specific section on environmental disclosures, including specific climate change disclosures.</p>
15	<p>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?</p>	<p>ESG disclosures must be included in the NFI statement (see question 11). Regarding the extent of ESG disclosures, the NFRD, and its Dutch implementation, prescribe a minimum: the NFI statement must include the large PIEs' policies on environmental, social and personnel matters, respect for human rights, and the fight against corruption and bribery.</p> <p>Regarding the manner of disclosure, companies have some latitude. Large PIEs are permitted to make use of national and international frameworks, such as the GRI standards, IR Framework, TCFD recommendations or non-binding guidelines on non-financial reporting of the European Commission. This also allows companies to 'cherry pick' the standards to be applied for their non-financial reporting, provided the minimum requirements following from the NFRD are met.</p> <p>The ESG disclosure requirements following from Dutch legislation regarding the male-female ratios as set out in the answer to question 13 are standardised; deviation is not allowed.</p> <p>Compliance with the CGC is based on the 'comply or explain' principle. Consequently, the CGC offers flexibility and provides room to depart from the principles and best practice provisions, including the disclosure requirements as set out in the CGC.</p>
16	<p>Is there a clear guidance and 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?</p>	<p>Currently, there is no clear guidance on what applicable law understands by 'ESG disclosures'. Current applicable legislation does not define the scope of what is included in ESG.</p> <p>This will change once the CSRD comes into effect. 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 will not include one definition for the scope of ESG. Because these are overarching terms, we expect that the definition will remain open to interpretation.</p>

17	<p>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?</p>	<p>Article 18 of the EU Taxonomy Regulation prevents green investments from being labelled and regarded as 'sustainable' when they involve negative impacts on human rights, including labour rights, corrupt practices, or links to non-compliance with the letter or spirit of tax laws or anti-competitive practices. As a result, Article 3 of the EU Taxonomy Regulation specifies one out of three criteria for environmentally sustainable economic activities that are to be 'carried out in compliance with the minimum safeguards'. In addition, Recital 35 of the EU 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 undertakings whose economic activities are to be considered as EU Taxonomy Regulation-aligned have to align with the standards for responsible business conduct mentioned in:</p> <ul style="list-style-type: none"> • the OECD Guidelines for Multinational Enterprises; • 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 • the International Bill of Human Rights. <p>Certain developments on clarifications to Article 18 of the EU Taxonomy Regulation are pending. For example, on 11 July 2022, the PSF published and requested feedback on its draft report on the application of minimum safeguards set out in Article 18 of the EU Taxonomy Regulation. The draft report gives advice on how undertakings could ensure compliance with Article 18. The PSF and European Commission invited stakeholders to provide feedback on the draft report until 22 August 2022. After considering the stakeholders' input, the PSF submitted a final report in September 2022. The final advice will be analysed by the European Commission, but it does not bind the European Commission to any decision on the matter.</p>
18	<p>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?</p>	<p>It is increasingly important for companies to report on sustainability topics, for example, to attract funding. Hence, there is a business rationale for making ESG disclosures. In turn, the currently proposed ESRS are an extra incentive for companies to adopt more responsible ESG policies and abide by them. Hence, the proposed CSRD and ESRS will create value in that sense.</p> <p>Although the current regulations are not considered a burden per se, the introduction of the CSRD and ESRS will require considerable efforts and investments from the companies in scope. This may very well create a compliance burden. However, the ESG disclosures may at the same time again create value for businesses and help to attract funding against favourable terms or otherwise aid companies in their commercial endeavours. Hence, the positive effects do not exclude the negative effects and vice versa.</p> <p>However, one important point to note in this context is that the CSRD in its current form requires many detailed disclosures. This will force companies to issue very extensive reports on a wide range of topics that may not be as relevant. In turn, this will cause stakeholders and potential investors to incur difficulties in separating the main important issues from the secondary and non-important ones. The result may be that neither investors nor society are able to make effective use of the reported information.</p>
19	<p>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</p>	<p>We observe that our clients would benefit from clarity in terms of harmonised sustainability standards. It is questionable whether current developments in the field of sustainability reporting will result in this or whether the new regimes will be 'more transparent, clear and effective'. A non-harmonised system creates undue vulnerabilities, especially when companies operate globally and are subject to several, and possibly diverging, sustainability disclosure obligations.</p> <p>We further note that, for example, the currently proposed ESRS requires companies to report with a significant level of detail and presume materiality. 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>

20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	<p>As also discussed under question 1, we envisage that the proposed CSRD and its further implementation will have a significant impact on sustainability reporting in the Netherlands in terms of both the scope and nature. The introduction of the ESRS on a European level and the development of sustainability standards by the ISSB on a global level will further enhance sustainability reporting. An important question will be how the ESRS and ISSB standards will relate to each other, and how companies applying both will structure their sustainability disclosures.</p> <p>Another future trend we envisage is increased monitoring by regulators and supervisory 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 expect the AFM to increase its focus on ESG disclosures and the ACM to intensify its focus on greenwashing.</p> <p>Finally, we envisage that further clarification will be needed on, for example, assurances by accountants with respect to sustainability disclosures and other technicalities around the role of accountants.</p>
21	Please provide your name, firm name and a brief biography about yourself (optional).	Pieter Schütte, Eline Glazener, Loes van Dijk and Ingrid van der Klooster (Stibbe), and Davine Roessingh, Annabel van Schaik and Lisanne Baks (De Brauw Blackstone Westbroek).

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for 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 entity that is required to make ESG disclosures?	No. There is no distinction between the type and nature of entity that is required to make ESG disclosures.
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 prior to mandatory disclosure requirements being triggered?	N/A
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?	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	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	Reports can be done in the form of a separate report or as part of the annual report to stakeholders.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	According to the 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	In the case in which 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?	In Nigeria, it is mandatory for companies to report ESG issues annually; therefore, it is not voluntary as companies operating in this jurisdiction have to comply with the requirement.
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?	In Nigeria, there are different regulators that monitor ESG disclosure compliance, which include the Nigerian Stock Exchange (NSE) and SEC.
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?	Where a false or misleading ESG disclosure has been made, it could lead to enormous penalties issued by the SEC that are as high as a seven-figure fine.
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?	No, there is no tiered disclosure system in Nigeria, and at the moment, there are no further ESG disclosure requirements expected.
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?	There is currently no system of ESG certification in Nigeria. However, there are guidelines and laws for different sectors that contain rules and procedures that must be complied with regarding ESG disclosures.

13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<p>Part E, Principle 26 of the National Code of Corporate Governance (NCCG) specifically addresses sustainability issues that public companies are expected to consider in their operations, and covers some of the key elements in the Financial Services Regulation Coordination Committee (FSRCC) Sustainability project. It states, in part, that 'paying adequate attention to sustainability issues including environment, social, occupational and community health and safety, ensures successful long-term business performance and projects the company as a responsible citizen contributing to economic development'.</p> <p>SEC guidelines on sustainability should be adopted by public companies 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 NSE (the 'SDGN') also provide reporting requirements to include the following:</p> <ul style="list-style-type: none"> i. the reporting period should be in alignment with the same financial period; ii. the report should contain a comprehensive description of the listed company's management overview of economic, ESG risks and opportunities; and iii. the NSE also encourages reporting companies to consider getting their reports independently verified against international standards. <p>The reporting themes cover the following:</p> <ul style="list-style-type: none"> i. economic-suppliers relations management, and ethics/responsible products and services; ii. social diversity in the workplace, labour practices, occupational health and safety, human rights and society; iii. governance: anti-corruption; and iv. environmental: product and service responsibility.
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?	We are not aware of any specific emphasis on climate change with regards to ESG disclosures in Nigeria.
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?	There is a reporting template available on the SEC website 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.
16	Is there a clear guidance and 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?	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 NCCG, Petroleum Industry Act 2021, Companies and Allied Matters Act, and Federal Competition and Consumer Protection Act 2018.
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?	In Nigeria, ESG goals encompass economic, ESG aspects that are taken into account as a whole when measuring ESG compliance. Therefore in our opinion, no one aspect, such as gender diversity policies, can be taken in isolation for the purpose of measuring ESG compliance.
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?	Yes. In Nigeria, ESG disclosure regulation has aided investor value creation.

19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	Yes. Our clients would certainly like to see a greater, more transparent, clear and effective ESG disclosure regime.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	In the future, we foresee 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.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Patrick Osu, Ajumogobia & Okeke.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Pakistan

1	Which jurisdiction are you covering?	Pakistan
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Pakistan has an extremely limited mandatory disclosure regime for ESG. The Listed Companies (Code of Corporate Governance) Regulations, 2019 require listed companies to have at least one female director, and this is also disclosed in the annual reports.
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	Presently, the mandatory requirements are for listed companies only.
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 prior to mandatory disclosure requirements being triggered?	Please see the response above.
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?	Please see the response above.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	No, separate reports are not required.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	Annual reports are submitted to the Securities and Exchange Commission of Pakistan (SECP).
8	In the case in which 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 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 section on Management Discussion and Analysis 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 terms of conducting ESG compliance audits for leading corporates.
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?	The SECP is the regulator for companies, generally. The Pakistan Stock Exchange is also the frontline regulator for listed companies. Because 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 disclosures or separate ESG disclosure compliance. Late payment charges are applicable for the late filing of annual returns.
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?	There are no penalties for false or misleading ESG disclosures specifically.
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?	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.
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?	No.
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	Please see the response to question 2 above.

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?	No.
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?	N/A
16	Is there a clear guidance and 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?	No.
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?	N/A given the rudimentary and basic disclosure regime.
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?	Given the rudimentary mandatory disclosure regime, there has been no investor value creation.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	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	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	We expect that a proper code of ESG governance will be issued for listed companies to begin with that will involve more transparent and effective 'comply or explain' disclosures and limited mandatory ESG-specific disclosures.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Rabel Z Akhund, Akhund Forbes. Founder and Managing Partner Akhund Forbes Corporate and Commercial Law Firm, Pakistan Officer of the CMF of the IBA 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.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for 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, ESG disclosures are mandatory, but only for certain companies under the supervision of the Peruvian Securities Market Regulator (Superintendencia del Mercado de Valores or SMV) as explained in our answer to question 3. As part of their disclosure obligations, these companies must reveal the level of implementation of certain ESG standards to the market annually. This disclosure is made through the Corporate Sustainability Report, which in turn is part of the annual report (<i>memoria anual</i>) that every company under the supervision of the SMV shall prepare and disclose to the market through its filing with the SMV.</p> <p>The Corporate Sustainability Report contains a set of questions 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; and (3) complementary information. Issuers shall provide information on whether they comply 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. However, it is mandatory for the aforementioned companies to reveal the extent to which they implement them.</p>
3	If ESG disclosures are required, is there a distinction between the type and nature of 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 as part of the general market segment. Therefore, it is not mandatory for issuers with securities registered in other market segments, such as the alternative securities market (<i>mercado alternativo de valores</i> created to facilitate 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 prior to mandatory disclosure requirements being triggered?	Please, refer to the answers to questions 2 and 3.
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?	As stated in the answer to question 2, the Corporate Sustainability Report must be filed annually to the SMV as part of the issuers' annual report.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	Yes. ESG disclosure is made through the Corporate Sustainability Report, whose new template was approved in 2020. The new template places 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	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	The Corporate Sustainability Report is filed annually with the SMV and can be found on the SMV's website and the corporate website of the corresponding issuer (it is mandatory to upload the report to the corporate website).

8	<p>In the case in which 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?</p>	<p>As mentioned before, the filing of the Corporate Sustainability Report is mandatory for issuers with securities registered in the Public Registry of the Securities Market as part of the general market segment. However, and in addition to the aforementioned cases, it is now more common for certain institutional investors, such as Private Pension Fund Administrators, insurance companies and investment funds, to ask Peruvian issuers in which they plan to invest about their ESG practices and policies as part of their investment eligibility analysis. Therefore, before these institutional investors approve the investment, the issuer often needs to complete an ESG questionnaire internally prepared by the investor, which allows it to identify and assess the company's standards, level of implementation and commitment in connection with ESG matters.</p>
9	<p>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?</p>	<p>The name of the regulator that monitors ESG disclosure compliance in Peru is the Peruvian Securities Market Regulator (Superintendencia del Mercado de Valores). Failure to file the Corporate Sustainability Report is a 'serious' infraction that may result in fines and the suspension of securities trading, among other penalties. In the case of late filing, this constitutes a minor sanction, which results in a warning or fine.</p>
10	<p>What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?</p>	<p>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.</p> <p>The answer does not change if the issuer makes the ESG disclosure voluntarily because the applicable sanction is for the disclosure of false or inaccurate information to the market, regardless of whether it was made voluntarily or mandatorily.</p>
11	<p>Is there a tiered disclosure system in your jurisdiction and are any further ESG disclosure requirements expected in your jurisdiction in the near future?</p>	<p>There is not a tiered disclosure system in Peru. Likewise, 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 on 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 and investors can fully incorporate ESG parameters in investment evaluations.</p>

12	<p>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?</p>	<p>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. We have observed that the regulator, on the basis of the reports filed by issuers, conducts a comprehensive study and prepares an annual report for the market, measuring, in general, the level of implementation of ESG standards among issuers.</p> <p>On the other hand, recently (on 8 November 2021), the Lima Stock Exchange 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> <p>In this way, as explained by the Lima Stock Exchange, the S&P/BVL Peru General ESG Index has been designed to reflect the performance of companies that are listed on the S&P/BVL Peru General index and meet environmental, social and corporate governance criteria (defined by S&P in its Corporate Sustainability Assessment). This index includes companies with ESG scores that are equal to or higher than the median of the S&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>
13	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<p>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. We have observed that the regulator, on the basis of the reports filed by issuers, conducts a comprehensive study and prepares an annual report for the market, measuring, in general, the level of implementation of ESG standards among issuers.</p> <p>On the other hand, recently (on 8 November 2021), the Lima Stock Exchange 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> <p>In this way, as explained by the Lima Stock Exchange, the S&P/BVL Peru General ESG Index has been designed to reflect the performance of companies that are listed on the S&P/BVL Peru General index and meet environmental, social and corporate governance criteria (defined by S&P in its Corporate Sustainability Assessment). This index includes companies with ESG scores that are equal to or higher than the median of S&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>

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?	The Corporate Sustainability Report contains 12 questions regarding the environment and climate change to measure the ESG standards of the company in this aspect. Some questions are: (1) Does the company measure its water consumption in all its activities? (2) Does the company have objectives or targets to reduce greenhouse gas emissions? (3) Does the company measure its greenhouse gas emissions? (4) Has the company been subject to any investigation, complaint, public controversy or been imposed any corrective measure, precautionary measure, fine or other sanction involving the violation of environmental regulations? (5) Does the company have an environmental policy or management system that includes environmental commitments? (6) Does the company measure its energy consumption?
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?	The disclosures made through the Corporate Sustainability Report are meant to be standardised.
16	Is there a clear guidance and 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?	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	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?	Because the implementation of ESG standards is not mandatory in Peru, there are no specific legal requirements referring to them that apply to investments. As explained in our previous answers, it is mandatory for certain companies to disclose the level of implementation of ESG standards. Such a disclosure seeks to provide investors with an objective comparison tool to measure and evaluate, according to their own internal policies and criteria, whether a specific investment is convenient. In other words, investors internally determine their own ESG goals in connection with their investments, and how cross impacts between those goals are taken into account when analysing and making their investment decisions.
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?	ESG standards are still a recent trend in Peru. Despite this, 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 the answer to question 8), is adding value to the market and investors. On the one hand, such disclosure is helping investors to analyse the sustainability model of the companies they invest in and, in that way, make better investment decisions. On the other hand, issuers interested in performing sustainable practices now have a tool that allows them to differentiate between companies that do and don't follow the standards. It is true, however, that as of today, apart from being preferred by certain institutional investors that perform investments, there are no other tangible benefits to implementing ESG standards that issuers see (eg, better interest rates).
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	As mentioned before, ESG standards are still a recent trend in Peru. Nevertheless, we have observed that our clients (eg, institutional investors) are interested in having more transparent and comprehensive ESG disclosure, which is the reason that this type of client has elaborated on its own ESG questionnaire, as explained in our answer to question 8. Among issuers, however, some are still resistant to more comprehensive disclosures on ESG compliance.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	Please refer to our answer to question 11.

21	<p>Please provide your name, firm name and a brief biography about yourself (optional).</p>	<p>Nydia Guevara Villavicencio is a partner in the Finance and M&A department of Rodrigo, Elías & 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 market 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, on regulatory matters.</p>
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ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Poland

1	Which jurisdiction are you covering?	Poland
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<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> <ul style="list-style-type: none"> i. regulations implementing the NFRD to Polish law: the Accounting Act of 29 September 1994 (unified text: Journal of Laws of 2021, item 217, 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 as equivalent information required by the laws of a non-Member State (the 'Regulation'); ii. the EU Taxonomy Regulation; iii. the SFDR; iv. 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'); v. the BMR; and vi. 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'). <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>
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<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 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> <ul style="list-style-type: none"> i. average annual employment exceeding 250 employees; ii. balance sheet size exceeding PLN 85m; and iii. net turnover exceeding PLN 170m; <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 and sponsor 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.</p>

4	<p>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 prior to mandatory disclosure requirements being triggered?</p>	<p>Please refer to our answer to question 3.</p>
5	<p>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?</p>	<p>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). 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).</p>

6	<p>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</p>	<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>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. 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, 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, the EBA prepared draft implementing technical standards for these disclosures, which will be integrated (once adopted by the European Commission and published in the Official Journal) in Implementing Regulation 2021/637. The draft Implementing Technical Standards (ITS) provide templates for Article 449a disclosures, which are aimed at ensuring comparability of data and which, once adopted, will need to be used starting from 2023.</p> <p>A standardised approach to disclosures under the STS Regulation is also anticipated. Public consultations of the European Supervisory Authorities (EBA, EIOPA and ESMA) on the content, methodologies and presentation of information on sustainability indicators for simple, transparent and standardised (STS) securitisations were only finalised at the start of July 2022.</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>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?</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> <ul style="list-style-type: none"> i. on the obliged entity's website; ii. part of the pre-contractual information provided to the client on the basis of the relevant sectoral legislation; and iii. part of information disclosed in periodic reports under relevant sectoral legislation. <p>For the NFRD, EU Taxonomy Regulation and BMR disclosures, please see our answer to question 6.</p>
8	<p>In the case in which 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?</p>	<p>N/A</p>

9	<p>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?</p>	<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 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> <ul style="list-style-type: none"> i. 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; ii. impose a financial penalty on a financial market participant not exceeding PLN 21,569,000 or three 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 iii. 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. <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.</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 ten 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 chairman 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	<p>What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?</p>	<p>Please see our response to question 9.</p>

11	<p>Is there a tiered disclosure system in your jurisdiction and are any further ESG disclosure requirements expected in your jurisdiction in the near future?</p>	<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> <ul style="list-style-type: none"> i. a revision of the NFRD: in April 2021, the European Commission published a proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014 regarding the CSRD, which will replace the NFRD; the main amendments will include extending the scope of reporting obligations to all large companies and all companies listed on regulated markets, and more detailed reporting requirements with a requirement to report according to mandatory EU sustainability reporting standards; ii. 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); iii. a proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (the 'CSSD'), which 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 NFRD, but which will be subject to the CSSD, will be required to report on matters covered by the CSSD by publishing an annual statement on their website; iv. certain ESG-related disclosure requirements are expected to apply in the future in connection with a proposal for a Regulation of the European Parliament and of the Council on European green bonds (the 'EU GBS Regulation'); v. prospective changes to the EU Taxonomy Regulation focusing on social objectives; and vi. prospective changes to the STS Regulation: earlier this year 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. Moreover, the EBA suggests extending voluntary principal adverse impact disclosures to non-STS securitisations as well.
12	<p>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?</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> <ul style="list-style-type: none"> i. makes a significant contribution to one or more environmental goals: <ul style="list-style-type: none"> (a) climate change mitigation; (b) adaptation to climate change; (c) sustainable use and protection of water and marine resources; (d) transition to a closed-loop economy; (e) pollution prevention and control; and (f) protection and restoration of ecosystem biodiversity; ii. does not cause serious harm to any environmental objective; iii. provides a minimum of social and governance safeguards; and iv. meets technical eligibility criteria. <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 targeted consultation on ESG ratings and sustainability factors in credit ratings has just been conducted by the European Commission and was aimed at giving it enough insight to evaluate whether a possible EU-level policy initiative on ESG ratings and sustainability factors in credit ratings is needed. An EU Ecolabel for retail financial products is also being prepared at the EU level.</p>

13	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<p>We partially included our answer to this question in preceding responses (particularly in relation to the CRR, BMR and STS Regulation). Below, we elaborate on some additional details relating to the NFRD, EU Taxonomy Regulation and SFDR disclosures.</p> <p>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"> 1. a brief description of the entity's business model; 2. key non-financial performance indicators related to the entity's operations; 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; 4. a description of due diligence procedures if the entity applies them as part of the policies referred to in point (iii); and 5. a description of significant risks associated with the entity's activities that may adversely affect the issues referred to in point (iii), 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. <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/financed 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> <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"> i. 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 ii. 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. <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>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?</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. We do not identify a particular emphasis on climate change-related disclosures per se in the 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	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?	<p>The trend is for disclosures to become increasingly standardised for the sake of data comparability (please see our answer to question 6). However, 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: Guidelines on Reporting of Non-Financial Information (2017) and a Guidelines for Reporting Non-Financial Information supplement on the disclosure of information related to climate issues (2019). Based on the above guidelines, the Polish Stock Exchange, in cooperation with the European Bank for Reconstruction and Development (EBRD), published the Guidelines for ESG Reporting, which is a guide for listed issuers on reporting ESG factors that systematises and organises recommendations in this area.</p>
16	Is there a clear guidance and 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?	<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>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	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?	<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	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?	<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. On the other hand, a plethora of new regulations that are not always accompanied by standardised and comparable disclosure methods makes it difficult and costly for companies to follow their ESG disclosure obligations and for investors to compare different ESG data.</p>

19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	The main difficulties related to the current ESG disclosure regime lie in the multiplicity of regulations, novelty of obligations and their complexity. Moreover, the current reach of ESG disclosures is not absolute and there are still many market players that are not covered by any such disclosure obligations (they may, however, decide to apply them on a voluntary basis). Thus, our answer would be yes. Both in-scope entities, as well as investors are interested in the current regime becoming increasingly standardised, clear and effective, and therefore easier to handle and assimilate.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	We identify the following trends: <ul style="list-style-type: none"> • impact investing; • 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 • greater standardisation of reporting.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Marcin Pietkiewicz, Attorney-at-law, Partner, Wardyński & Partners. Łukasz Szegda, Attorney-at-law, Partner, Wardyński & Partners. Joanna Werner, Attorney-at-law, Wardyński & Partners.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Singapore

1	Which jurisdiction are you covering?	Singapore
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	Sustainability reports are required to be made by all issuers listed on the Singapore Exchange (SGX).
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	Yes, currently only issuers listed on the SGX have to file a sustainability report.
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 prior to mandatory disclosure requirements being triggered?	All issuers are required to file a sustainability report, which must contain the elements set out in our response to question 13. While climate reporting is currently on a 'comply or explain' basis for all issuers, an issuer in: (1) the financial industry; (2) agriculture, food and forest products industry; and (3) energy industry may not exclude such disclosures from FY 2023. In addition, issuers in: (1) the materials and buildings industry; or (2) transportation industry may not exclude climate-related disclosures from FY 2024.
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?	The sustainability reports to be issued by SGX-listed issuers are required to be made on an annual basis.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	Sustainability reports are typically included as part of the annual reports issued by an SGX-listed issuer.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	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.
8	In the case in which 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, 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.
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?	The regulator monitoring the sustainable reporting is the SGX. Sustainability reports are mandatory under the listing rules on a 'comply or explain' basis and failure to 'comply or explain' would mean non-compliance with a listing rule and this 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.
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?	There are potential criminal and civil liabilities for false or misleading public statements made by issuers. These are generally applicable to false or misleading statements and are not specific to ESG disclosures.
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?	<p>In June 2022, the Accounting and Corporate Regulatory Authority (ACRA) and SGX Regulation (SGX RegCo) set up a Sustainability Reporting Advisory Committee (SRAC) to advise on a sustainability reporting roadmap for Singapore-incorporated companies, beyond listed companies on the SGX. As part of its work, SRAC will provide input on the suitability of international sustainability reporting standards for implementation in Singapore.</p> <p>It is expected that this may lead to further ESG disclosure requirements for Singapore companies generally.</p>
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?	No, there is no national system of ESG certification for ESG approval/compliance.

13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<p>The annual sustainability report required to be made by SGX-listed issuers must include the following primary components:</p> <ol style="list-style-type: none"> 1. material ESG factors; 2. climate-related disclosures consistent with the TCFD recommendations; 3. policies, practices and performance; 4. targets; 5. sustainability reporting framework; and 6. board statement and associated governance structure for sustainability practices. <p>Where the issuer cannot report on any primary component, the issuer must state this, and explain what it does instead and the reasons for doing so.</p>
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?	<p>Yes. While climate reporting is on a 'comply or explain' basis for all issuers currently as part of the mandatory sustainability report, an issuer in: (1) the financial industry; (2) agriculture, food and forest products industry; and (3) energy industry may not exclude such disclosures from FY 2023. In addition, issuers in: (1) the materials and buildings industry; or (2) transportation industry may not exclude climate-related disclosures from FY 2024.</p>
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?	<p>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.</p>
16	Is there a clear guidance and 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?	<p>Yes, the SGX has proposed a list of core ESG metrics as guidance to assist issuers in providing a standardised set of reported ESG data. Each metric has a description, defined standardised units and is mapped against global sustainability reporting frameworks.</p>
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?	<p>N/A as the focus is on disclosure rather than ESG compliance.</p>
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?	<p>While the quality of ESG disclosure has improved significantly since the initial introduction of the requirement for sustainability reporting, a move towards a more standardised set of disclosures and independent audits would facilitate investor assessment of these reports and enhance the value of these reports.</p>
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	<p>Generally, issuers appreciate the clear guidance given on the level of mandatory disclosures required for SGX-listed issuers.</p>
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	<p>We expect greater regulation and movement towards a common set of disclosures for more industries and classes of entities as regulators seek to manage greenwashing and provide investors with a reliable and consistent dataset to assess sustainability claims.</p>
21	Please provide your name, firm name and a brief biography about yourself (optional).	<p>Lee Kee Yeng, Allen & Gledhill.</p>

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for South Korea

1	Which jurisdiction are you covering?	South Korea
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	There is no mandatory consolidated ESG disclosure requirement applicable to market participants in Korea, whereas: (1) the corporate governance report is required to be published by companies as discussed in question 3; and (2) disclosures on certain limited environmental and social issues are required to be made in accordance with various regulations, as discussed in question 3.
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<p>Governance</p> <p>Under the rules of the Korea Exchange Inc ('KRX'), a company listed on the KOSPI Market of the KRX (the 'KRX KOSPI Market') with aggregate assets based on its consolidated financial statements in an amount of KRW 1tn or more is required to publish its <i>Corporate Governance Report</i>, which contains information on its governance by 31 May of each year.</p> <p>In addition, a financial company is required to publish its Annual Report on Corporate Governance, which contains information on its governance by 20 days prior to its annual general shareholders' meeting, as required under the Act on the Corporate Governance of Financial Companies.</p> <p>Environmental</p> <p>Under the Financial Investment Services and Capital Markets Act (the 'FSCMA'), a company that: (1) listed its shares or debt securities on the KRX; (2) conducted a public offering of securities; or (3) is subject to external audit requirements, with 500 or more holders of the shares or debt securities issued by such a company (the 'company subject to the annual report filing requirement') is required to file the annual report with the KRX and the Financial Supervisory Service (FSS) by 31 March each year. Companies emitting greenhouse gases that are designated as 'controlled entities' under the Framework Act on Carbon Neutrality and Green Growth to Cope with Climate Crisis (the 'Framework Act on Carbon Neutrality') are required to disclose information on the following in their respective annual reports: (1) compliance with government regulations related to environmental issues; (2) estimate of the capital expenditure for environmental improvement facilities; and (3) greenhouse emissions and energy use.</p> <p>In addition, the Act on the Development and Support for Environmental Technology (the 'Environmental Technology Act') requires the following to disclose information on the target, major action plan and performance of environmental protection, resource conservation and reduction of pollutant emissions on the Env-Info System maintained by the Korea Environmental Industry and Technology Institute by 30 June each year: (1) companies designated as 'eco-friendly enterprises'; (2) companies listed on the KRX with aggregate assets based on their non-consolidated financial statements of KRW 2tn or more; and (3) companies as designated under the Presidential Decree to the Environmental Technology Act, including controlled entities under the Framework Act on Carbon Neutrality.</p> <p>Social</p> <p>Companies subject to the annual report filing requirement under the FSCMA are required to disclose the following in their annual report: information on their employees, remuneration payable to their executive officers and gender equality.</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 prior to mandatory disclosure requirements being triggered?	Please refer to our response to question 3.
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?	The disclosures discussed in question 3 are required to be made on a continuous annual reporting basis.

6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	<p>The disclosures on the corporate governance of the company discussed in question 3 must be made in the form of a separate corporate governance report.</p> <p>The disclosures on the environmental issues discussed in question 3 must be made in the annual report to be filed under the FSCMA or through the Env-Info System maintained by the Korea Environmental Industry and Technology Institute, as the case may be.</p> <p>The disclosures on the social issues discussed in question 3 must be made in the annual report to be filed under the FSCMA.</p>
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	<p>The corporate governance reports of the companies listed on the KRX KOSPI Market discussed in question 3 are published on the website of the KRX. The annual corporate governance reports of financial companies subject to the Act on the Corporate Governance of Financial Companies are published on: (1) the website of the KRX; (2) the website of the relevant financial companies; and (3) the website of the industry association to which the relevant financial companies belong.</p> <p>The annual reports to be filed under the FSCMA discussed in question 3 are published on the websites of the FSS and KRX.</p> <p>The Env-Info System, which discloses certain environmental issues under the Environmental Technology Act, is publicly available on a website maintained by the Korea Environmental Industry and Technology Institute.</p>
8	In the case in which 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?	<p>The KRX issued 'ESG Disclosure Guidance' on 18 January 2021, which provides the basic principles on ESG disclosures applicable to companies voluntarily disclosing ESG information through sustainability reports. Only 80 companies voluntarily disclosed their sustainability reports in 2021.</p>
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?	<p>The KRX monitors compliance with corporate governance reporting requirements under the KRX rules, whereas the FSS monitors compliance with annual corporate governance reporting requirements by financial companies under the Act on the Corporate Governance of Financial Companies.</p> <p>The FSS monitors compliance with requirements to disclose environmental and social issues in annual reports to be filed under the FSCMA.</p> <p>The Minister of Environment monitors compliance with the requirement to disclose environmental issues through the Env-Info System under the Environmental Technology Act.</p>
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?	<p>Penalties under the rules of the KRX</p> <p>Failure to file the corporate governance report as required under the rules of the KRX or false disclosure therein constitutes non-fulfilment of disclosure obligations that may trigger the suspension of trading and/or imposition of monetary penalties. False disclosure in the sustainability report voluntarily filed with the KRX also constitutes such non-fulfilment of disclosure obligations.</p> <p>Penalties under the Act on the Corporate Governance of Financial Companies</p> <p>Failure to file the annual corporate governance report as required under the Act on the Corporate Governance of Financial Companies may trigger the imposition of an administrative fine.</p> <p>Penalties under the FSCMA</p> <p>Failure to disclose environmental or social issues in the annual report as required under the FSCMA may trigger the imposition of monetary penalties and/or criminal penalties, including a fine or imprisonment.</p> <p>Penalties under the Environmental Technology Act</p> <p>Failure to disclose environmental issues as required under the Environmental Technology Act may trigger the imposition of an administrative fine.</p>

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?	<p>The KRX announced that it will reduce the threshold amount that triggers the requirement to file a corporate governance report from KRW 1tn to KRW 500bn commencing from 2024, and abolish such thresholds and require all companies listed on the KRX KOSPI Market to file a corporate governance report commencing in 2026.</p> <p>In addition, the FSS announced that it will introduce mandatory ESG disclosure requirements reflecting international standards (eg, the GRI and World Federation of Exchanges (WFE)). According to the FSS announcement, companies listed on the KRX KOSPI Market with assets equal to or exceeding a certain threshold amount will be required to file an ESG report commencing from 2025 and all companies listed on the KRX KOSPI Market will be required to file an ESG report commencing from 2030.</p>
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?	<p>Currently, there is no mandatory ESG certification or benchmarks that need to be met to have 'ESG approved/compliant' status.</p> <p>Companies that voluntarily filed a sustainability report in accordance with the ESG Disclosure Guidance published by the KRX obtain ESG ratings from the Korea Corporate Governance Service or MSCI Inc/MSCI ESG Research.</p>
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<p>Governance</p> <p>The corporate governance report to be filed under the rules of the KRX must disclose the following information:</p> <ul style="list-style-type: none"> i. information on shareholders: shareholders' rights and equitable treatment of shareholders; ii. information on the board of directors: functions of the board, composition of the board, the responsibilities and evaluation of the independent directors, operation of the board and committees of the board; and iii. information on the audit systems: internal auditing bodies and external auditors. <p>The annual corporate governance report to be filed under the Act on the Corporate Governance of Financial Companies must disclose the following information:</p> <ul style="list-style-type: none"> i. composition of the board of directors; ii. qualifications of the directors; iii. responsibilities and obligations of the board and directors; iv. standards and procedure for the appointment and dismissal of directors; v. procedure for convening board meetings and method of exercising voting rights; vi. evaluation of the operational performance of the board; vii. type, composition and functions of the committees; viii. evaluation of the operational performance of the committees; ix. qualifications of executive officers; x. responsibilities and obligations of executive officers; xi. standards and procedure for the appointment and dismissal of executive officers; xii. trading of the executive officers and nominees; xiii. evaluation of the performance of executive officers and method of remuneration; xiv. principles for the succession of the CEO; xv. assistance for the succession of the CEO; xvi. qualifications of the CEO; xvii. procedure for the recommendation of the nominee for CEO; xviii. disclosure related to the recommendation of the CEO; and xix. establishment of the accountable management system.

		<p>Environmental</p> <p>The annual report to be filed by the controlled entities designated under the Framework Act on Carbon Neutrality must disclose the following information on environmental issues:</p> <ul style="list-style-type: none"> i. compliance with government regulations related to environmental issues, including pollutant emissions and environmental protection; ii. estimate on the capital expenditure for environmental improvement facilities; and iii. greenhouse emissions and energy consumption. <p>The disclosure to be made through the Env-Info System under the Environmental Technology Act must include the following information on environmental issues:</p> <ul style="list-style-type: none"> i. target and major action plan for environmental management, including the environmental protection and reduction of pollutant emissions; ii. development and utilisation of products and services for environmental management; iii. performance of environmental management; and iv. green management pursuant to Article 55 of the Framework Act on Carbon Neutrality. <p>Social</p> <p>The annual report to be filed by the company subject to the annual report filing requirement under the FSCMA is required to disclose the following information on social issues:</p> <ul style="list-style-type: none"> i. information on the executive officers; ii. information on employees; iii. information on remuneration payable to the directors and statutory auditors; and iv. any sanctions for the violation of the gender equality regulations. <p>ESG Disclosure Guidance of the KRX</p> <p>The ESG Disclosure Guidance of the KRX recommends the following items and metrics for ESG disclosure:</p> <ul style="list-style-type: none"> i. organisation: ESG response (management roles), ESG assessment (ESG risks and opportunities) and stakeholders (stakeholder participation); ii. environment: greenhouse gas emissions (direct emissions, indirect emissions and emission intensity), energy use (direct energy use, indirect energy use and energy intensity), water use (total water use), waste discharge (total amount of waste discharge), and violation and accidents (violation of environmental law and accidents); and iii. society: employment (equality and diversity, new employment hires and employee turnover, intern hiring and parental leave), health and safety (industrial accidents, product safety, and labelling and advertising), customer privacy (personal data protection) and fair competition (fair competition and abuse of market position).
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?	N/A
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?	The ESG disclosures currently required to be made under the rules of the KRX and the various Korean laws and regulations are standardised.

16	Is there a clear guidance and 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?	The rules of the KRX and each Korean law and regulation provide clear guidance and definitions necessary for ESG disclosures.
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?	<p>The Principles on the Stewardship Responsibilities of Institutional Investors (the 'Korea Stewardship Code') sets forth the principles and guidelines that institutional investors holding the shares of publicly listed companies in Korea should follow to fulfil their fiduciary duties as a steward taking care of and managing assets entrusted by others, including socially responsible investment, taking into consideration ESG during the entire investment process.</p> <p>Note that the National Pension Service, which manages the National Pension Fund, has selected 52 ESG assessment metrics and evaluates about 800 investee companies twice a year based on the aforementioned 52 ESG assessment metrics as a whole.</p>
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?	Currently, Korean laws and regulations require only limited ESG disclosures. The Korean regulators announced that the ESG disclosure regulations will be amended to streamline and strengthen ESG disclosure standards as discussed in question 11. It is expected that such ESG disclosure requirements as amended, coupled with the Korea Stewardship Code, will contribute to the socially responsible investments of institutional investors.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	Yes.
20	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 various laws and regulations, and to expand the items and metrics for ESG disclosures.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Ben B Hur and Sang Man Kim, K1 Chamber.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Spain

1	Which jurisdiction are you covering?	The Kingdom of Spain
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>Yes, companies that meet certain thresholds are subject to ESG disclosures. In particular, they are required to prepare a non-financial statement (NFS).</p> <p>Other than the obligation to prepare a NFS, there are no material disclosure obligations in respect of ESG information that apply to companies other than EU-level PIEs (as referred to in Directive 2013/34/EU, as amended by the NFRD). However, it must be noted that certain corporate documentation (eg, the management report that accompanies the statutory annual accounts and the notes in the statutory annual accounts) must include certain ESG information.</p> <p>Furthermore, it must be noted that certain EU regulations may be directly applicable to Spanish market participants (eg, the SFDR), which sets concrete disclosure requirements for financial market participants and financial advisers both at an 'entity level' and 'product level', and the EU Taxonomy Regulation, which requires companies that fall within the scope of the NFRD to disclose certain indicators about the extent to which their activities are environmentally sustainable.</p>
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<p>The NFS disclosure regime 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)) of a group required to prepare consolidated accounts. The NFS disclosure regime applies in the same manner to all of the aforementioned companies.</p> <p>It should be noted that the Code of Good Governance recommends that listed companies assign the task of supervising compliance with ESG policies to one board committee, which could be a dedicated committee. Such a 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 policy regarding ESG disclosure; (2) periodically evaluate the effectiveness of the company's corporate governance system and ESG policies; and (3) ensure that the company's ESG practices are in accordance with the established strategy and policy.</p>

4	<p>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 prior to mandatory disclosure requirements being triggered?</p>	<p>The companies referred to in question 3 are required to prepare the NFS (consolidated or individual) if:</p> <ol style="list-style-type: none"> the average number of employees during a financial year exceeds 250 (on a consolidated or individual basis, as applicable); and any of the following criteria is met: <ol style="list-style-type: none"> it is a PIE in accordance with the Audit Law or the Audit Regulation (except if it qualifies as an SME); or for two consecutive financial years, either of the following circumstances occurs at the closing date of each of them: <ul style="list-style-type: none"> the total assets are worth more than €20m (on a consolidated or individual basis, as applicable); and the net annual turnover exceeds €40m (on a consolidated or individual basis, as applicable). <p>For these purposes, and in addition to what Article 2 of Directive 2013/34/UE (as amended by the NFRD) establishes, Article 8.1 of the Audit Regulation provides that the following entities are also PIEs:</p> <ol style="list-style-type: none"> investment firms and collective investment undertakings that, for two consecutive financial years, at the closing date of each financial year, have at least: (a) 5,000 clients in the case of investment firms; or (b) 5,000 unit holders or shareholders in the case of collective investment undertakings and the management companies managing such undertakings; 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; banking foundations, financial credit institutions, payment institutions and electronic money institutions; and 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.
5	<p>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?</p>	<p>The NFS must be prepared on an annual basis. It must be 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 approval at the general shareholders' meeting as a separate item on the agenda within six months of the end of the relevant financial year. The interpretation of the Instituto de Auditoria y Cuentas (ICAC) is that the individual NFS must also be submitted to the shareholders' vote as a separate item on the agenda.</p>
6	<p>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</p>	<p>There is no required format for the NFS disclosure. Spanish law provides an option for the NFS to be included in the management report that is part of the annual accounts or as a standalone report.</p>
7	<p>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?</p>	<p>The NFS must be deposited, along with the statutory annual accounts of the company, within one month of its approval by the general shareholders' meeting at the relevant Commercial Registry (Registro Mercantil) based on the location of its registered office, at which point it becomes publicly accessible without the need to prove a legitimate interest.</p> <p>Furthermore, the consolidated NFS (if any) must be published on the registered corporate website of the company 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 devoted to corporate governance matters regarding the company, 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 have it registered with the relevant Commercial Registry.</p>

8	<p>In the case in which 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?</p>	<p>Yes, the recent rise in ESG considerations among institutional and retail investors has led to heightened demand for ESG information in Spain. Moreover, it is fair to assume that ESG disclosure obligations affecting large companies are leading to a trickle-down effect, which is already visible as large entities are demanding that their suppliers provide ESG information and get such information validated or audited.</p> <p>In particular, many SMEs are facing growing requests for sustainability information, typically from banks that lend them money and large companies that they supply. The transition to a sustainable economy is likely to mean that collecting and sharing sustainability information will become a common business practice for companies of all sizes.</p>
9	<p>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?</p>	<p>The Commercial Registry and ICAC are responsible for monitoring ESG disclosure compliance in Spain. It should be noted 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) it has been duly approved by the general shareholders' meeting; and (3) it is duly signed.</p> <p>The ICAC is responsible for imposing fines on companies that do not submit the NFS to the Commercial Registry within the deadline mentioned in question 7. Note that 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 deposit 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 specific fine is imposed based on the following criteria (always within the limits outlined in this paragraph):</p> <ol style="list-style-type: none"> 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 two per cent of the registered share capital of the company; and 3. if the amounts identified in (i) exceed two per cent of the share capital, the fine will be equal to 90 per cent of the amount calculated in accordance with (ii). <p>Additionally, failure to comply with the obligation to prepare the NFS may be considered by the courts as an infringement of the directors' duty of care, and they may be held liable for the damage caused to the company by that infringement (eg, the fines imposed on the company). This outcome depends on the relevant claimant providing evidence that the lack of care caused damage to the company or the claimant itself.</p> <p>There are no grace periods for the submission of the NFS.</p>
10	<p>What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?</p>	<p>The Criminal Code establishes that directors who misrepresent the annual accounts or other documents that should reflect the legal or economic status of the entity (eg, the NFS) in such a way as to cause economic damage to the entity, one of its partners or a third party shall be punished with imprisonment of one to three years and a fine of six to 12 months. If economic damage is caused, then the penalties imposed must be in the upper half of the possible range.</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 incur criminal liability.</p>

11	<p>Is there a tiered disclosure system in your jurisdiction and are any further ESG disclosure requirements expected in your jurisdiction in the near future?</p>	<p>There is no tiered disclosure system in Spain. The same disclosure regime applies to all companies that meet the relevant thresholds mentioned in question 4, which trigger the obligation to prepare the NFS.</p> <p>Regarding further ESG disclosure requirements, in April 2021, the European Commission adopted a proposal for a CSRD that would amend the existing reporting requirements of the NFRD. The proposal: (1) extends the scope of the NFRD to all large companies and all companies listed on regulated markets (except listed micro-enterprises); (2) introduces more detailed reporting requirements and a requirement to report according to mandatory EU sustainability reporting standards; and (3) requires companies to digitally 'tag' the reported information, so it is machine readable and feeds into the European single access point.</p> <p>Recently, the Council of the EU and the European Parliament reached a provisional political agreement on the CSRD. It is expected that the new regulation will come into application in three stages: (1) 1 January 2024 for companies already subject to the NFRD; (2) 1 January 2025 for large companies that are not presently subject to the NFRD; and (3) 1 January 2026 for listed SMEs, small and non-complex credit institutions, and captive insurance undertakings.</p>
12	<p>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?</p>	<p>There is no system of ESG certification or benchmarks that needs to be met to have 'ESG approved/compliant' status. Nevertheless, it should be noted that the consolidated NFS must be verified by an independent third party (which may be the auditor of the company). The interpretation of the ICAC is that the individual NFS must also be verified by such an 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>Furthermore, 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 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): SDGs or SASB.</p> <p>Many companies use more than one framework/standard/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, whereas others are topic or sector-specific.</p>

13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<p>The NFS must include:</p> <ul style="list-style-type: none"> i. 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; ii. a description of the group's policies pursued in relation to those matters, including the due diligence processes implemented for the identification, assessment, prevention and mitigation of significant risks and impacts, and for verification and monitoring, including what measures have been taken; iii. the outcome of those policies, including relevant non-financial KPIs to enable the monitoring and evaluation of progress and to facilitate comparability across companies and sectors, in accordance with the national, European or international frameworks used for each subject; iv. 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 v. the non-financial KPIs relevant to the company that meet the criteria of comparability, materiality, relevance and reliability. <p>Further, 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 the disabled 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>
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?	Yes, the NFS places special emphasis on climate change issues. In particular, reporting companies must identify: (1) the material components of greenhouse gas emissions resulting from their activities, including the use of 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 for reducing greenhouse gas emissions and the means implemented to this end.
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?	Spanish law does not establish a standardised format for drafting the NFS, so companies have latitude when preparing it, provided the minimum legally required content is covered.
16	Is there a clear guidance and 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?	Yes, as referred to in question 13, Spanish law clearly identifies the scope of the ESG disclosure to be included in the NFS, that is, information on: (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 the disabled and gender equality); (3) respect for human rights; (4) anti-corruption and anti-bribery matters; and (5) the company.
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?	Cross-impacts between ESG goals are not addressed by Spanish law.

18	<p>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?</p>	<p>It lies somewhere in the middle.</p> <p>On the one hand, the disclosure of non-financial information has enabled financial market participants to assess and price in ESG risks when making investment decisions, allowing financial resources to flow to companies and activities that promote the transition to a more sustainable economy. Businesses have much to gain in terms of enhancing brand value. Top-tier ESG disclosures help companies to enhance their access to financial capital, identify and manage their own risks and opportunities related to ESG matters, and improve their reputation.</p> <p>However, on the other hand, ESG disclosure is mostly perceived by companies as a source of administrative burden and a compliance exercise as it requires information companies have not traditionally gathered, which is, in some cases, inaccessible to them.</p>
19	<p>Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?</p>	<p>Although investors would like to see greater and more transparent, clear and effective ESG disclosure, they currently face various major problems, such as the following: (1) some companies do not voluntarily report ESG information, while many that do report ESG information do not report all the information that is relevant for users; (2) applicable regulations do not clearly specify in detail the information that companies should disclose and do not mandatorily require companies to use a non-financial reporting standard, so reported information is not sufficiently comparable and reliable; (3) disclosure requirements are high level, principles-based and flexible; (4) information on intangibles is under-reported; 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>Likewise, companies subject to ESG disclosure obligations find it difficult to: (1) decide what information to report; and (2) get the non-financial information they need from suppliers, clients and investee companies in order to report adequately. Consequently, they usually incur unnecessary costs associated with the reporting of non-financial information.</p> <p>It should be noted that the CSRD proposal: (1) extends the scope of the ESG reporting requirements to additional companies; (2) requires the assurance of sustainability information; (3) specifies in greater detail the information that companies should report, in line with mandatory EU sustainability reporting standards; and (4) ensures that all information is disclosed in a digital machine-readable format.</p>
20	<p>What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?</p>	<p>Future trends in Spain on ESG disclosure requirements will mainly be driven by the aforementioned CSRD proposal: (1) extension of the scope of the ESG disclosure requirements to all large and all listed companies (including some non-EU companies with branches or subsidiaries in the EU above certain thresholds); (2) setting mandatory EU standards; and (3) focus on climate change disclosure (eg, transition plans and specific targets).</p>

21	<p>Please provide your name, firm name and a brief biography about yourself (optional).</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&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&A involving listed and unlisted companies. Núñez 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 a large number of articles in books and legal magazines.</p> <p>Gorka Atutxa joined Uría Menéndez in 2016 and currently practises in the capital markets area in Madrid. His legal practice is mainly focused on IPOs, rights issues, and offerings of shares and takeover bids, as well as listings in the Spanish Alternative Market (Mercado Alternativo Bursátil or MAB). He regularly advises both issuers and investors on matters related to corporate law, the corporate governance of listed companies and capital market regulations. He also has experience of the M&A of non-listed companies.</p> <p>Manuel Suero joined Uría Menéndez in 2018 and currently practises in the capital markets area in Madrid. He focuses on capital markets and M&A, with a particular focus on ECM transactions, takeover bids and M&A. He also usually provides general advice, both to issuers and investors, on commercial law and the corporate governance of listed companies, and on regulatory aspects related to securities markets.</p>
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ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Sweden

1	Which jurisdiction are you covering?	Sweden
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	A major part of the ESG regulation that is applicable in Sweden has been decided on by the EU and either consists of regulations or directives that have been implemented in Sweden. Mandatory regulations in relation to ESG disclosure issues, applicable in Sweden, are the EU's SFDR, Taxonomy Regulation and NFRD.
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	<p>The NFRD, which was decided upon in 2014 and first applied in 2018, contains requirements for some firms to produce a sustainability report in conjunction with their annual report. This report should include an account of firms' work with ESG factors, which in the directive are identified as environmental protection, social responsibility and the treatment of employees, respect for human rights, and anti-corruption and bribery. The NFRD only applies to so-called PIEs (essentially, rather big corporations) and it contains so-called 'comply or explain' clauses (allowing for non-disclosure of information if this is made transparent and reasons are given).</p> <p>The SFDR was decided upon in December 2019 and entered into force in March 2021. It regulates how financial market participants should disclose to their investors and customers both how they integrate sustainability into their activities and sustainability-related information about the activities for which they provide different forms of financing. As of 1 January 2022, financial firms must start to disclose sustainability factors in regular reports. The SFDR applies at the 'entity level' (ie, requiring financial firms to report on how the whole organisation deals with such risks) and at the 'product level' (ie, requiring firms to report on how their financial products are affected by such risks). The SFDR contains few 'comply or explain' clauses (eg, smaller firms, with less than 500 employees, can opt out of reporting on due diligence processes). If an entity offers ESG-related products, the SFDR requires additional disclosures depending on how 'green' the product is considered to be.</p> <p>The EU Taxonomy Regulation was adopted in June 2020 and contains rules for determining when an economic activity should be considered environmentally sustainable. The regulation affects several groups of participants. It requires firms subject to the NFRD to estimate what percentage of their activities meet the criteria for being considered environmentally sustainable. It also requires financial market participants that are subject to the SFDR and offer environmentally sustainable financial products to disclose the extent to which the underlying investments in each such product are invested in activities that meet the criteria set out in the EU Taxonomy Regulation.</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 prior to mandatory disclosure requirements being triggered?	<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's classification system, a fund is either classified as an Article 6, 8 or 9 fund, depending on its characteristics and level of sustainability:</p> <ul style="list-style-type: none"> • Article 6: funds without a sustainability scope; • Article 8: funds that promote environmental or social characteristics (light green); and • Article 9: funds with sustainable investment as their objective (dark green). <p>Pursuant to the NFRD and the Swedish Annual Reports Act (SFS 1995:1554) (Årsredovisningslagen), the reporting requirements under the NFRD are applicable when the group satisfies one or more of the following criteria:</p> <ul style="list-style-type: none"> • the average number of employees in the undertaking during each of the two most recent financial years has exceeded 250; • the undertaking's reported balance sheet total for each of the two most recent financial years has exceeded SEK 175m; or • the undertaking's reported net turnover for each of the two most recent financial years has exceeded SEK 350m. <p>The EU Taxonomy Regulation only applies at a product level and thus is independent in relation to the types of entities.</p>

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?	<p>The NFRD requires PIEs with more than 500 employees to prepare a sustainability report.</p> <p>Pursuant to the Swedish Annual Reports Act (SFS 1995:1554), sustainability reporting is mandatory for companies that meet more than one of the following conditions:</p> <ul style="list-style-type: none"> • the average number of employees in the undertaking during each of the two most recent financial years has exceeded 250; • the undertaking's reported balance sheet total for each of the two most recent financial years has exceeded SEK 175m; or • the undertaking's reported net turnover for each of the two most recent financial years has exceeded SEK 350m. <p>ESG disclosures shall be made on a continuous annual reporting basis.</p> <p>The ESG disclosures pursuant to the SFDR are applicable to financial market participants, financial advisers and financial products, as defined in the SFDR. ESG disclosures are to be made on the website, in pre-contractual disclosures and in periodic reports.</p>
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	<p>A company may include the sustainability report as part of the directors' report or choose to prepare the report as a document separate from the annual report. This shall be submitted to the undertaking's auditor within the same time as the annual report.</p> <p>According to the SFDR, a fund may either be classified as an Article 6, 8 or 9 fund. However, the SFDR is in many ways very voluntary, meaning that it is only when a fund chooses to be classified under a specific article that it must comply with the ESG disclosure regulations. The SFDR contains provisions that stipulate where ESG disclosures are to be disclosed, depending on the type of entity of the financial market participant (eg, AIFM, investment firm and insurance undertaking). The website disclosure should be in a separate section on the website and pre-contractual disclosures shall be provided as an appendix to that information.</p>
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	<p>The ESG disclosure shall be made in a sustainability report, either as part of the directors' report or as a separate document. Such reports shall be available on the company website.</p> <p>ESG disclosures pursuant to the SFDR for financial market participants, financial advisers and financial products (as defined in the SFDR) are to be disclosed on the website, in pre-contractual disclosures and in periodic reports.</p>
8	In the case in which 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?	<p>According to the SFDR, a fund may either be classified as an Article 6, 8 or 9 fund. However, the SFDR is in many ways very voluntary, meaning that it is only when a fund chooses to be classified under a certain article that it must comply with the ESG disclosure regulations.</p> <p>As interest in sustainable investments is growing among both small savers and professional asset managers, a lot of companies are choosing to work towards becoming an Article 8 or Article 9 fund.</p>
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?	<p>Pursuant to the SFDR, the Swedish Financial Supervisory Authority (Sw. Finansinspektionen) exercises supervision over sustainability reporting, that is, ESG disclosure. For now, companies are not required to report directly to the Swedish Financial Supervisory Authority.</p> <p>However, in order to avoid so-called 'greenwashing' and retain ESG criteria on Article 9 funds, the Swedish Financial Supervisory Authority has decided to review the information that fund managers provide to investors to see whether these meet the requirements for Article 9 funds. This includes the Swedish Financial Supervisory Authority reviewing information brochures and fund regulations to assess whether the information meets the requirements for the most sustainable funds.</p>

10	<p>What are the penalties for false or misleading ESG disclosures? Does your answer change depending on whether the ESG disclosure was mandatory or voluntary?</p>	<p>There are no specific penalties in Sweden for false or misleading ESG disclosures. However, according to the Swedish Annual Reports Act, various penalties may apply regarding reports, such as late filing fees for limited companies, personal payment liability and conditional fines.</p> <p>Regarding false or misleading ESG disclosures, in accordance with the SFDR and EU Taxonomy Regulation for financial market participants and financial advisers, the SFSa can decide on penalties in its capacity as the supervisory authority in accordance with the sectoral regulations for the entity. The size of penalties depends on the sectoral regulations.</p>
11	<p>Is there a tiered disclosure system in your jurisdiction and are any further ESG disclosure requirements expected in your jurisdiction in the near future?</p>	<p>According to the SFDR's classification system, a fund will either be classified as an Article 6, 8 or 9 fund, depending on its characteristics and level of sustainability:</p> <ul style="list-style-type: none"> • Article 6: funds without a sustainability scope; • Article 8: funds that promote environmental or social characteristics (light green); and • Article 9: funds with sustainable investment as their objective (dark green). <p>If an entity offers ESG-related products, the SFDR requires additional disclosures depending on how 'green' the product is considered to be.</p> <p>ESG disclosures in the future</p> <p>The delegated act to the SFDR with RTS, with detailed provisions on how ESG disclosures are to be presented under the SFDR, entered into force on 1 January 2023.</p> <p>The EU Taxonomy Regulation contains rules for determining when an economic activity should be considered environmentally sustainable. As of 1 January 2022, the EU Taxonomy Regulation is applicable to the first two climate-related environmental objectives. As of 1 January 2023, its application is expanded to include water and marine resources, the transition to a circular economy, pollution and biodiversity.</p> <p>Furthermore, the European Commission is currently working on a social taxonomy for social sustainability.</p> <p>The Council of the EU and European Parliament reached a provisional political agreement on the CSRD in June 2022. The provisional agreement is subject to approval by the Council of the EU and European Parliament. The CSRD amends the 2014 NFRD. It introduces more detailed reporting requirements and ensures that large companies are required to report on sustainability issues, such as environmental rights, social rights, human rights and governance factors. The CSRD also introduces a certification requirement for sustainability reporting, as well as improved accessibility of information, by requiring that it is published in a dedicated section of company management reports.</p> <p>The application of the regulation will take place in three stages:</p> <ul style="list-style-type: none"> • 1 January 2024 for companies already subject to the NFRD; • 1 January 2025 for large companies that are not presently subject to the NFRD; and • 1 January 2026 for listed SMEs, small and non-complex credit institutions, and captive insurance undertakings.
12	<p>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?</p>	<p>N/A; there is no ESG certification system in order to be 'ESG approved/compliant'.</p>

13	<p>Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.</p>	<p>Disclosures according to the SFDR</p> <p>The SFDR requires financial market participants and financial advisers to disclose the following information on their websites:</p> <ul style="list-style-type: none"> • sustainability risk policy: a statement on how sustainability risks are taken into account in their investment decisions; • principal adverse impact: a description of how their investments affect a range of sustainability factors; and • sustainability risk remuneration policy: a statement on how sustainability risks are taken into account in their remuneration policy. <p>If financial market participants do not consider the sustainability impact of their investment decisions, they must publish a prominent statement to this effect on their website and provide a clear reason for why they do not take sustainability impact into account.</p> <p>When it comes to entity-level principal adverse impacts, the SFDR requires companies to report on 14 sustainability factors, including climate-related indicators and social matters.</p> <p>The SFDR requires financial market participants and financial advisers to disclose the sustainability profile of financial products they produce or promote. They must categorise financial products as:</p> <ul style="list-style-type: none"> • Article 6: financial products without a sustainability scope; • Article 8: financial products that promote environmental or social characteristics; and • Article 9: financial products that have sustainable investment as their objective. <p>As with entity-level disclosures, firms are required to disclose how sustainability risk was taken into account and what the principal adverse impacts are. If they do not disclose this, they must explain why. If a financial product is categorised as promoting environmental or social characteristics, it must be made clear which particular characteristics and sustainability indicators are used to measure whether they are attained. Similarly, if a financial product has a sustainable investment objective, it must be made clear what sustainability indicators are used.</p> <p>Disclosures according to the NFRD</p> <p>The NFRD requires some firms to prepare a sustainability report, namely PIEs with more than 500 employees.</p> <p>The report should contain sustainability-related disclosures that are required to understand a firm's earnings, position, development and impact on its operations. The directive specifies environmental protection, social responsibility and the treatment of employees, respect for human rights and the prevention of corruption, and bribery.</p> <p>According to the European Commission's non-binding guidelines on the presentation of sustainability reports, climate-related information can be reported in accordance with the recommendations prepared by the TCFD on behalf of the Financial Stability Board.</p> <p>Disclosures according to the Swedish Annual Reports Act</p> <p>Pursuant to the Swedish Annual Reports Act, the sustainability report shall contain such sustainability information as is necessary to understand the undertaking's development, financial position, and results and consequences of the operations, including information regarding environmental, social relationships, personnel, human rights and anti-corruption issues.</p> <p>Disclosures according to the EU Taxonomy Regulation</p> <p>The EU Taxonomy Regulation affects several groups of participants. It requires firms subject to the NFRD to estimate what percentage of their activities meet the criteria for being considered environmentally sustainable. It also requires financial market participants that are subject to the SFDR and offer environmentally sustainable financial products to disclose the extent to which the underlying investments in each such product are invested in activities that meet the criteria set out in the EU Taxonomy Regulation.</p>
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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?	<p>Where a financial product under Article 9 of the SFDR has a reduction in carbon emissions as its objective, the information to be disclosed in pre-contractual disclosures shall include the objective of low carbon emission exposure in view of achieving the long-term global warming objectives of the Paris Agreement.</p> <p>The EU Taxonomy Regulation constitutes a joint classification system to determine which economic activities should be viewed as being environmentally sustainable with the aim of helping investors to identify and compare environmentally sustainable investments.</p> <p>In order for a certain economic activity to be classified as environmentally sustainable, it must make a substantial contribution to one or several of six established environmental objectives, not cause significant harm to any of the other objectives and meet certain minimum sustainability requirements.</p> <p>The taxonomy includes the following environmental objectives:</p> <ul style="list-style-type: none"> i. climate change mitigation; ii. climate change adaptation; iii. the sustainable use and protection of water and marine resources; iv. the transition to a circular economy; v. pollution prevention and control; and vi. the protection and restoration of biodiversity and ecosystems. <p>The requirements apply to certain financial market participants, listed companies and other large publicly owned companies that must prepare a sustainability report in conjunction with their annual report.</p>
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?	<p>Regarding financial market participants and financial products, the SFDR will be supplemented with delegated regulations that will specify the information that is to be disclosed and how the disclosures should be made public. The delegated regulation contains a standardised template on how information shall be disclosed.</p>
16	Is there a clear guidance and 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?	<p>The EU Taxonomy constitutes a joint classification system to determine which economic activities should be viewed as being environmentally sustainable, with the aim of helping investors to identify and compare environmentally sustainable investments.</p> <p>The SFDR contains a definition of sustainable objectives for financial products that fall under Article 9 of the SFDR.</p> <p>For a company that discloses ESG under the NFRD, ESG is not defined in applicable law.</p>
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?	<p>The goals are taken into account as a whole when measuring ESG compliance in respect of the SFDR and EU Taxonomy Regulation.</p> <p>In respect of the SFDR, 'sustainable investment' means, in summary, an investment in an economic activity that contributes to an environmental objective, social objective, or investment in human capital or economically or socially disadvantaged communities, provided that such an investment does not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular, with respect to sound management structures, employee relations, remuneration of staff and tax compliance.</p> <p>The SFDR lays down a harmonised definition of 'sustainable investment', which provides that the investee companies follow good governance practices and the precautionary principle of 'do no significant harm' is ensured so that neither the environment nor the social objective is significantly harmed.</p> <p>Regarding the EU Taxonomy Regulation, for each environmental objective, uniform criteria for determining whether economic activities contribute substantially to that objective are laid down. One element of the uniform criteria is to avoid significant harm to any of the environmental objectives set out in the EU Taxonomy Regulation. This is to avoid investments qualifying as environmentally sustainable in cases in which the economic activities benefitting from those investments cause harm to the environment to an extent that outweighs their contribution to an environmental objective.</p>

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?	Regarding financial products that fall under the SFDR, ESG disclosures have aided investors who focus on ESG investments. At the same time, they have created a greater compliance burden for financial market participants, especially smaller firms that lack the resources to provide ESG products.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	N/A
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	Rules on accounting and reporting of sustainability-related information are laid down in international, EU and Swedish law. The continued work with the EU framework for sustainable finance will be harmonised in Swedish law in the upcoming years.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Fredrik Arvebratt and Marcus Arvidsson, Wigge & Partners Advokat.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Switzerland

1	Which jurisdiction are you covering?	Switzerland
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>In 2020, the so-called Responsible Business Initiative was put before the public, but 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"> • 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 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 December 2021, 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. <p>Certain further regulatory guidelines are also in the making. In March 2022, the Swiss government published a draft ordinance, which specifies climate-related reporting obligations. The ordinance was expected to come into force on 1 January 2023. The recommended reporting obligations will 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, the preparation of sustainability reports in accordance with an internationally recognised standard and publish them on their website. The SIX Exchange Regulation recognises the following international standards for sustainability reporting: the GRI, the SASB standards, the UN Global Compact and the European Public Real Estate Association's Best Practices Recommendations on Sustainability Reporting.</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.</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 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.</p>
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	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).

4	<p>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 prior to mandatory disclosure requirements being triggered?</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.</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>
5	<p>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?</p>	<p>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.</p>
6	<p>In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?</p>	<p>Non-financial reporting for public interest companies as per the counter-proposal (see question 2) must be made in a separate report. Such a 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, for example, 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	<p>What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?</p>	<p>The general non-financial reporting for public interest companies is part of a separate report. Such a 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	In the case in which 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?	<p>Irrespective of whether the ESG disclosure applies, there is increasing pressure from investors to prepare and publish the ESG disclosure. This pressure is driven by the demand for 'green', 'social' or 'sustainable' investments for funds, pension funds or asset managers, as well as the general public's expectation that companies are in line with ESG aspects.</p> <p>To prevent and combat misleading practices, that is, so-called 'greenwashing', FINMA 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 expectations with regard to rules to be followed at the point of sale (advisory process).</p>
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?	<p>For violations of non-financial reporting, 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 venue bodies.</p>
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?	<p>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 the case of negligence and up to CHF 100,000 in the case of intent.</p>
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?	<p>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 a broader range of companies to be subjected to ESG disclosure.</p>
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?	<p>There is no certification system, yet. However, recently (29 June 2022), the Federal Council launched Swiss Climate Scores for climate transparency in financial investments. 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.</p>
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<p>Please see question 2.</p>

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?	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	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?	There is no standardisation yet. Companies are relatively free in the way they present the ESG disclosure, provided 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	Is there a clear guidance and 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?	The relevant regulations, including the implementing ordinances, regulate what the reports have to cover. There is, however, no standardised checklist that regulates the order of publication and/or how it is to be presented, provided the content is included.
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?	There is no such specific rule and/or established practice in this respect yet.
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?	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 good analysis more difficult.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	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 performed for years and can now stick a label on and report may help to attract different and/or more investors. Notwithstanding this, the administrative effort (especially given the risk of wrong/false disclosure and/or being blamed for 'greenwashing' generally) will be significant and will lead to increased costs.

20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	We expect that the focus will be on the standardisation and comparability of ESG aspects and related disclosure generally.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Theodor Härtsch, Walder Wyss. Benjamin Leisinger, Homburger. Patrick Schleiffer, Lenz & Staehelin.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Thailand

1	Which jurisdiction are you covering?	Thailand
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	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) concerning the financial conditions and business operation of the company and submit it to the SEC Office.
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	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	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 prior to mandatory disclosure requirements being triggered?	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, regardless of whether they are private or public unlisted companies.
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?	There are both annual reporting ESG 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 Office and to investors, including the following events: i. a company suffered from serious damages; ii. a company ceases operating part or all of its business; iii. a company alters its objectives or the nature of its business; iv. a company enters into an agreement entrusting other persons with power in whole or in part for the management of the company; v. a company takes over or is taken over by, another company; and vi. 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 Office.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	The ESG disclosure must be made in Form 56-1 as prescribed by the SEC Office.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	The ESG disclosure must be submitted to the SEC Office via SEC filings electronic system and published on the company's website.
8	In the case in which 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?	N/A as the ESG disclosure requirement is mandatory in Thailand.
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?	The name of the regulator is the SEC. Failure to make the requisite ESG disclosure 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 a 56-1 form to issue the ESG disclosure to the SEC Office within three months after the end of the company's accounting period.
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?	Penalties for false or misleading ESG disclosures are imprisonment for a term not exceeding two years and/or a fine not exceeding THB 500,000 (approximately \$13,617). Companies that are not required to make ESG disclosures are not subject to the aforementioned penalties.

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?	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 2020.
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?	No, there is no such system of ESG certification or benchmarks.
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<p>ESG disclosures in Thailand must include the following main topics:</p> <ul style="list-style-type: none"> i. business structure and operation of the company and its affiliate/subsidiary: <ul style="list-style-type: none"> • shareholding structure, organisation chart and business operation of the group companies; • risk management; • sustainable business development of the company; • management discussion and analysis; and • other significant information; ii. corporate governance of the company: <ul style="list-style-type: none"> • corporate governance of the company, for example, code of conduct and policy; • corporate governance structure and other significant information related to the directors, subcommittee, executives, employees and so on; • result of the significant corporate governance conduct of the company; and • internal control and related party transactions; iii. financial statement.
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?	A specific emphasis on climate change-related disclosures is to be included in the 56-1 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 Organization 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	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?	There is a checklist of information for ESG disclosures as an annex to SEC Notification No TorJor 44/2556 as amended (which is an applicable law regarding rules, conditions and procedures used to prepare and submit a 56-1 report to the SEC Office) published on the SEC's website. SEC Notification No TorJor 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. A company must disclose the information as required in the guidelines and checklist, otherwise it would need to clarify with the SEC Office the reason why it is unable to disclose such a particular topic.
16	Is there a clear guidance and 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?	There is no clear definition of ESG disclosures in applicable law. However, the scope of ESG disclosures is included in SEC Notification No TorJor 44/2556 as amended, SEC official guidelines, SEC official documents and the checklist in the annex to SEC Notification No TorJor 44/2556 as amended. SEC Notification No TorJor 44/2556 as amended provides procedures and clear guidance regarding ESG disclosures, including the topics to be disclosed and the timeline.

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?	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	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?	ESG disclosure regulation in Thailand, to a certain extent, aids investor value creation.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	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	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	<p>We view that, 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>
21	Please provide your name, firm name and a brief biography about yourself (optional).	Vinay Ahuja, DFDL.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for Turkey

1	Which jurisdiction are you covering?	Turkey
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	<p>ESG disclosure requirements are not mandatory in Turkey. However, Turkey has taken action to address ESG concerns by regulating mandatory disclosure requirements only regarding 'sustainability' for publicly listed companies.</p> <p>The Capital Markets Board of Turkey (the '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 Sustainability Principles Compliance Outline (the 'Principles'), which outlines the fundamental principles on sustainability compliance.</p> <p>According to the Communiqué, the implementation of sustainability principles announced by the CMB shall be voluntary, thus there is no obligation for 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>
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	As stated in question 2, ESG disclosures are not mandatory for any entity; however, there is a sustainability disclosure requirement for publicly listed companies only, as stated above.
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 prior to mandatory disclosure requirements being triggered?	Only publicly listed companies are obliged to disclose the reasons for and effects of any non-compliance with the Principles in their Annual Reports. There are no thresholds for any companies to be triggered in order to meet a mandatory ESG/sustainability disclosure requirement.
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?	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.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	There are no mandatory disclosure requirements regarding ESG in Turkish legislation. However, regarding sustainability, which is an important part of ESG, there is the obligation for companies to acknowledge whether they comply with the sustainability goals outlined in the Principles or provide insight on why they do not comply with the Principles in their Annual Reports. However, these Annual Reports don't only include information about sustainability, thus they are not separate and specific ESG/sustainability reports.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	<p>According to the Communiqué, the place for disclosure regarding compliance with the Principles 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, due to the fact that ESG disclosure in Turkey is not regulated in a mandatory way, companies may also disclose their ESG information on their websites and other public channels on a voluntarily basis.</p>

8	In the case in which 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?	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.
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?	<p>Even though ESG disclosures are not mandatory, there is a mandatory requirement on sustainability disclosures. The regulator authorised to monitor these requirements is the CMB.</p> <p>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 \$3,850 (TRY 69,783.00) to \$48,120 (TRY 872,282.00). 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.</p> <p>Additionally, in cases in which the person acting in violation of the provisions of the first paragraph 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 provision of the first paragraph.</p>
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?	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 five thousand days. Thus, misleading ESG disclosures, if within this context, can potentially lead to the implementation of such penalties.
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?	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.
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?	No Turkish authority is legally authorised to certify that any company is ESG approved/compliant in Turkey.
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	In the Turkish regulations, ESG disclosures are limited to sustainability, and disclosures about sustainability are regulated in the Principles. The Principles contain disclosure information regarding: (1) how environmental issues are integrated into business objectives and strategies; (2) companies' policies on formulating processes for environmental issues; (3) companies reports about air quality, energy management, water and wastewater management, waste management and total energy consumption data; (4) companies' strategies and actions to fight against the climate crisis; (5) increasing the use of renewable energy sources, renewable energy generation and consumption data regarding renewable energy; and (6) corporate human rights and employee rights.
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?	<p>Article 8 of the Communiqué regulates information about 'environmental and social risk management', but there is no specific and explicit reference to 'climate change'.</p> <p>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	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?	The CMB standardised sustainability disclosures with the Principles; thus, publicly listed companies are obliged to explain whether they comply with each item listed in the Principles. However, there is no other standardised ESG obligation other than sustainability obligations on a 'comply or explain' basis.
16	Is there a clear guidance and 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?	In Turkey, there isn't any clear definition or a specific law regulating, outlining or defining the ESG.
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?	<p>In Turkey, only 'sustainability' under ESG compliance is regulated, so there is a lack of specific regulation for the social and governance areas. Therefore, sustainability is the only criterion for determining whether a company complies with ESG under applicable law. Thus, there are no goals taken into account other than sustainability when measuring the ESG compliance of a company.</p> <p>However, recently 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.</p>
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?	The sustainability disclosure obligation on a 'comply or explain' basis as it exists in Turkey may increase the workload of companies, but companies are aware that this increased workload will create greater investor value. Considering that most companies prefer to make ESG disclosures voluntarily, this clearly shows us that the ESG disclosure workload is worth taking when considering its outcome as creating investor value.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	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	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	<p>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. The 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 and organisations determined by the PAASA.</p> <p>With the amendment, not only the 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 Principles. This shows that agencies and boards in Turkey, such as the Banking Regulation and Supervision Agency, Capital Markets Board, Insurance and Private Pensions Regulation and Supervision Agency, will be able to make detailed arrangements for the businesses and organisations in its scope of authority regarding the sustainability standards.</p> <p>Accordingly, this shows that non-public companies, to be selected by the Regulatory Authorities and PAASA, may also be obliged to report within the scope of the sustainability principles set out by the Regulatory Authorities and PAASA.</p>
21	Please provide your name, firm name and a brief biography about yourself (optional).	<p>Halide Çetinkaya provides Turkish law advice as part of Çetinkaya Taktak Semiz Baltalı Yürükoğlu Attorney Partnership (CCAO), a Turkish attorney partnership registered with the Istanbul Bar Association.</p> <p>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.</p>

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for the United Kingdom

1	Which jurisdiction are you covering?	United Kingdom
2	Are ESG disclosures required to be mandatorily made in your jurisdiction by market participants?	ESG disclosures are mandatory to a limited extent in respect of climate-related disclosures via the TCFD. However, the UK Government has proposed the introduction of mandatory ESG disclosures, termed the Sustainability Disclosure Requirements (SDRs) and reporting against a Green Taxonomy of environmentally sustainable business activities. Legislation has not yet been forthcoming. However, the relevant financial regulator, the Financial Conduct Authority (FCA), began the process of policy development with an initial public consultation in early 2022.
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	The UK's mandatory ESG disclosures are envisaged to be economy-wide, that is, the disclosures would be made by corporate issuers, investment managers and institutional investors, such as pension schemes and insurers, and investment intermediaries, such as financial advisers. The precise scope of the disclosure regime has not been defined, although mandatory TCFD reporting applies only to listed companies and larger financial institutions (with more than 500 employees).
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 prior to mandatory disclosure requirements being triggered?	As indicated in the response to question 3, the precise scope of entities that will be mandated to make ESG disclosures has not yet been defined. However, financial institutions that are determined to be in scope will be required to make more comprehensive 'consumer-facing disclosures' if their clients (or end-clients) are retail investors. Financial institutions with professional or institutional clients might be subject to a more flexible set of additional disclosures, comprising more granular information.
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?	It can be expected that, at the very least, companies that wish to raise funds on public markets and fund managers that wish to fundraise from retail investors will be required to make disclosures under the SDRs and Green Taxonomy. Disclosures are likely to be both periodic (ie, company and fund annual reports) and one-off (eg, listing and fund prospectuses). Fund managers and institutional investors will be required to report on both an entity-wide and product-specific level.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	ESG disclosures are likely to be embedded in a range of reporting documents, such as regulated fund disclosures and company annual reports. However, it is possible that mandatory or voluntary disclosures might also be made in a standalone way, such as reporting ESG metrics on a company website.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	The details are to be determined based on the entities that are in scope, but the locations are expected to be company and fund prospectuses, annual reports, company websites, and scheme and product-regulated disclosures (eg, fund key information documents).
8	In the case in which 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, companies and financial institutions are beginning to disclose against various voluntary measures beyond the limited level of mandatory disclosures currently required of some entities.
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?	Regulation in the UK is sector-specific and hence disclosures are monitored by various regulators. The most prominent includes the FCA for most (but not all) impacted financial institutions. The penalties for non-compliance also vary, ranging from financial penalties to deauthorisation and sanctions for individuals, and depend on the nature of the breach. For instance, the penalty for an inadvertent error in a disclosure is less than that for intentionally misleading and miss-selling a product.

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?	Please see the response to question 9. In addition, the FCA treats a firm's decision to opt-in to a voluntary disclosure as equivalent to being mandated to disclose information. In both instances, firms are expected to be accurate and to treat customers fairly.
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?	As indicated previously, in-scope firms are expected to make general ESG disclosures about their company and/or products, disclosures about the EU Taxonomy Regulation alignment of their business activities or investments, and provide specific climate-related information under the TCFD. For investment managers and institutional investors, general ESG disclosures are tiered depending on whether the firm's clients are retail and/or institutional investors.
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?	Yes, there is a system in two senses. The Green Taxonomy defines which business activities are environmentally sustainable according to six objectives (eg, the circular economy or climate transition). In-scope companies and investors must report the scale of their activities aligned to the EU Taxonomy Regulation standard. In addition, the UK will create a green investment label, comprising five categories of ESG-aligned products, with minimum standards for each category.
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<ul style="list-style-type: none"> i. General ESG disclosures about a company and, potentially, its products. ii. The alignment of a company's activities or a portfolio's investments with a Green Taxonomy. iii. Climate-related disclosures about a company's business, strategy, governance and performance against carbon metrics.
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?	Yes, the previously mentioned TCFD climate disclosures are mandatory for many companies.
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?	There is and will be a strong element of standardisation, although this is expected to be balanced with latitude for a sector or individual company to disclose information that is deemed to be, at least, financially material to the business.
16	Is there a clear guidance and 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?	The relevant law and guidance is forthcoming.
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?	Currently, there is no defined hierarchy for ESG factors. However, there is an emphasis on climate-related information (via TCFD disclosures), environmental disclosures (via the Green Taxonomy) and certain social elements (eg, the gender pay gap).
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?	It is too early to tell, but there is strong investor demand for more and better ESG disclosures. We see this demand along the value chain (eg, from general partners and limited partners in private equity structures).
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	Generally, yes, there is a demand for more standardised and reliable data.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	Future trends are a greater focus on the availability and quality of ESG data rather than simply mandating disclosures, and a better alignment of information along the value chain, from issuers to end investors.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Robert Boyle, M&A Partner, Macfarlanes.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for the 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?	ESG disclosures are currently not mandatory, but the US SEC has released proposed rules on climate and cybersecurity disclosures, and is expected to release new proposed rules on human capital management and board diversity. The SEC has also proposed new ESG disclosures that would apply to registered investment companies, business development companies, registered investment advisers and certain unregistered advisers. In addition, as a general matter, registrants are required to disclose material risks in their periodic filings with the SEC.
3	If ESG disclosures are required, is there a distinction between the type and nature of entity that is required to make ESG disclosures?	Currently, ESG disclosures are not mandatory in the US, but the SEC has proposed rules on climate and cybersecurity disclosures that would apply to both US issuers and foreign private issuers. The SEC has also proposed separate ESG disclosures that would apply to registered investment companies, business development companies, registered investment advisers and certain unregistered advisers.
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 prior to mandatory disclosure requirements being triggered?	Private companies are currently not subject to the SEC's rulemaking purview and would not be required to comply with the SEC's proposed rulemaking relating to ESG.
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?	Under the SEC's proposed rulemaking on climate-related disclosures, ESG reporting would be integrated into periodic reports filed with the SEC, as well as registration statements. The SEC's proposed rulemaking on cybersecurity would also require periodic reporting, as well as 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 disclosures in fund prospectuses, annual reports and adviser brochures, as well as Forms N-CEN and ADV Part 1A.
6	In the case of mandatory disclosures, are disclosures required in the form of separate ESG reports?	There are currently no mandatory ESG disclosures in the US, but issuers commonly issue standalone ESG reports. It remains to be seen whether the SEC's proposed ESG disclosures would supplement or replace such standalone reporting.
7	What is the location of the ESG disclosure (eg, SEC filings, sustainability reports and company website)?	Currently, issuers make ESG disclosures via a number of public channels including standalone ESG reports, proxy statements, Form 10-K and company websites. In addition, ESG issues are increasingly discussed during investor calls and in the context of transaction announcements.
8	In the case in which 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, companies are increasingly issuing standalone ESG reports that are aligned with the SASB, TCFD and GRI reporting frameworks, in part due to ongoing pressure from larger investors.
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?	In the US, the US SEC is the key regulator on ESG disclosure compliance. Under the proposed climate-related and cybersecurity disclosure rules, non-compliance could result in SEC enforcement action and also a private right of action leading to criminal and civil penalties. The climate disclosure rules include phase-in periods for compliance among issuers of different sizes.
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?	False or misleading ESG disclosure may result in SEC enforcement action, as well as private litigation resulting in criminal and civil penalties, which may vary depending on whether the disclosure is voluntary or made pursuant to the SEC's proposed ESG-related disclosure rulemaking.
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?	Currently, there is no tiered disclosure system, but the SEC's proposed rulemaking on climate contemplates different phase-in periods for issuers depending on their size. The SEC is expected to release new proposed rules on human capital management and board diversity.

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?	No, there is currently no taxonomy or similar system in place, but companies may choose to provide assurance for certain ESG disclosures, such as emissions data.
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	Currently, there is no required ESG disclosure in the US, except, in certain cases, public companies are required to disclose ESG-related information to the extent they may be considered material to investors. A growing number of companies are publishing standalone ESG reports aligned with the TCFD, SASB and GRI reporting frameworks.
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?	Yes, the SEC has proposed climate-related disclosure rules that will require qualitative and quantitative disclosures in periodic reports, and registration statements filed with the SEC.
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?	Currently, ESG disclosures are not standardised, and companies have discretion to determine the scope of their disclosures. However, there appears to be growing convergence towards the SASB and TCFD frameworks.
16	Is there a clear guidance and 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?	Currently, applicable law does not define ESG, and the SEC has, thus far, chosen to address the salient issues under the ESG umbrella rather than trying to define ESG.
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?	Cross-impacts are currently not covered by law or regulation, but investors may take such issues into account when assessing a company's ESG profile.
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?	The answer lies somewhere in the middle. ESG disclosures to date have elicited some useful data, but investors remain dissatisfied by the quality, scope and comparability of the information currently disclosed, while issuers are concerned that expanded mandatory reporting on ESG issues will prove to be unduly burdensome.
19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	Most companies support greater clarity in terms of ESG disclosures, but are also concerned that mandatory reporting could become unduly burdensome and elicit disclosures that may not be material to investors.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	We expect to continue to see growing convergence in market-led disclosures around the SASB and TCFD frameworks. We also expect the SEC to seek the adoption of its ESG-related rules, although the scope of such rules and how they will be implemented and enforced remains to be seen.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Trevor Norwitz, Wachtell, Lipton, Rosen & Katz.

ESG survey regarding disclosure regulations and capital market transactions

Questionnaire for 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 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 prior to mandatory disclosure requirements being 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 \$1.5m) and at least ten 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, 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?	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 and 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 (the 'SSC'), the Vietnamese securities market regulatory authority.
8	In the case in which 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, we have seen cases in which private companies need funding that requires ESG compliance and hence voluntarily prepare such reports.
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?	<p>The Ministry of Finance and SSC are the regulators that monitor the reporting regimes of public companies, which include ESG disclosures.</p> <p>Non-compliance with mandatory ESG disclosures is subject to a monetary fine of up to VND 70bn (about \$3,500). No grace periods are applicable.</p>
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?	<p>Providing false or misleading ESG disclosures would incur a monetary fine of up to VND 200bn (about \$10,000) for the disclosing company.</p> <p>Our answer remains unchanged, regardless of whether ESG disclosure is mandatory or voluntary.</p>
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?	No, we are not aware of any such system.

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?	No.
13	Please give a brief overview of the nature and extent of ESG disclosures required to be made in your jurisdiction.	<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 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. 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	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?	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	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?	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	Is there a clear guidance and 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?	Please see our response to question 13.
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?	N/A
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?	In our view, ESG disclosure regulation creates both value to corporates and investor value.

19	Would your clients like to see a greater, more transparent, clear and effective ESG disclosure regime than the one that exists presently?	In general, our clients would like to see greater, more transparent and quantitative reporting from companies about their ESG efforts.
20	What are the future trends that you envisage in terms of ESG disclosures in your jurisdiction?	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.
21	Please provide your name, firm name and a brief biography about yourself (optional).	Vinay Ahuja, DFDL Vietnam Law Company Limited.



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