ESG survey results report: ESG in Latin America

the global voice of the legal profession®

International Bar Association
Latin American Regional Forum

The International Bar Association (IBA), established in 1947, is the world's leading international organization of legal practitioners, bar associations, law societies, law firms and in-house legal teams. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of more than 80,000 lawyers, 190 bar associations and law societies, and 200 group member law firms, spanning over 170 countries.

The IBA is headquartered in London, with offices in São Paulo, Seoul, The Hague and Washington, DC. The IBA Legal Policy & Research Unit (LPRU) undertakes research and develops initiatives that are relevant to the rule of law, the legal profession and the broader global community.

Contributing authors: Miguel Tornovsky, Carolina Queiroga Nogueira, Sandra Reed and Luis Enrique Palacios

Supporting Committee: IBA Latin American Regional Forum

International Bar Association
5 Chancery Lane
London WC2A 1LG
United Kingdom
LPRU@int-bar.org
www.ibanet.org

Contents

1. Introduction

ESG issues have taken the corporate world by storm ever since the UN adopted the Sustainable Development Goals in 2015. The newest generation of investors is pressing for sustainable growth, and it is obvious that ESG is not merely a fashionable trend but instead a permanent issue to be addressed by lawmakers – particularly as the effects of the climate crisis become undeniable and social injustices are brought to light in an unstable economy.

The market players are increasingly integrating ESG factors into their investment and business decisions, and governmental authorities worldwide have answered the demand by tightening their regulations and creating entirely new sets of standards applicable to legal professionals across multiple activity areas. It is no different in Latin America, where companies and governments are implementing ESG and setting up local forums for ESG discussion.

However, in this global economy, regional distinctions tend to become negligible with time, as financial players and stakeholders seek to participate in global trends. This universal movement towards standardised regulations and principles shakes law practices in both the public and private sector, and law professionals are forced to integrate ESG concerns and opportunities into their service framework. In Latin America specifically, ESG discussion is directly reactive to EU and North American development, which creates unique challenges to overcome.

This survey and subsequent study sought to understand the place of Latin America and Latin American law firms in the ESG discussion. Firstly, we sought to understand the pace of the Latin American economies in integrating ESG discussions – our first survey asked one or two law firms per country to inform the state of ESG affairs locally. Secondly, we reached out to a large number of law firms to answer questions about how ESG was affecting their own practices and the type of legal services provided.

We believe ESG integration is no longer optional in the global business development agenda. All public and private players must pay attention to the ESG discussions in order to create a form of economic development that is sustainable and compatible with the market's new demands.

Law firms are an integral part of such ESG development – we hope that this material assists law firms in Latin America in understanding the trends of ESG discussion locally and better prepares them to advise clients in ESG-related projects in the future.

2. Executive summary of key findings

(a) ESG in Latin America

1. Following the international trend, Environmental, Social and Governance (ESG) issues have gained importance in Latin America over the past years.

2. Latin American countries have established different levels of ESG regulations. Compliance regulation and governmental incentives for waste reduction are the most common topics. In Latin America, the 'E' is particularly prioritised and the 'S' has gained importance after the Covid-19 pandemic.

3. Just under half of the countries surveyed have established some ESG disclosure obligations. As is the case with the rest of the globe, the lack of a reporting standard leads to comparability issues among jurisdictions.

4. Only two of the 16 countries surveyed were developing an ESG taxonomy. Without a clear taxonomy in place, the problem of greenwashing and virtue signaling remains a great obstacle to ESG implementation.

5. Six of the 16 countries surveyed have stewardship codes with a relevant number of signatories. Stewardship codes are one of the most important strategies in ESG implementation, as they allow for a soft start on multiple ESG obligations relevant to companies.

6. B Corporations are still not well known in Latin America – with 80 per cent of countries surveyed indicating that the B Lab system is 'not well known'.

(b) ESG in Latin American firms

1. 79.8 per cent of the law firms are discussing ESG related work and opportunities, but only 47 per cent of the firms have a designated ESG team.

2. The most common practices associated with ESG in Latin American law firms are environmental, compliance, banking/finance and corporate.

3. 70.8 per cent of the firms have already been retained to work on ESG-related projects or projects with a material ESG component. Most projects are related to financial transactions with ESG requirements and environmental sustainability. Firms are not yet seeing much work related to assistance in ESG disclosure or ESG litigation.

4. 79.1 per cent of the firms incorporate ESG initiatives in the management of their own activities. The most popular activity implemented by Latin American law firms is recycling, followed by voluntary community services and programmes to avoid discrimination.

3. ESG in Latin America

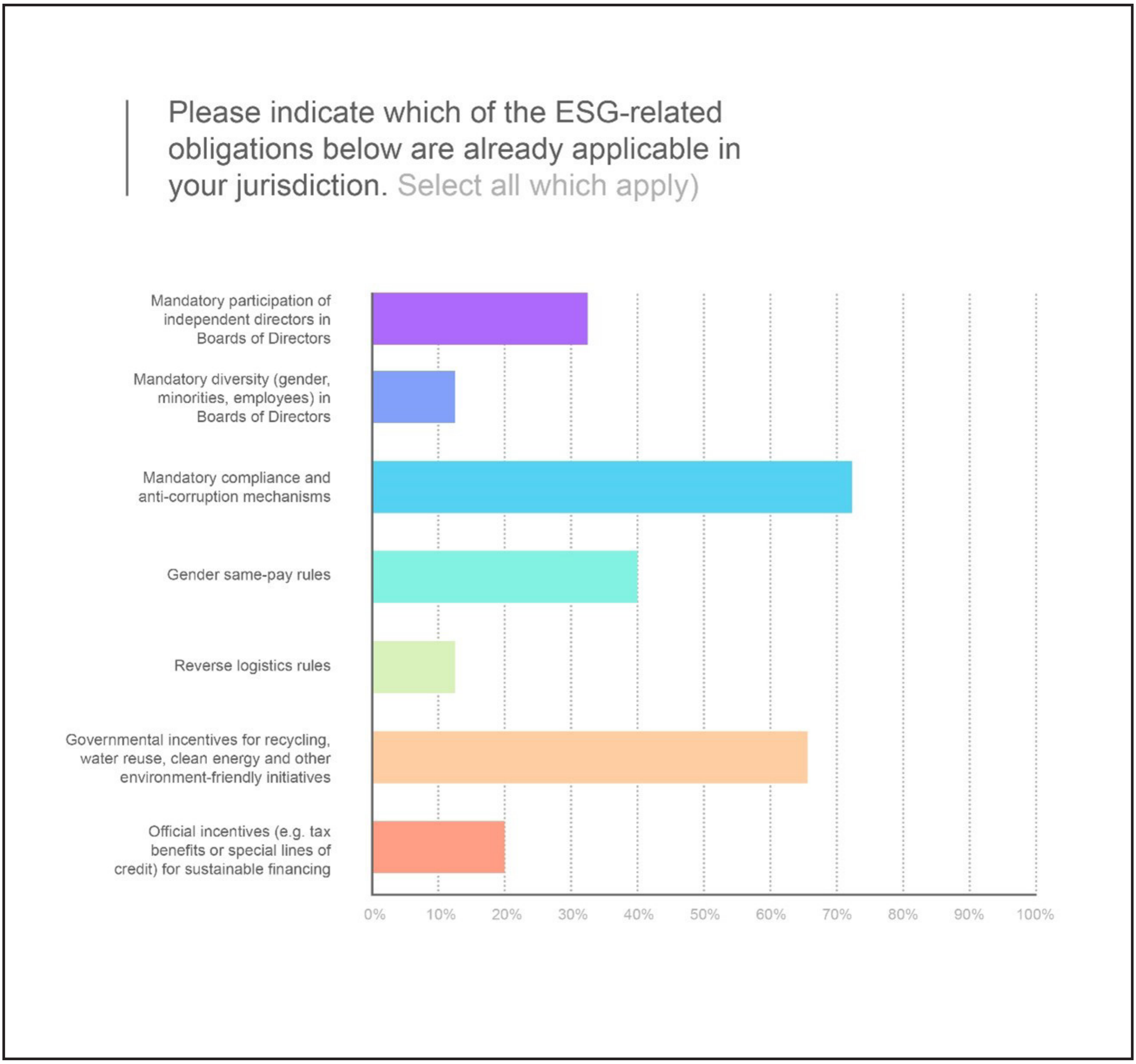
a) Participating countries

We’ve received answers from law firms in 16 countries.

- Argentina
- Bolivia
- Brazil
- Chile
- Costa Rica
- Ecuador
- El Salvador
- Guatemala
- Honduras
- Mexico
- Nicaragua
- Panama
- Paraguay
- Peru
- Uruguay
- Venezuela

b) ESG development

All Latin American countries already have some ESG-related laws and regulation. However, the level of detail and sophistication of such rules varies widely from nation to nation. The survey conducted among law firms confirmed such understanding, as seen by the graph below:



In the last few years, Latin America has seen an increasing shift in corporate and regulatory attention towards ESG themes, especially when it comes to financial disclosure standards and financial instruments. Nowadays, the region finds itself as a strategic centre among sustainable investing in emerging markets. According to an ESG sector report published by S&P Global Ratings, approximately 16 per cent of the evaluated Latin American financial institutions had their credit quality directly influenced by ESG credit factors.[1]

1 Alexandre Outeda Jorge and Dérick Mensinger Rocumback. As Políticas e Investimentos ESG Na América Latina, O Papel do 'S' na América Latina e a Possibilidade de Crescimento no Brasil. In. 'ESG no Brasil: Um Olhar Jurídico'. Available: www.pinheironeto.com.br/Documents/ESG-no-brasil_um-olhar-juridico-PT.pdf

The ‘E’ element of ESG tends to be particularly prioritised, as sustainability becomes more important to business leaders across Latin America (companies are ‘working proactively with their suppliers to create more sustainable supply chains’).[2] The discussions related to international environmental protection, which began in the latter half of the 20th century and is increasingly important, turning the eyes of the world to Latin America’s seemingly untouched resources. All Latin American countries have environmental laws in place, but there are still bridges to be crossed regarding the implementation of such laws.[3]

The Covid-19 pandemic resulted in a trend of ‘S’ initiatives, as economic difficulties and inequality became more evident.[4] Some countries in Latin America already have a well-established framework of social requirements, especially those related to labour protection and avoidance of discrimination.

Finally, the ‘G’ element of ESG is also on the radar for stakeholders. Although Latin America is a region with a tradition of state-owned companies, no consolidated minority protection and restricted market development, this scenario has been changing for the better since the turn of the century. Latin Americans highly value integrity and transparency in public and private decision-making.

Overall, as described in this report, the pace of ESG development in Latin America follows the trend observed in other developing regions: the lack of an integrated discussion, lack of consolidated taxonomies and economic constrains all hinder the growth of ESG implementation and efficient regulation. We believe that the subject will continue to grow in Latin America as discussions among private and public stakeholders evolve.

c) ESG disclosure

Investors can learn about a company’s performance on ESG matters from corporate ESG disclosures, which are used to inform investment decisions. Without obligatory and equivalent ESG disclosure standards, corporations can give information that is either insufficient or incomplete to assess the factual ESG application.

Only seven out of the 16 countries surveyed had ESG disclosure obligations for publicly held companies, and seven had obligations for financial institutions.

Gradually, Latin American governments and state agencies are making ESG disclosures mandatory for some sectors, mainly the financial sector. The Chilean Financial Market Commission, for example, ‘introduced the obligation to disclose ESG data in financial statements, starting January 2021’.[5] A few jurisdictions are also implementing and perfecting ESG disclosure standards. An illustrative example is Brazil’s Securities and Exchange Commission, Central Bank and National Monetary Council, which have issued several normative instruments aiming to regulate and standardise the presentation of information on ESG practices, indicators and risks by companies and financial institutions.

2 Mauricio Tarazona. Could Latin America Benefit from Global Supply Chain Trends? In. ‘Citi Latin America Regional Articles’. Available: www.citibank.com/tts/insights/assets/docs/articles/Could_Latin_America_Benefit_from_Global_Supply_Chain_Trends.pdf

3 Inter-American Development Bank. Environmental Governance Indicators for Latin America and the Caribbean Available: https://publications.iadb.org/publications/english/document/Environmental-Governance-Indicators-for-Latin-America–the-Caribbean.pdf

4 Ruti Smithline et al. ESG in Latin America and the Rise of the Social Pillar. Latin Lawyer, May 2022. Available: https://latinlawyer.com/guide/the-guide-corporate-compliance/third-edition/article/esg-in-latin-america-and-the-rise-of-the-social-pillar

5 Juan Carlos Rodriguez. Sustainable Investment: Can Latin America Keep up with the Global Market? Available: www.evalueserve.com/blog/sustainable-investment-can-latin-america-keep-up-with-the-global-market

Another example of mandatory disclosure obligations can be found in Mexico, as per this response from the survey:

> 'Starting in April 2022, Mexican Pension Plans (Afores), the main Institutional Investors in Mexico will be required to comply with ESG standards (set forth in their specific regulations and referred to internationally recognised ESG principles). Current securities regulations do not expressly set forth disclosure obligations for publicly traded corporations. However, given that the Afores regulations will require pension plans to consider ESG compliance, it is likely that public companies that have Afores as shareholders, will be required to comply with ESG principles and disclose the level of compliance.'

In this post-pandemic world of higher financial constraints and greater economic instability, managing ESG issues will become an important standard for long-term investment sustainability and stakeholders will naturally demand more ESG information in companies' disclosures.[6] As such, bulkier disclosure obligations are likely to be imposed upon companies, especially those which manage third party equity.

d) ESG taxonomies

A taxonomy initiative is a method developed to standardise how ESG factors are classified. It establishes default concepts that are used to describe and classify ESG metrics and policies, ensuring that businesses are adhering to a common standard and avoiding 'greenwashing'.[7]

Only two out of the 16 jurisdictions surveyed were developing ESG taxonomies.

This data reflects a broader scenario in Latin America: ESG taxonomy development is still very incipient. In a document covering corporate governance in Latin America and the Caribbean, the Economic Commission for Latin America (ECLA) states that, 'despite bringing recommendations on what to report on and how to report it, ESG frameworks [...] do not usually set targets for such metrics; the latter is left to the discretion of the company's ESG commitments and goals'; and emphasises the importance of creating common standards and indicators, by sector and by country.[8]

The Commission also highlights that the region's lack of taxonomies may be hindering the expansion of ESG strategies, and 'that developing a taxonomy for sustainable activities within the framework of the [Sustainable Development Goals] could help sovereign and corporate bond issuers in the [Latin America and Caribbean] region to widen and strengthen financing for sustainable development'.

A survey respondent from Brazil stated:

> 'Brazil currently lacks an official ESG taxonomy standard, which significantly lowers the usefulness and effectiveness of the ESG disclosures made by businesses. The initiatives launched inside the EU are anticipated to have an impact on the future of taxonomy-related talks in Brazil, despite the fact that the Brazilian stakeholders have not yet come to an agreement on what should be acknowledged as sustainable and the associated criteria.'

---

6 J.F. Lavin and A. A. Montecinos-Pearce. ESG Disclosure in an Emerging Market: An Empirical Analysis of the Influence of Board Characteristics and Ownership Structure. Sustainability 2021, 13, 10498. Available: https://doi.org/10.3390/su131910498

7 'Greenwashing is essentially when a company or organization spends more time and money on marketing themselves as being sustainable than on actually minimizing their environmental impact.' Deena Robison. What is Greenwashing?. Available: https://earth.org/what-is-greenwashing

8 Georgina Núñes, Helvia Velloso and Filipe Da Silva. Corporate governance in Latin America and the Caribbean: Using ESG debt instruments to finance sustainable investment projects. Available: https://repositorio.cepal.org/bitstream/handle/11362/47778/1/S2200103_en.pdf

In 2021, the Financial Superintendency of Colombia launched Colombia's Green Taxonomy, which is responsible for defining a classification system for economic activities and assets with substantial contributions to achieving environmental objectives. Thus making Colombia the first Latin American country with an initiative of this kind.[9] Chile's Coordination of Finance and International Matters is also developing a taxonomy committee to advance green-economy discussions.[10]

The development of an ESG taxonomy is one of the most important steps in battling greenwashing locally. Equipped with a set of standards which are verifiable and comparable, states and regulatory agencies can effectively oversee which companies are in fact developing ESG matters objectively, possibly sanction those companies who are providing incorrect information and measure the development of the market.

e) Stewardship codes

A collection of values and rules used by investors in relation to ESG practices and metrics is known as an ESG stewardship code. They are often created by government agencies and freely embraced by businesses and investors, who may do so in full or in part.

Only six of 16 jurisdictions adopted stewardship codes with a relevant number of signatories. Such codes were developed by the market stakeholders (83.3 per cent) and by the governmental authorities (50 per cent).

A survey respondent from Mexico stated:

> 'In 2017, the Mexican Stock Exchange published a Sustainability Guide, outlining ESG stewardship codes and reporting thereto, for publicly traded companies, many of which have made this guide their own and follow it as part of their operations and when publishing their annual reports'

A survey respondent from Brazil stated:

> 'In 2016, the Brazilian Association of Capital Markets Investors (AMEC) published the Brazilian Stewardship Code, aiming to develop and disseminate the Stewardship culture in Brazil, promoting a sense of ownership in institutional investors and creating standards for responsible engagement. The Code comprises seven principles and ushers the creation of self-regulatory controls in companies.'

Regarding stewardship codes in Latin America, corporate governance authorities have identified a 'box-ticking' attitude problem, in which companies that do not really take corporate governance seriously view codes as 'burdensome lists of practices to be complied with which all too often do not suit the reality of their situation'.[11]

Even so, stewardship is a great tool to engage stakeholders in ESG implementation, as corroborated by the Principles for Responsible Investment. Stewardship codes promote collaboration among the

9 Ministerio de Hacienda de Colombia. Taxonomia Verde de Colombia. Available: www.minhacienda.gov.co/webcenter/portal/TaxonomiaVerdeColombia/pages_taxonomiavercolombia

10 Ministerio de Hacienda de Chile. Ministerio de Hacienda inició comité de Taxonomía para fomentar inversiones verdes en Chile. June 20, 2022. Available: www.hacienda.cl/noticias-y-eventos/noticias/comite-taxonomia-finanzas-verdes

11 Organization for Economic Co-operation and Development. Strengthening corporate governance codes in Latin America. Available: www.oecd.org/daf/ca/LART-2016-Strengthening-Corporate-Governance-Codes-Latin-America.pdf

market players and can put its signatories at an advantage as the criteria of the codes eventually become regulatory requirements in different jurisdictions.

f) Other voluntary ESG regulatory initiatives

There are numerous market-led stewardship codes, label classifications and self-applied concepts employed by enterprises or sectors, which aimi to obtain equivalent ESG practices. Voluntary ESG regulation measures substantially vary from one state to another.

Our survey found many different examples of initiatives currently implemented in Latin America. Mostly, companies have been adopting initiatives which have been internationally developed and adhere to other local ESG ventures. Many sector-specific groups have been developing ESG standards in their own industries, especially in the financial and banking sectors.

A survey respondent from Mexico stated:

> 'As in most of the world, the most relevant voluntary ESG regulatory and disclosure initiatives followed in Mexico are the UN's Sustainable Development Goals, the UN's Principles for Responsible Investment, the Global Reporting Initiative (GRI), the Taskforce for Climate Disclosure (TCFD) directives and the Sustainability Accounting Standards Board (SASB) guidelines. At the local level, the aforementioned [Mexican Stock Exchange]'s Sustainability Guide and increasingly, the International Association for a Sustainable Economy (IASE). Adherence to these initiatives is mostly done by publicly traded companies and transnational companies with branches or subsidiaries in Mexico. Furthermore, most banks financing institutions, hedge and investment funds, are increasingly requiring integration and disclosure of ESG factors to the companies that will be credit recipients or investment destinations.'

A survey respondent from Honduras highlighted the importance of non-profit initiatives:

> 'Currently, in Honduras there is a non-profit organization called "FUNDAHRSE" that addresses social responsibility within private corporations in Honduras. Corporations that qualify with certain requirements established by FUNDAHRSE and adopt their self-applied principles of social responsibility may become members.'

Although the level of implementation of legal frameworks varies from country to country, many private companies promise to follow the most relevant voluntary ESG regulatory and disclosure initiatives, as well as the UN Global Compact – in which Latin America has the second largest number of companies after Europe.[12] Furthermore, some countries (such as Argentina, Brazil, Chile, Colombia, Mexico and Uruguay) are members of the Global Steering Group for Impact Investment (GSG).

It is important to understand that, while international frameworks are undoubtedly a great tool to push the movement forward, many foreign ESG initiatives fail to account for local issues present in Latin America. As such, adhering to and participating in the national ESG environment is key in order to achieve a standard that addresses country-specific milestones.

---

12 Oliver Balch. From philanthropy to radical new business models in Latin America. Reuters, May 2022. Available: www.reuters.com/business/sustainable-business/philanthropy-radical-new-business-models-latin-america-2022-05-16

g) B Corps

The non-profit organisation B Lab has created the 'B Corp Certification', an impartial certification process to classify companies' ESG implementation. Generally speaking, companies must meet three requirements in order to become B Corporations: (i) receive a minimum rating on an ESG assessment conducted by B Lab; (ii) submit an impact report in accordance with B Lab's transparency standards; and (iii) have corporate documents that require its board of directors to follow specific governance guidelines that take ESG factors into account.

In Latin America, 'Sistema B' partnered with B Lab to expand the 'B Movement' with a systemic vision. Sistema B was created in April 2012, and has resulted in ten National Sistemas B, one International Sistema B and eight B Local Communities. A key aspect of Sistema B is that it works with businesses of all sizes and has the objective of 'affecting systemic change at an economy-wide level', by advocating for 'updates in company law to formalize business models that allow for a fiduciary duty towards people and planet, and not just shareholders', as reported by Reuters.[13]

In 80 per cent of the countries surveyed, B Corporations were 'not well known' and four countries were in the process of regulating B Corps.

Still, as of May 2022, according to Reuters, Latin America was 'one of the areas where the movement is growing most swiftly', and 'was one of the first regions outside of the United States to adopt the B Corp model'.[14]

From the beginning of 2021 to the beginning of 2022, the number of B Corps in Latin America grew 21 per cent, going from approximately 660 to 800.[15] B Corp Certification seems to be a crucial factor for the protection of female workers. B Corporation itself cites research that says that 'the single most important aspect for the promotion of [workplace] gender equality in Latin America seems to be having a B-certified company', and that 'being a B Corp in a [Latin America and Caribbean] country increases the likelihood of having a majority women workplace by 10%'.[16]

A notable case is that of Betterfly, a 2018-founded Chilean insurtech that has become the first Latin American B Corp to achieve unicorn status.[17] Another contribution to ESG from the B Corps system is the free online tool that allows companies to measure how they are performing on ESG issues. Understanding where they are allows companies to take measures to better their practices where needed.

We believe the B Corp system is a great platform for development of ESG certification in Latin America. Third party certification can be a tool to avoid greenwashing and allow for more effective ESG discussions.

13 *Ibid.*

14 *Ibid.*

15 Rennan Setti. O salto latino-americano das 'empresas B', aquelas com compromisso socioambiental. Capital, February 2022. Available: https://blogs.oglobo.globo.com/capital/post/o-salto-latino-americano-das-empresas-b-aquelas-com-compromisso-socioambiental.html

16 The B Effect for Women Workers in Latin America & the Caribbean. Available: https://blogs.oglobo.globo.com/capital/post/o-salto-latino-americano-das-empresas-b-aquelas-com-compromisso-socioambiental.html

17 https://labsnews.com/en/articles/business/latin-americas-first-b-corp-unicorn-betterfly-wants-to-go-global-and-soon

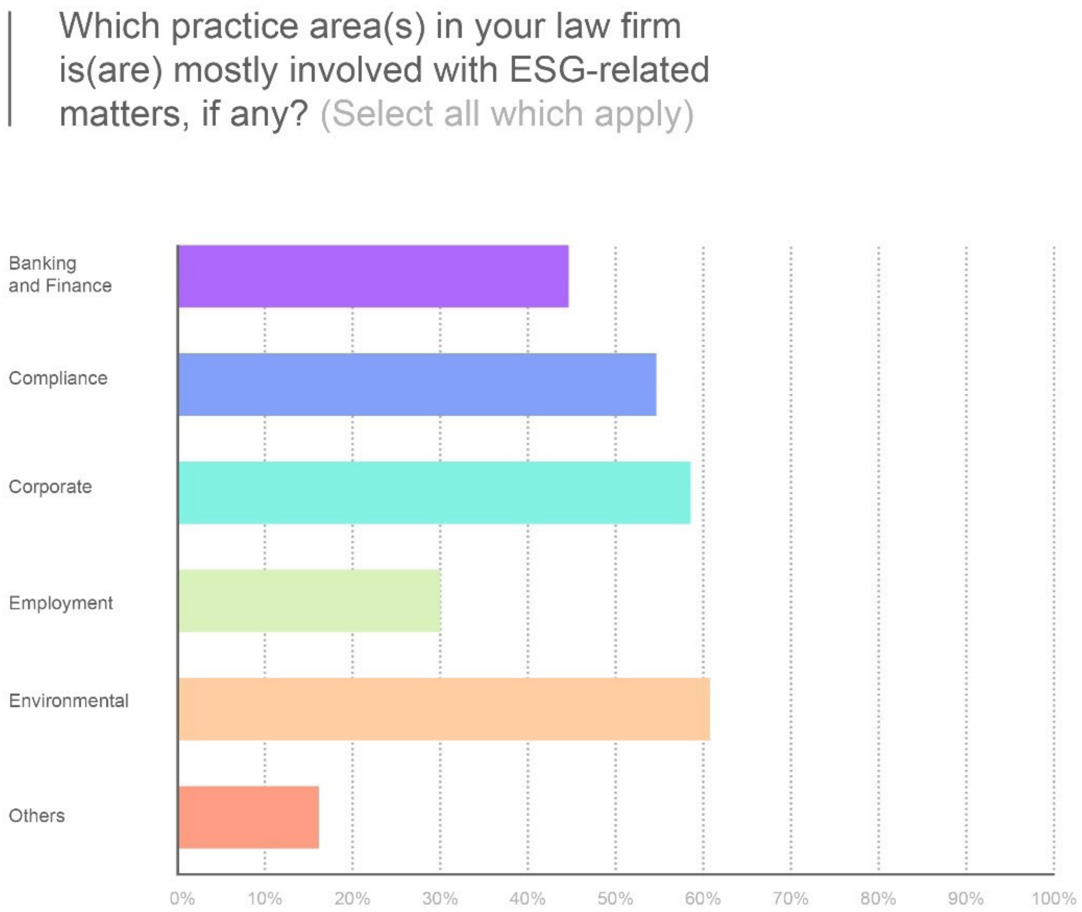
4. ESG in Latin American law firms

a) Participating firms

We received answers from 149 law firms in 15 countries.

b) Which teams deal with ESG?

47 per cent of the answering firms had a team (either a partner/associate or a full practice area) mainly dedicated to ESG.



As ESG often connects different subjects and expertise. Having a core team composed of a few partners and associates, which keeps up with trends is a commonly used structure. Still, considering that ESG commonly covers multiple subjects, the results of the survey reflected the reality of interdisciplinary development for the execution of ESG-related projects.

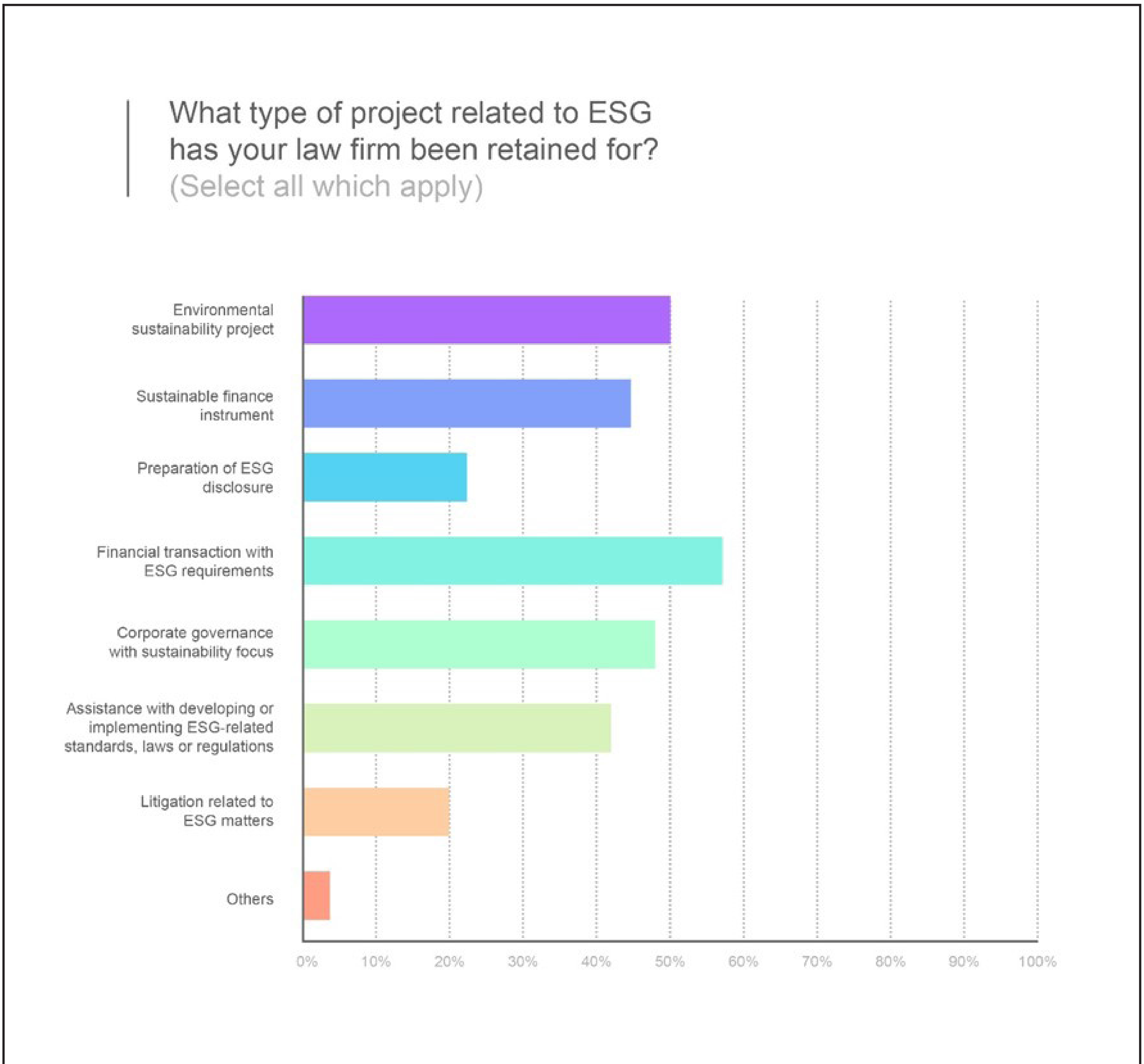
As seen in this report, Latin American countries (as is the case with most emerging markets) have yet to consolidate a single understanding on what constitutes ESG and naturally law firms tend to move flexibly to accommodate demand. As new projects and new considerations regarding ESG surge among clients, it is anticipated that an ESG team, if existing, will surely need to consult with other areas in order to provide comprehensive advice for clients.

Other practice areas cited by law firms were: energy; capital markets; mining and natural resources; data privacy; oil and gas; and public and administrative law. Additionally, it is expected that companies with heavily regulated services such as telecommunications and healthcare will have discussions when implementing ESG and law firms will be looking for ways to help them.

c) Projects involving ESG

70.8 per cent of the firms already had been retained to work on ESG-related projects or projects with a material ESG component.

79.8 per cent of the law firms are discussing ESG-related work and opportunities.



The most common ESG-related subject is assistance in financial transactions with ESG requirements. As retail and institutional investors increasingly demand ESG standards in their investment decisions, law firms are expected to see a rise in the demand for ESG expertise in financial transactions. The subject of green debt issuance is not new in the region, but this type of investment has gone from niche to mainstream in a very short time.

From a firm point of view, projects such as this may be not directly related to a knowledge of ESG practical implementation measures, but rather knowledge of sustainability ratings and reporting directives. Latin America is still underdeveloped in terms of green finance regulation, which might worry regulators that the growing number of ESG financial transactions is merely a form of virtue signaling. As the regulatory framework for ESG debt issuance evolves, it is expected that financial advisors and lawyers will need to be up to speed on the new criteria for sustainable investment.

Additionally, many ESG projects in which firms are involved are related to environmental sustainability, which showcases the greater importance given to the 'E' aspect in Latin America. This result is in line with the greater international concern with environmental issues and the protection of natural biomes[18] – a concern which many of the surveyed jurisdictions share.

As seen in this report, most Latin American countries have yet to establish ESG-related disclosure requirements. Naturally, assistance in disclosure requirements is still not quite a hot topic in law firms. However, as the trend of adopting ESG disclosure requirements is followed by regulators, law firms can expect an increase in projects addressing the theme.

ESG litigation is not a main focus for firms in Latin America,[19] but as was the case in Europe and North America, it is expected that proceedings related to this theme will become increasingly common. A study conducted by the Inter-American Development Bank found that poor accessibility to dispute resolution in general hinders social and environmental justice in Latin America. This difficulty is related to the great complexity of the legal procedures, poor public awareness and the lack of access to information related to dispute resolution.[20] Such difficulties, present in all of litigation's practices, are also affecting ESG-related procedures and are obstacles to the development of ESG justice.

As novel ESG regulations surge so will cases of noncompliance and law firms must be prepared to address this new form of litigation. From a corporate standpoint, shareholder's activism may become interconnected with ESG themes as jurisdictions attribute ESG responsibility to companies. However, considering that shareholder's activism is not well developed in Latin America (a region without a tradition of minority shareholder's protection or public companies), this introduction of ESG themes in corporate disputes is likely to be small at first, but slowly to grow with the globalisation of financial markets.[21]

18 Alberto Ninio. The evolution of environmental law in latin america: the cases of brazil, colombia and peru and the effort to protect forest resource. In. 'Los Nuevos desafíos del Derecho Internacional Público y Privado'. ISBN: 0-8270-4139-X. Available: www.oas.org/es/sla/ddi/docs/publicaciones_digital_XXVI_curso_derecho_internacional_1999_Alberto_Ninio_2.pdf

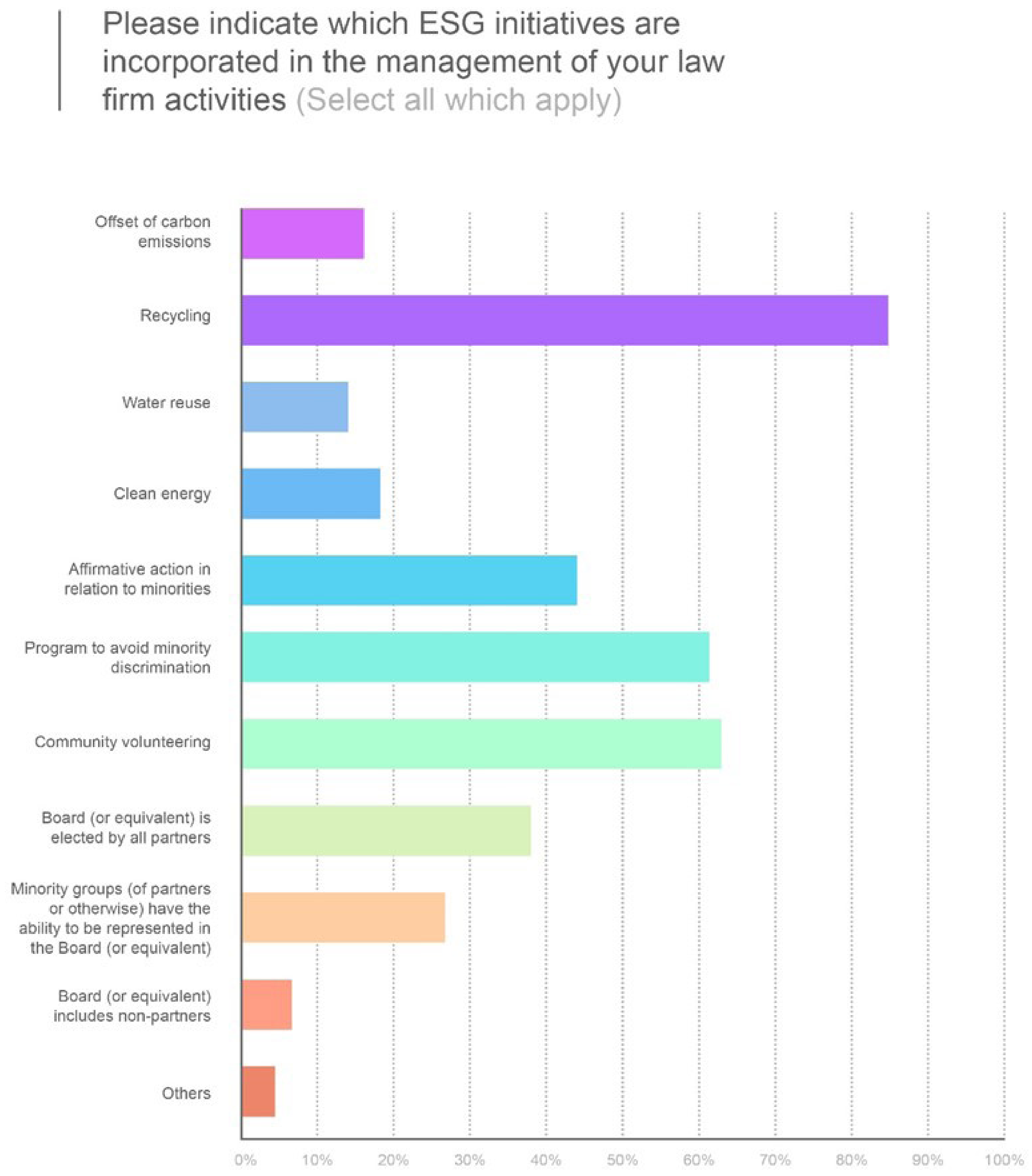
19 That said, many relevant ESG-related disputes have arisen in Latin America, such as the Mariana/Brumadinho Indemnification disputes in Brazil and the Saúl Luciano Lliuya v RWE damages dispute, among other notable cases.

20 Inter-American Development Bank. Environmental Governance Indicators for Latin America and the Caribbean Available: https://publications.iadb.org/publications/english/document/Environmental-Governance-Indicators-for-Latin-America–the-Caribbean.pdf

21 Pacheco HERNAN. Remarks on shareholders activism in Latin America - Prepared for the International Section Meeting of the New York State Bar Association in Tokyo, Japan Available: https://nysba.org/NYSBA/Sections/International/Seasonal%20Meetings/Tokyo%202019/Coursebook/Olof%20-%20REMARKS%20ON%20SHAREHOLDERS%20ACTIVISM%20IN%20LATIN%20AMERICA.pdf

d) ESG measures for law firms activities

9.1 per cent of the firms incorporate ESG initiatives in the management of their own activities



Most of the law firms surveyed (79 per cent) already implement some ESG actions in their own practices. It is important to note that even before the rise in popularity of ESG discussions, law firms were already subject to intense scrutiny from clients and stakeholders, and as such are more likely to be strict in their compliance with all applicable regulations. It is indisputable that lawyers exert a crucial function in society as gatekeepers of justice and social order.[22] This usually translates to, in most professional large-scale firms, a natural inclination to keep up with social demands. ESG falls directly into the category of practices that tend to be organically performed by law firms.

The most popular activity implemented by law firms was recycling, according to 85 per cent of the firms surveyed. Even though this may seem like a simple measure, the reality of law firms still requires the use of a great quantity of paper, making recycling an elemental, yet fundamental practice. In fact, waste management is a difficult subject in many Latin American countries, as they are often dependent on informal sector recyclers rather than state-organised systems.[23]

Voluntary community work comes next with 62 per cent of respondents implementing the activity. Partnering up with non-profit organisations in order to implement volunteering campaigns is a popular measure with law firms in most of the world, and it is no different in Latin America. Lawyers are often naturally interested in social justice and voluntary work ,even in the form of taking up pro bono cases, can be a great platform to implement or solidify ESG's 'S' in law firms.

Matters related to social implementation of ESG are also considered important by law firms: avoiding discrimination and implementing affirmative action to include minorities are cited as used by 61 per cent and 44.8 per cent of law firms, respectively. All measures focused on increasing diversity and combatting discrimination are especially important due to the poor (yet improving) performance of law firms in terms of diversity.[24] Implementing ESG can be seen as a great opportunity to fight stereotypes and achieve a more inclusive workplace for all involved.

That said, some important implementations were found to be lacking in most of the surveyed firms, such as discussions relating to carbon emissions offset, water reuse and clean energy. Considering the relatively low impact of the law activity in the environment (aside from, as discussed, the non-negligible paper usage), it is not surprising that firms have not been focusing much on the 'E' aspect of ESG, although this is clearly changing and we see an increasing number of law firms in Latin America more concerned about this aspect.[25]

Finally, law firms are not immune to committing greenwashing and virtue signaling. Firms must be careful not to become 'performative allies', that is, to merely discuss ESG externally to clients and not effectively implement measures internally. If law firms are to become serious defenders of ESG and wish to publicise their expertise to the market, it is paramount to evidence the seriousness, signalling to all its stakeholders its seriousness in adopting ESG principles.

---

22 As seen in the International Bar Association's International Principles on Conduct for the Legal Profession: 'Lawyers throughout the world are specialised professionals who place the interests of their clients above their own, and strive to obtain respect for the Rule of Law. They have to combine a continuous update on legal developments with service to their clients, respect for the courts, and the legitimate aspiration to maintain a reasonable standard of living.'

23 www.bioenergyconsult.com/recycling-latin-america

24 DILALP. Diversity & Inclusion in the Latin America Legal Profession. 2017 Event Report. Available: https://theiilp.wildapricot.org/resources/Documents/Diversity_Inclusion_in_the_Latin_America_Legal_Profession-2017_Event_Report.pdf

25 For example, a Peruvian firm cited it is part of the LEED Building rating system – developing its activities in sustainable buildings; a Brazilian firm has offset its carbon footprint.

5. Conclusion

This survey was constructed as a starting point for ESG discussion within Latin American law firms. We hoped to promote and encourage a future in which the legal profession actively engages in ESG discussions not only as a client-facing practice area but also institutionally as an inward-looking matter. Additionally, we aimed to foster open communication between lawyers, law firms and governmental agencies through the sharing of best practices and experiences in the region, so that ESG becomes an integral part of each firm's activities.

Latin America is historically a region with relevant environmental, social and governance problems. Latin America is also home to immense areas of preserved ecosystems, which we have the responsibility to protect.

The survey results showed us that Latin American countries and law firms are committed to the ESG agenda, but that more detailed legislation is still in the process of being implemented in most countries, and that more robust ESG internal practices are still in the process of being implemented by most firms.

We believe that Latin American law firms will play a relevant role in the development of the ESG agenda in the region. As a starting point, law firms will participate in the development of legislation and self-regulation, advise their clients on ESG-related matters and increasingly incorporate ESG practices to their own businesses. At a later stage, law firms may be involved in more complex discussions about ESG practices, such as whether providing certain types of advice to certain clients would be aligned with ESG principles.

It is clear that law firms will be in the spotlight of the ESG agenda in Latin America over the coming years. The IBA Latin American Regional Forum plans to participate in these developments by creating awareness about the importance of the ESG agenda, promoting the exchange of information between law firms in the region and also bringing insights from law firms in other regions where the ESG agenda is already more developed.

Annex I: Methodology

In November 2021, the IBA Latin American Regional Forum launched two surveys:

(a) The first survey contained questions about the status of ESG rules in each country. Responders were specialists from the law firms of LARF officers and members of the LARF Young Council. We received one response per country and a total of 16 responses.

(b) The second survey contained questions about ESG initiatives in law firms in the region. It was sent to all LARF members. We received 149 responses from 15 different countries.

Full copies of the survey questions are available on Annex II of this Report. The surveys remained open for approximately 30 days. The second survey was anonymous, so the IBA is not able to identify individual respondents or their workplaces or individual institutions.

This report includes a few representative qualitative comments from specific respondents to assist in highlighting some of the main topics. Some of the qualitative comments have been slightly adjusted to improve readability while taking care to preserve the statement's sense.

Annex II: Survey forms

IBA LARF ESG questionnaire

Environmental, Social and Corporate Governance (ESG) issues are currently on the spotlight of legal discussions worldwide – jurisdictions and international bodies are monitoring the initiatives developed by public and private agents in order to understand how such initiatives converge (or not) into a unified system for ESG implementation.

While some countries and regions have considerably developed their ESG hard law and soft law framework, other countries lag behind. The purpose of this survey is to identify the main ESG trends across Latin America and compare such efforts both within the continent and with the international regulatory framework. Please answer the questions below in regard to your jurisdiction.

1. **ESG Development:** ESG is already present in all countries through different specific laws and regulations. The level of development of such rules, however, will vary greatly from country to country. Please indicate which of the ESG-related obligations below are already applicable in your jurisdiction.

   (a) Mandatory participation of independent directors in Boards of Directors

   (b) Mandatory diversity (gender, minorities, employees) in Boards of Directors

   (c) Mandatory compliance and anti-corruption mechanisms

   (d) Gender same-pay rules

   (e) Reverse logistics rules

   (f) Governmental incentives for recycling, water reuse, clean energy and other environment-friendly initiatives

   (g) Official incentives (e.g., tax benefits or special lines of credit) for sustainable financing

   (g) Others [please specify]

2. **ESG Disclosure:** Corporate ESG disclosures provide investors with information regarding a company's performance on ESG issues used when making investment decisions. Without mandatory and comparable ESG disclosure standards, the information provided voluntarily by companies is often incomplete or insufficient to measure factual ESG application.

   Are there ESG-related disclosure obligations (including listing requirements and/or risk factors) in your jurisdiction?

   (a) For publicly held companies? Y/N

   (b) For financial institutions? Y/N

(c) For other types of companies? Y/N Specify: __________

(d) To your best knowledge, are such obligations based on the TCFD (Task Force on Climate-related Financial Disclosures), the SFDR (Sustainable Finance Disclosure Regulation), SEC's current regulations or any such other such international regulation? Y/N Specify: __________

3. **ESG Taxonomies:** A taxonomy initiative is a system created to standardize ESG classification, creating default concepts used to define and categorize ESG measures and policies – thus certifying that companies are following a single directive and preventing greenwashing26.

(a) Are there regulatory ESG taxonomy/classification initiatives currently being developed or in force in your jurisdiction? Y/N

(b) To your best knowledge, are such initiatives based on the EU Taxonomy Regulation, currently under phased implementation ([*link*])? Y/N/DK

4. **Stewardship Codes:** An ESG stewardship code is a set of principles and guidelines used by investors in connection with ESG practices and measures. They are usually established by government bodies and voluntarily adopted by companies and investors, which can adopt all or some of the requirements of the code.

(a) Are there ESG stewardship codes currently implemented with a relevant number of signatories in your jurisdiction? Y/N/DK

(b) If so, were the codes developed by:

(i) national financial regulators ____

(ii) market led ____

(iii) other (please specify) ______________

5. **Other Voluntary ESG Regulatory Initiatives.** Voluntary ESG regulatory initiatives greatly vary from one jurisdiction to another - there are multiple market-led stewardship codes, label classifications and self-applied principles used by companies or sectors seeking to secure comparable ESG procedures.

(a) What are the main voluntary ESG regulatory initiatives in your jurisdiction, their scope of application, and current form and level of adhesion within their specified fields of application?

(b) Are there government-led ESG label, benchmarks, or policy initiatives currently in force or under development?

6. **B-Corps.** The "B Corp Certification" is an independent certification procedure issued by the non-profit B Lab. To become a B Corporation, companies need to: (i) achieve a minimum score on an ESG rigorous assessment conducted by B Lab; (ii) produce an impact report as per the transparency standards required by B Lab; and (iii) have corporate documents that subject its board of directors to specific governance rules that take into consideration ESG factors.

26 understood as the measures taken to convey a false idea of sustainability to a company

(a) How well is B Corp Certification known in your jurisdiction? 1-5

(b) Are B Corps regulated by law or in the process of becoming regulated in your jurisdiction? Y/N
Please describe the status of such regulation and provide references.

IBA ESG Law Firm Survey Initiative

Environmental, Social and Corporate Governance (ESG) issues are currently on the spotlight of legal discussions worldwide – jurisdictions and international bodies are monitoring the initiatives developed by public and private agents in order to understand how such initiatives converge (or not) into a unified system for ESG implementation.

Law Firms are an important part of this trend, both in how they prepare to assist their clients in ESG matters, and in how they implement ESG initiatives in their own business.

The Latin American Regional Forum (LARF) of the IBA is conducting surveys to understand the development of ESG regulation in Latin America, and the impact of ESG on Latin American law firms.

If you wish to assist on this project, please answer the questions below in regards to your law firm. It should not take more than 3 minutes and the answers will remain anonymous. Thank you for your cooperation.

1. In which country is your law firm located (or, if located in multiple countries, in which country is your office located)? (Select one)

    a. Argentina

    b. Bolivia

    c. Brazil

    d. Chile

    e. Colombia

    f. Costa Rica

    g. Cuba

    h. Dominican Republic

    i. Ecuador

    j. El Salvador

    k. Guatemala

    l. Honduras

    m. Mexico

    n. Nicaragua

    o. Panama

p. Paraguay

q. Peru

r. Puerto Rico

s. Uruguay

t. Venezuela

u. Other ______

2. Is your law firm currently discussing ESG-related work and opportunities? Y/N

3. Does your law firm have a team (whether just one partner/associate or a full practice area) mainly dedicated to ESG? Y/N

4. If not, which practice area(s) in your law firm is(are) mostly involved with ESG-related matters, if any? (Select all which apply)

    a. Banking and Finance

    b. Compliance

    c. Corporate

    d. Employment

    e. Environmental

    f. Others ______

5. Has your law firm already been retained to work on ESG-related projects or projects with a material ESG component? Y/N

6. If yes, what type of project? (Select all which apply)

    a. Environmental sustainability project

    b. Sustainable finance instrument

    c. Preparation of ESG disclosure

    d. Financial transaction with ESG requirements

    e. Corporate governance with sustainability focus

    f. Assistance with developing or implementing ESG-related standards, laws or regulations

    g. Litigation related to ESG matters

    h. Others _______

7. Does your law firm incorporate ESG initiatives in the management of its own activities? Y/N

8. If so, please indicate which ones (Select all which apply)

    a. Offset of carbon emissions

    b. Recycling

    c. Water reuse

    d. Clean energy

    e. Affirmative action in relation to minorities

    f. Program to avoid minority discrimination

    g. Community volunteering

    h. Board (or equivalent) is elected by all partners

    i. Minority groups (of partners or otherwise) have the ability to be represented in the Board (or equivalent)

    j. Board (or equivalent) includes non-partners

    k. Others ______________

INTERNATIONAL BAR ASSOCIATION®

the global voice of
the legal profession®