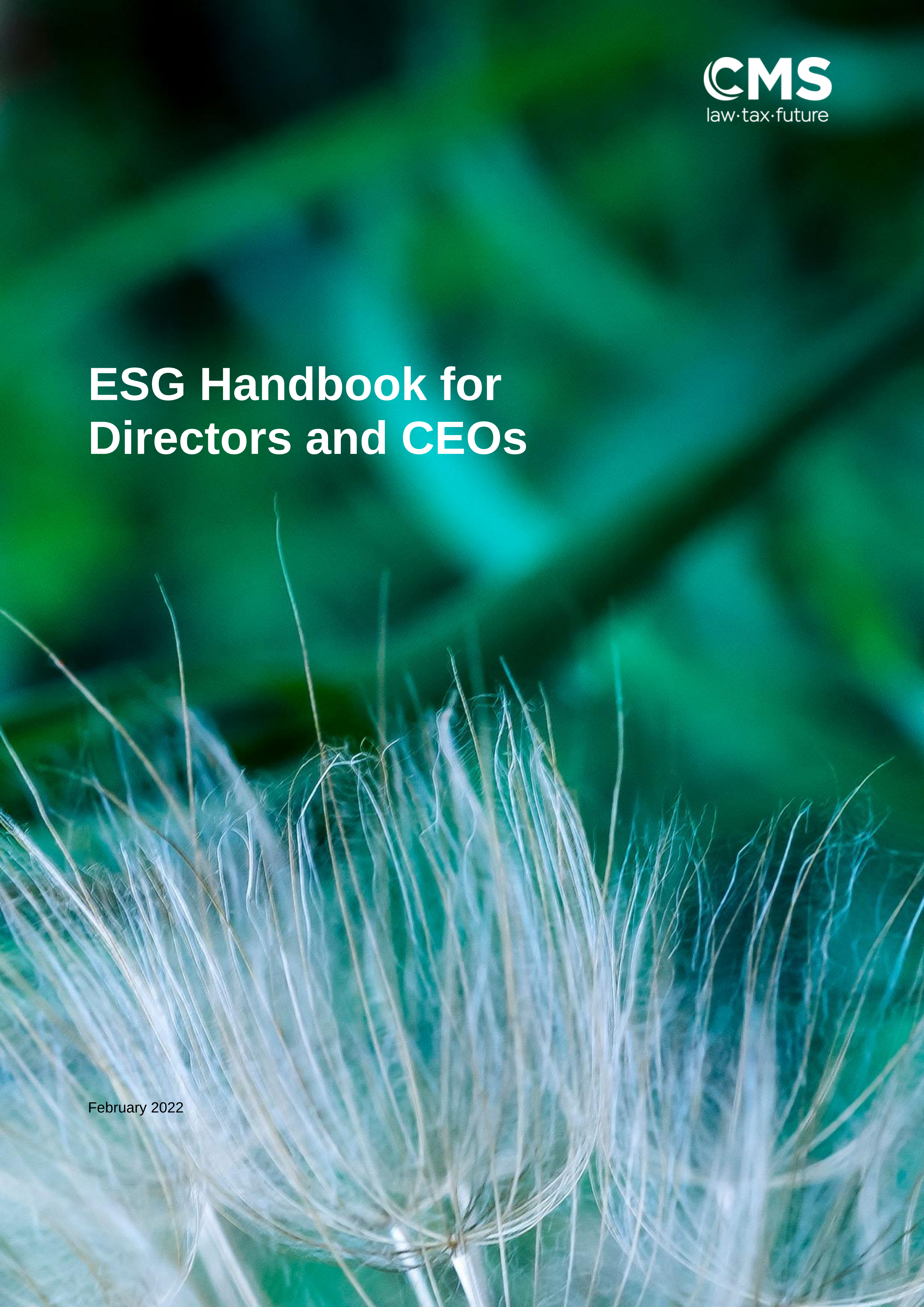


ESG Handbook for Directors and CEOs

February 2022

Table of Contents

Introduction 3
Overview 4
Angola 5
Austria 8
Belgium 10
Bosnia and Herzegovina 12
Bulgaria 13
Chile 15
China 17
Colombia 20
Czech Republic 22
France 24
Germany 28
Hong Kong 30
Hungary 32
Italy 34
Kenya 38
Luxembourg 40
Mexico 43
Netherlands 45
Peru 48
Poland 49
Portugal 51
Romania 53
Russia 55
Serbia 56
Singapore 58
Slovakia 60
South Africa 62
Spain 65
Turkey 67
United Arab Emirates 69
United Kingdom 71
About CMS 73

Introduction

With the ever-increasing focus by stakeholders and governments on Environmental, Social and Governance ("**ESG**") issues, and the ever-changing realities in this scope, Directors and CEOs must be vigilant of how their duties are continuously evolving.

We have taken the four of the most topical aspects of ESG duties and responsibilities for Directors and CEOs and we have addressed them in this handbook which covers over 30 countries across the globe.

Given the increasing regulatory, investor and media scrutiny of ESG factors, Directors and CEOs are increasingly required to proactively consider these integral elements of the framework within which they perform their duties. Failure to consider these factors can expose the individual(s) to potential regulatory penalties and/or legal liabilities.

Overview

Of the 30 countries we surveyed, only six (Bulgaria, France, Luxembourg, Portugal, South Africa and the UK) have explicit ESG rules directors must follow.

The remainder could be said to include ESG within other sets of regulations such as those imposed on listed (or larger) companies, certain industries, a general duty of care – often health & safety – towards employees, fair pay requirements, bans on discrimination, and an increasing awareness of business' impact on the environment.

There is a growing tendency for financial institutions and large investment funds to view companies that emphasise ESG – thereby benefiting the environment and people – as more likely to achieve better business results, and be less exposed to risks such as legal disputes.

Overall, France – followed by Portugal – has the most developed set of ESG rules, which first became mandatory for listed companies in 2001. Luxembourg, for its part, has an Environmental Code and more recently (July 2021), an Enterprises and Human Rights Pact, while South Africa's Broad-Based Black Economic Empowerment Act dates back to 2003.

In many markets, special classes of companies are emerging that focus on ESG issues, such as Commercial Corporations of Collective Interest and Benefit (BIC) in Colombia, and Benefit companies in Italy. In Mexico, private pension funds must consider ESG issues when investing.

Across the board, the growing emphasis on sustainability and social issues is expected to lead to more stringent requirements for companies – often in response to pressure from social (Poland), academic (Netherlands) and political (UK, as host of the COP26) sources.

The European Commission is in the meantime working on a Corporate Sustainability Reporting Directive (CSRD), which if adopted would apply to larger companies and be transposed into national law by EU member states, becoming applicable by 1 January 2023 and part of all management reports a year later. Certain reporting obligations already apply to the financial sector under the EU's Sustainable Finance Disclosure Regulation (SFDR), which is stricter than the Non-Financial Disclosure Regulation (NFRD), the latter addressing environmental and social matters among others.

Turkey, for its part, may adopt aspects of Europe's Green Deal Action Plan in order to maintain commercial ties with the Continent.

Looking ahead, it is expected that future financial mechanisms will include carbon tax and emissions trading schemes. France is floating procurement policies that could see suppliers and subcontractors having to meet certain ESG standards in order to do business with large clients.

ESG is at the top of every board agenda. Even in jurisdictions where relevant regulations are not yet in place, it is only a matter of time before the duty and responsibility to implement them fall on directors and CEOs.

Louise Wallace – Global Head of CMS Corporate M&A Group

Country by Country

Angola

- ***Alberto Galhardo Simões***
- ***Nuno Alves Mansilha***
- ***Luis Borba Rodrigues***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

No. Under the Angolan Companies Law ("**ACL**"), which forms the core of corporate governance and corporate liability regimes, directors' duties are limited to a general duty of care. This duty entails the obligation to act in the best interest of the company with the diligence of a careful manager and subject to the interests of the company, its shareholders and employees. ALC provides other specific duties imposed on directors, which are further detailed below but do not specifically relate to ESG matters.

Notwithstanding, there are a number of soft law instruments that have been published in recent years that cover corporate governance issues, such as the Carta de Corporate Governance de Angola ("**Angolan Corporate Governance Charter**"), an open letter drafted by the Angolan Corporate Governance Centre, a private organisation comprising academic scholars and banking sector private parties, and the Guia Anotado de Boas Práticas de Governação Corporativa (the "**Corporate Governance Good Practices Guide**"), put out by Comissão do Mercado de Capitais ("**CMC**"), the Angolan capital markets regulatory body.

Both the Angolan Corporate Governance Charter and the Corporate Governance Good Practices Guide offer a number of recommendations concerning corporate governance issues, such as transparency, board of directors' remuneration, conflicts of interests, financial and non-financial information reporting and segregation of control and supervisory functions.

However, these provisions remain as mere recommendations and are therefore non-binding, even for entities that have adhered to the Angolan Corporate Governance Charter.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

As referenced in the above comment, directors are only bound to a general duty of care, in the terms described therein. However, the Angolan General Labour Law provides a principle of equality and non-discrimination of women in relation to men. It further provides that women must be ensured:

- access to any job, profession or work post;
- equal opportunities and treatment with regard to training and professional improvement;
- common professional categories and criteria for evaluation and promotion between genders;
- equal pay for equal jobs; and
- the right to not be directly or indirectly discriminated against on the basis of gender.

As the directors' general care duties entail the obligation to act in the best interest of the company with the diligence of a careful manager and subject to the interests of the company and its shareholders and employees, they are indirectly bound to these provisions of the Angolan General Labour Law, and it is therefore their duty to ensure compliance with the same.

In parallel, under the Angolan General Labour Law, companies must also adopt and apply all required safety, health and hygiene measures in the workplace, meaning that it will fall on the directors to ensure that these measures are adequately implemented.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

During 2021, the financial sector has experienced recent developments with regard to governance of financial institutions, as well as non-financial institutions that fall within the supervision scope of Banco Nacional de Angola (“**BNA**”), the regulator of the banking sector. With the recent Financial Institutions Regime and the enactment of a new Regulation on Corporate Governance and Internal Control for Financial Institutions (the “**Corporate Governance Regulation**”), a number of legal provisions have been enacted establishing that financial institutions (and non-financial institutions that fall within the supervision scope of BNA) should implement a corporate governance model that must cover an institution’s:

- remuneration policy;
- internal control policy;
- compliance policy;
- related parties’ transactions and conflicts of interests policy;
- transparency and information reporting policy;
- code of ethics; and
- reporting channel.

In addition, a code of conduct, which must include general conduct and deontological principles and rules for the prevention of criminal activity, must be in place. Directors are bound to the duties established by this code of conduct and must therefore act accordingly.

Also, the board of directors must set up an Internal Control Committee (which should include one or more non-executive directors, i.e. directors who are not part of the executive committee) which shall be in charge of:

- ensuring formalisation and operationalisation of an effective information disclosure system, including preparation and disclosure of financial statements;
- overseeing formalisation and operationalisation of the institution’s accounting practices and policies;
- reviewing all internally-disclosed financial information;
- oversight of the internal audit department’s independence and effectiveness;
- OVERSIGHT of the compliance department.

Furthermore, financial and non-financial institutions subject to BNA’s supervision must have at least one independent director. The duties of independent directors are to control and evaluate performance of the executive committee with regard to business strategy, organic and functional structure, disclosure of information and relevant operations. In particular, independent directors are responsible for:

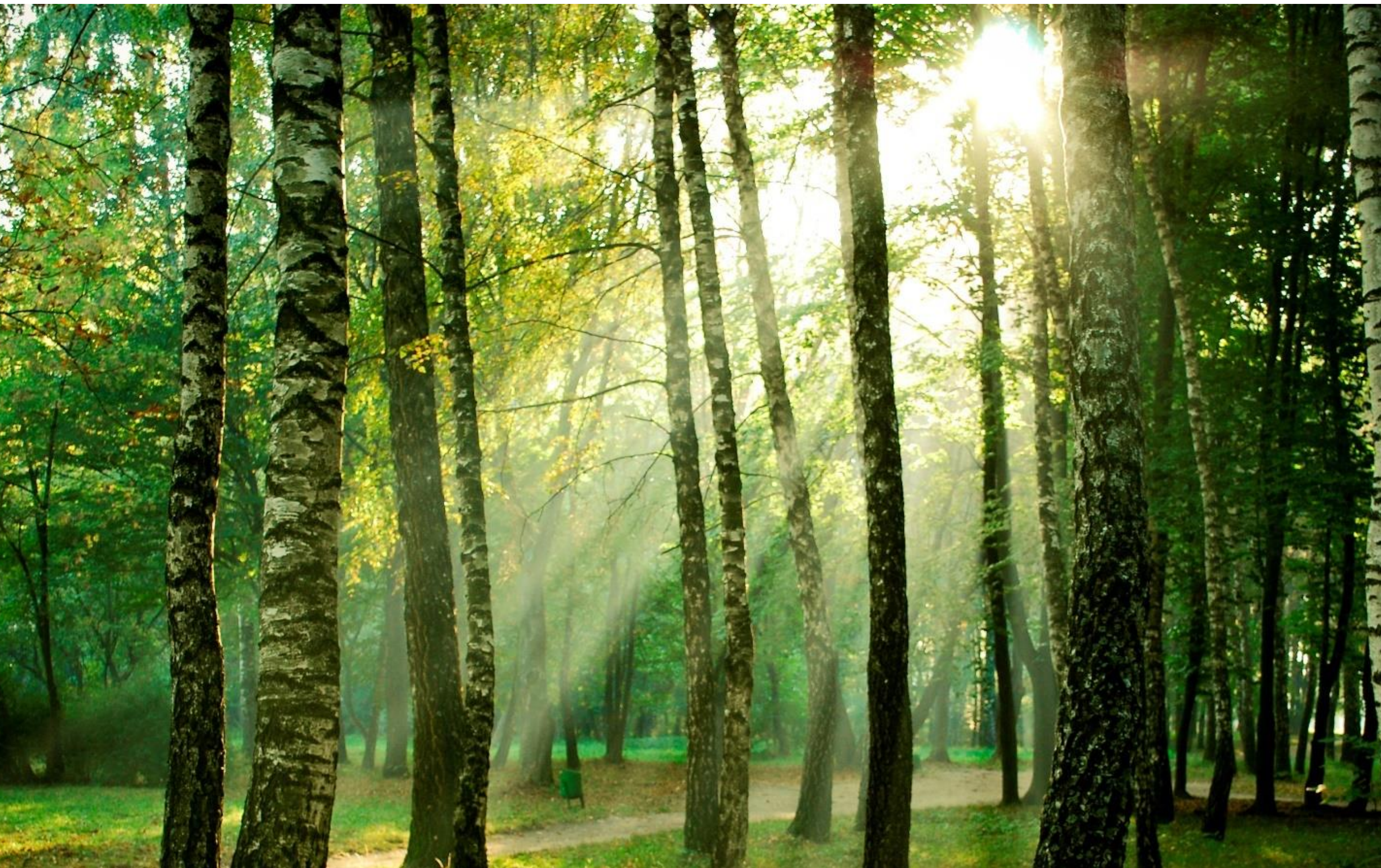
- ensuring that executive directors carry out their functions in a rational, prudent and effective manner;
- providing independent opinions in decision-making processes;
- taking part in defining and monitoring business strategies;
- analysing and discussing reports from the internal audit, compliance and risk management departments;
- overseeing management and accounting information disclosure proceedings;
- providing a report on their findings to both the board of directors and, on an annual basis, to the BNA.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

There are currently no general duties for directors with regard to ESG disclosure. However, recent rules applicable to financial and non-financial institutions (detailed in question 3) have already laid down some rules concerning the disclosure of financial information, which may pave the way to regulation on disclosure of non-financial information and, ultimately, ESG reporting.

Notwithstanding, CMC's Corporate Governance Good Practices Guide (see question 1) already includes recommendations concerning the disclosure of both sustainable management information (nature of annual initiatives and respective implications, sustainable development index comparison and recycling measures implemented) and of implemented social policies.

Despite not binding in nature, these CMC recommendations can certainly act as a point of reference for companies that wish to start disclosing ESG information, providing at least some form of guidance on how to do so.



Austria

- ***Peter Huber***
- ***Sanela Fürstenberg***
- ***Simon Cook***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

ESG considerations encompass a wide range of aspects such as human rights, equality and diversity, consumer protection, animal welfare, corporate governance, climate change, etc. In Austria, ESG-related regulations are stipulated in a number of laws on federal and on state level, for example:

— Austrian Water Rights Act (*Wasserrechtsgesetz*)

— Austrian Trade Law Act (*Gewerbeordnung*)

— Environmental Impact Assessment Act (Umweltverträglichkeitsprüfungsgesetz)

— Stock Corporation Act (*Aktiengesetz*)

— Austrian Commercial Code (UGB)

— Consumer Protection Act (*Konsumentenschutzgesetz*)

— Austrian Working Hours Act (*Arbeitszeitgesetz*)

— Austrian Employee Protection Act (*ArbeitnehmerInnenschutzgesetz*).

Obligations under these laws are mainly addressed to the respective company. However, compliance with such regulations must be ensured by the management. Moreover, under Austrian corporate law, managing directors of a joint-stock company (*Vorstand*) and of a private limited company (*Geschäftsführer*) are responsible for conducting all of the company's business. The Austrian Joint-Stock Companies Act explicitly requires managing directors to be guided by public interest, which includes at its core ESG considerations, limited to simple compliance with the applicable ESG regulations.

In terms of ESG requirements, directors need to:

— identify any ESG issues which need to be addressed in their company (in accordance with applicable law and best practice considerations);

— propose appropriate measures to be taken;

— monitor/ensure the proper implementation of such measures.

In case of violation of the above-mentioned regulations, the competent authorities may impose administrative fines on (each or some of) the company's directors. If violations lead to sanctions being imposed on the company (e.g. the loss or revocation of a licence or concession), the managing director may be held personally liable towards the company.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

ESG-related employee protection regulations are stipulated in a number of laws at state level.

Obligations relating to the health and safety of employees are mainly regulated in the Austrian Employee Protection Act (*ArbeitnehmerInnenschutzgesetz*). Workers are also protected by safety measures and guidelines for dangerous work equipment.

The issue of wage inequality between genders is addressed by the Austrian Equal Treatment Act (*Gleichbehandlungsgesetz*) and the general legal principle of equal treatment in accordance with Austrian constitutional law (*Gleichbehandlungsgrundsatz*). In this regard, companies must generally apply equal pay criteria for men and women. In addition, companies are prohibited from discriminating against employees or potential employees on the basis of their ethnicity, religion, ideology, age, gender or disability.

A major step in terms of ESG considerations in the area of diversity and gender equality has been achieved through the Austrian Equality of Women and Men on Supervisory Boards Act (*Gleichstellungsgesetz von Frauen und Männern im Aufsichtsrat*). It applies to listed public limited companies and other large companies and stipulates that newly constituted supervisory boards must consist of at least 30% women and at least 30% men.

Directors are responsible for complying with and observing the respective provisions and taking appropriate measures to ensure compliance at all lower levels of the organisation. Compliance with these provisions can be enforced by imposing administrative fines on some/all directors of a company.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

The EU Taxonomy Regulation was recently introduced. This provides for new disclosure obligations as from 1 January 2022. The Regulation will be directly applicable to Austrian companies and their directors.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

In Austria, various laws require the disclosure of ESG information; some of these disclosure provisions are directly contained in the ESG-related laws mentioned above. For example, according to the Austrian Commercial Code (UGB), large capital market-oriented companies, credit institutions and insurance companies in the EU have been required to report on non-financial aspects since 2017. Such companies and institutions must disclose – in their management report or a separate sustainability report – how they meet social requirements in terms of environmental protection, employee protection, respect of human rights, anti-corruption, etc.

Until now, however, the relevant reporting has in practice shown certain shortcomings: some reported information is not relevant, it is often unreliable and is only comparable in the rarest cases. Also, only a small number of companies is currently subject to the reporting obligation due to the scope of the respective provisions.

To address such shortcomings, the European Commission issued a draft directive on Corporate Sustainability Reporting (the "**CSRD**") on 21 April 2021. This is due to be transposed into national law by the EU member states by 1 December 2022 and thus shall be applicable as of 1 January 2023.

As of 1 January 2024, all management reports must be published in accordance with the reporting requirement set out in the CSRD.

Belgium

- ***Jean-François Goffin***
- ***Jean-Luc Hagon***
- ***Alexandre Jamar***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

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In terms of ESG requirements, directors need to:

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— propose appropriate measures to be taken;

— monitor/ensure the proper implementation of such measures.

In case of violation of the above-mentioned regulations, the competent authorities may impose administrative fines on (each or some of) the company's directors. If violations lead to sanctions being imposed on the company (e.g. the loss or revocation of a license or concession), the managing director may be held personally liable towards the company.

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As of 1 January 2024, all management reports must be published in accordance with the reporting requirement set out in the CSRD.

Bosnia and Herzegovina

- ***Nedžida Salihović-Whalen***
- ***Zalatan Balta***
- ***Zlatko Mašović***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Under the relevant laws on environmental protection, protection of the environment is generally stipulated as an obligation of a legal entity and its responsible person. In terms of employee welfare, the legal entity and its authorised person are obliged to obey the employment rights (and obligations) of each and any of its employees, as well as other rights and obligations stipulated by relevant laws. Additionally, in some cases when deciding on an employee's status, directors need to consult with the relevant council of employees or employee union. However, this is part of directors' general duties under the relevant legislation rather than under specific regulations regarding ESG considerations.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

The relevant legal entity and its responsible person are obligated to comply with laws that regulate matters of health and safety including, but not limited to, non-discrimination in any type and form. However, this is part of directors' general duties under the relevant legislation rather than under specific regulations regarding ESG considerations.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

There have been no recent changes, and no changes are expected, with respect to directors' responsibilities in relation to ESG considerations.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Under the relevant legislation, no disclosure/reporting is prescribed relating specifically to ESG considerations.

Bulgaria

- ***Atanas Bangachev***
- ***Gentscho Pavlov***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Yes, directors (members of a board of directors or the management board of joint-stock companies, and managers of limited liability companies) have certain obligations that could be categorised as ESG considerations. These obligations include inter alia:

— Environment – there are no specific obligations for directors regarding care for nature. Depending on the scope of a given company's activity, such obligations may be imposed on a company but no general provisions on directors' duties have been introduced in Bulgaria. However, compliance of the company must be secured by its directors, whether directly or through delegation to employees. In case of violation, environmental laws provide for financial sanctions on both the company and its director(s). It is arguable whether a company could provide indemnity to its directors against any such sanctions. In all likelihood, any such indemnity would be found invalid.

— Social – the directors' relationship with a company's employees is subject to strict regulations of labour law. The law forbids any discrimination (for details please see question 2 of this section), mobbing and/or employee maltreatment etc. It also imposes certain rules with regard to working hours, holiday leave etc. With regard to third parties (i.e. suppliers, customers etc.), directors should act in the best interest of the company and with professional care. Directors in Bulgaria do not have any specific obligations towards the communities where they operate.

— Governance – there are no ESG considerations with respect to the composition of boards of directors (e.g. no hard or soft targets for gender equality), and there is no employees' participation in governance rights (i.e. no rights of employees to nominate, to veto or to have a representative on a board). The general rules of a company's corporate governance are outlined in the provisions of law (please see the main part of this guide where these are summarised), supplemented by the articles of association and the board's rules of procedure (if such are developed). In general, these include the division of duties between the directors, and the relations between them and the shareholders (supervisory board, if applicable), including the obligation to obtain shareholders' consent for certain actions and the shareholders' right of control over directors' actions. Except for highly regulated industries such as banking, insurance, listed companies etc, there are generally no obligations regarding internal audit or internal control imposed on directors.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

Yes, if a company employs employees, labour law imposes certain ESG considerations on the company regarding the health and safety conditions in the workplace, pay equalities, discrimination, information and consultation of employees etc. Similar to the note in the previous paragraph, compliance of the company with such ESG requirements must be secured by its directors, whether directly or through delegation to certain officers/employees. Labour law provides for financial sanctions on both the company itself and on director(s) in case of violation of such company's obligations. The prevailing practice is that financial sanctions are initially levied on the company alone, and only in case of repeated violation are the directors also sanctioned.

It is worth noting that due to the COVID-19 outbreak, many businesses switched to a working from home regime. Occupational health and safety regulations require that employers carry out a risk assessment of a remote workplace. As with all of a company's other health and safety obligations, directors are responsible for securing compliance and may be exposed to sanctions on a personal as well as corporate level. However, as working from home was imposed by the pandemic and was not the free choice of businesses, the labour authorities have been tolerant and have not yet started monitoring compliance.

The law prohibits any discrimination of employees (both current and potential) on any grounds including gender, race, religion etc. As a result, no difference in salaries, career opportunities and progression, holiday entitlements, benefits etc. can be made based on such grounds.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

Currently, there are no expected changes with regard to directors' ESG duties.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

In general, there are no directors' obligations related to ESG disclosure and/or reporting.

Chile

- ***Jorge Allende Z.***
- ***Jorge Allende D.***
- ***Sebastián Barros***
- ***Adolfo Romero***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Although there is no specific legislation regarding ESG considerations in Chile, there are several rules that address ESG factors that apply to listed companies and other entities supervised by the Financial Market Commission (*Comisión para el Mercado Financiero*, the "**Commission**"), such as:

— Article 46 of the Chilean Law on Corporations No. 18,046 (the "**Law on Corporations**") – establishes the duty of the board of directors to provide the shareholders and the public with sufficient, timely and real information on the legal, economic and financial situation of the company, in accordance with the law or instructions of the Commission.

— General Standard Rule No. 30, which was modified by General Standard Rule No. 386 – establishes the information that issuers of securities must present to the Commission, i.e.: (i) diversity of the board of directors, members of management and employees of the company; (ii) number of directors, members of management and employees by gender; (iii) number of directors, members of management and employees by nationality; (iv) number of directors, members of management and employees by age range.

— General Standard Rule No. 385 – provides that listed companies shall provide the public with current practices related to corporate governance, social responsibility and sustainable growth, and register them with the Commission in accordance with the established form and criteria. In accordance with these regulations, good practices are considered adopted when the company has approved said policies, and the procedures, mechanisms and systems are fully implemented and in operation for all the elements described in the respective practice.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

There is no legal obligation for the board of directors to implement ESG considerations, notwithstanding that Chilean law and the General Standards issued by the Commission establish reporting obligations to the board of directors that may be related to ESG standards (please refer to question 4 below). In addition, the Commission, as well as some GOs and NGOs, has recommended some practices in this matter that can be adopted by companies in order to pursue a better governance practice, taking into consideration social and environmental practices.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

There have been no recent changes regarding directors' responsibility regarding ESG considerations. Nonetheless, a bill is being discussed in Congress that creates new legal entities, the Companies of Collective Benefit and Interest (*Sociedades de Beneficio e Interés Colectivo*), with the established purpose of taking into consideration public interest as well as investors' interests. These hybrid organisations seek positive impacts on people and the environment, not for directors only to maximise the profit of companies and their shareholders.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

General Standard Rules No. 385 and 386 establish that, in order to provide investors and the public with sufficient information about the company to make good investment decisions, listed companies must make known corporate governance practices to the general public. For this purpose, listed companies must submit to the Commission information on their corporate governance, social responsibility and sustainable development practices. To comply with the foregoing, the Commission has made available to listed companies, and to those that wish to do so voluntarily, a form containing ESG criteria which must be submitted to the Commission together with the Company's annual report. This form contains topics such as:

— procedures or mechanism for the induction of new directors that consider: (i) facilitating the processing of knowledge and understanding of the company's behaviour; (ii) corporate governance practices adopted by other entities; (iii) the steps that other entities have taken regarding inclusion, diversity and sustainability reports; (iv) main tools for risk management, including sustainability;

— meetings with external audit companies in order to analyse differences with accounting practices, administrative systems and internal audit;

— meetings with the entity's risk management unit to detect new risks and their impact on the company;

— meetings with social responsibility and sustainable development units in order to analyse the effectiveness of the standards adopted in the company and their benefits;

— implementation of a formal procedure for continuous improvement of the organisation and operation of the company;

— implementation of a formal procedure so that shareholders: (i) can be informed of the experiences, visions and conditions of the new directors to be elected; (ii) can participate and exercise their right to vote through electronic systems and know in real time what happens during meetings;

— information provided to the general public on the new standards implemented in the company in matters of social responsibility and sustainable development and relevant risks in these matters;

— communication channels between the board of directors, shareholders and the general public in order to answer questions about the company, its business, risks and financial, economic or legal situation;

— implementation of procedures to detect organisational, social or cultural barriers that may inhibit the diversity of capacities, conditions, experiences and visions.

The board of directors of listed companies must present how they have adopted each practice, or explain the reasons why the board of directors has estimated that the adoption of a certain practice was not appropriate in the best interest of the company, in order to comply with General Standard Rule No. 385.

China

- ***Dr. Ulrike Glueck***
- ***Michael Munzinger***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

ESG refers to environmental, social and governance-related matters. They are commonly regarded as criteria for a company's operations in relation to the environment, employees, customers, corporate governance, etc. Under PRC law, there is currently no specific statutory directors' duty on or in relation to matters that could be categorised as an ESG consideration. Such duties are, currently, also not stipulated or recommended in any nationwide applicable legal framework. In particular, China does not have a unified Corporate Governance Code to regulate ESG-related duties.

However, from a civil and corporate law perspective, Article 147 of the PRC Company Law stipulates that directors, supervisors and senior management personnel shall comply with laws, administrative regulations and the Articles of Associations of the company and bear a duty of loyalty and diligence towards the company. Thus, it is possible that the Articles of Association, a code of conduct or other internal rules of a company stipulate specific duties of directors and management personnel on ESG-related matters. For management personnel, such duties are additionally possible to be stipulated in their labour contracts. Therefore, in order to identify any ESG-related duties of directors and management personnel, the above-mentioned legal documents should be reviewed in the individual case.

As a basic principle under PRC law, a director or manager of a PRC limited liability company is personally liable towards a third party generally only for his or her personal actions, not for his or her operational activities. It is unlikely that third parties will directly raise civil claims against a director or manager for the acts (e.g. breach of contract) of the company. Under normal circumstances, even if a director, supervisor or manager is internally considered to be responsible for a breach of contract by the company, he or she will not assume external civil liability towards a third party.

From an administrative and criminal law perspective, there are numerous stipulations according to which the "responsible person", "person directly in charge", "person directly responsible" or "major person in charge" can be liable. Due to the immense administrative legislation of the PRC, an exhaustive summary of the potential administrative liability is practically unobtainable. Below are some examples:

Under Article 63 of the PRC Environmental Protection Law, where a company commits any of the violations stated below, besides imposing a penalty, the competent departments of environmental protection shall transfer the case to the public security organ which shall impose an (administrative) detention of no less than 10 days, and up to 15 days, on the persons directly in charge and other persons directly responsible. If the circumstances are relatively minor, detention for no less than 5 days, and up to 10 days, shall be imposed:

— construction projects without an environmental impact assessment in accordance with the law have been ordered to be suspended, but the company of such projects has refused to do so;

— the company that discharged pollutants in violation of the law and without a pollutant discharge license has been ordered to suspend discharging pollutants, but it has refused to do so;

— the company has discharged pollutants illegally using measures to avoid supervision;

— the company that produced and used forbidden pesticide has been ordered to rectify, but it has refused to do so.

According to Article 338 in conjunction with Article 346 of the PRC Criminal Law, where a company discharges, dumps or disposes of radioactive waste, waste containing infectious disease pathogens, toxic substances or other harmful substances, and thus seriously pollutes the environment in violation of the provisions of the State, detention or imprisonment of up to 7 years (or above 7 years in especially severe cases) shall be imposed on the persons directly in charge and other persons directly responsible, besides a penalty which shall be imposed on the company.

However, there is no statutory definition for the terms “person directly in charge” and “person directly responsible” under PRC law. In a commercial context, the responsible person of a company often refers to the Legal Representative and/or the General Manager. Also, persons to whom a relevant task has been assigned may be regarded as a “person directly in charge” or a “person directly responsible”, if, for instance, they are recorded as “person in charge” for environmental issues or work safety at the competent authorities.

Matters that can be categorised as an ESG consideration on employees’ welfare are usually stipulated as an obligation of the employer under PRC law. According to Article 76 of the PRC Labour Law, for instance, the employer shall create conditions to improve collective welfare and increase the employees’ social benefits. There is currently no specific statutory directors’ duty containing obligations on employee welfare under PRC law.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

According to Article 17 of the PRC Company Law, a company shall protect the legitimate rights and interests of its employees, enter into employment contracts with its employees in accordance with the law, purchase social insurance for employees and strengthen labour protection so as to ensure workplace safety. A company shall, through various means, enhance the professional education and in-service training of its employees so as to improve their quality as employees. According to Article 21 of the PRC Work Safety Law, the major person in charge of a production or operation company shall have the following duties with regard to work safety efforts of the company:

— establishing, improving and implementing a responsibility system for work safety of all employees of the entity, and strengthening the development of standards for work safety;

— organising the formulation and implementation of work safety-related rules and systems and operating procedures of the entity;

— organising the formulation and implementation of work safety education and training plans of the entity

— ensuring the effective execution of input in regard to work safety of the entity;

— organising the establishment and implementation of the dual prevention mechanism of level-to-level safety risk management and control and hidden danger identification and management, supervising, urging and inspecting work safety efforts of the entity, and eliminating the potential for work safety accidents in a timely manner;

— organising the formulation and execution of emergency rescue plans for work safety accidents of the entity;

— reporting work safety accidents truthfully and in a timely manner.

The PRC Work Safety Law requires that a production or operation company shall specify the responsible persons for the respective posts, but it does not define the term “major person in charge”. The “major person in charge”, as defined in the Interpretation of the PRC Work Safety Law (jointly released by the Legislative Affairs Commission of the Standing Committee of the National People’s Congress and the Ministry of Emergency Management) and the Reply from the Ministry of Emergency Management, must be the main decision-maker in the production and operation activities of the production and operation unit; enjoy the final decision on the production and operation activities of the unit, including production safety matters; and lead the overall production and operation activities. For example, if the major production and operation matters of the production and operation unit should be decided by the Board of Directors, then the Chairman of the Board of Directors will likely be regarded as the major person in charge. However, a director who is not the

Chairman but has given an affirmative vote for a Board resolution on a work safety related matter may possibly also be regarded as the major person in charge in regard to the resolved matter and bear the relevant liability under the PRC Work Safety Law.

As to ESG considerations on gender pay inequality, Article 48 of the PRC Constitutional Law stipulates that women in the PRC shall enjoy equal rights with men in all spheres of life: political, economic, cultural, social and familial. However, there is no specific regulation on any obligation of directors in this regard.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

We have not identified any recent changes to directors' responsibilities in relation to ESG considerations in the PRC. Also, no changes with regard to directors' responsibilities in relation to ESG considerations are expected in the near future according to the latest legislation plans issued by the PRC legislative body.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

We have not identified any explicit statutory obligations on directors in relation to ESG disclosure and/or reporting in the PRC.

There are merely reporting and/or disclosure obligations for directors of listed companies. This is reflected under Articles 82 and 85 of the PRC Securities Law, under which the directors, supervisors and senior officers of an issuer shall guarantee that the issuer discloses information in a timely and fair manner, and guarantee the authenticity, accuracy and completeness of the information so disclosed. Where an information disclosure obligor fails to disclose information as required, or any published securities issuance document, periodical or ad hoc report or any other information disclosed, contains any false record, misleading statement or major omission, causing losses to investors in the course of securities trading, the information disclosure obligor shall be liable for compensation; the controlling shareholder, actual controller, director, supervisor, senior officer or any other person directly liable of the issuer, as well as the sponsor, underwriting securities company or the person directly liable thereof, shall be jointly and severally liable for compensation together with the issuer, unless they are able to prove that they are not at fault. Further, under Articles 80 and 81 of the PRC Securities Law, when any major event occurs that may: (i) materially affect the stock trading price of a listed company or any company whose stock is traded on any other national securities trading place approved by the State Council; (ii) materially affect the trading price of listed corporate securities; and (iii) is not in the public domain; the company shall immediately submit an ad hoc report on the event to the securities regulatory authority under the State Council and the stock exchange and make a public announcement thereon, in which the cause of the event, the current status and any possible legal consequences of the event shall be indicated. Since the scope of the information disclosure obligation of the directors of listed companies is very broad, we do not exclude the possibility that directors of listed companies may be required to disclose and/or report certain matters in relation to ESG in these scenarios

Colombia

- ***Juan Camilo Rodríguez***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

In Colombia, directors of companies do not have any specific obligations to strengthen ESG practices. In general terms, legal provisions only provide for directors' fiduciary duties toward the company. However, note that directors of BIC companies (as defined further below) have the duty not only to act in the company's interest but also for the collective interest.

Colombian law 1 provides for certain economic and tax benefits for companies that are oriented to collective and environmental goals. Companies wishing to obtain such benefits must include in their corporate purpose, by way of a statutory reform, their ESG goals and register with the Colombian Chamber of Commerce their status as a Commercial Corporation of Collective Interest and Benefit (*Sociedad Comercial de Beneficio e Interés Colectivo* or BIC, "**BIC company**").

Nevertheless, given that directors must ensure that the companies they manage comply with Colombian law, companies (BIC and non-BIC) are subject to environmental and employee welfare obligations. For instance, companies developing industrial activities must hold environmental permits, and companies involved in extractive activities must hold environmental licenses. Regarding employee welfare obligations, companies must, among other duties: (i) affiliate and pay pension, health and occupational hazard systems contributions; (ii) guarantee a good work environment; (iii) protect special populations.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

BIC companies must have a balanced wage policy for their employees, subsidies for employee formation and education, employee equity participation, health and benefits plans for employees, flexible working hours and policies relating to hiring structurally unemployed communities, among others. They also must have gender, racial, cultural, religious and sexual diversity on boards of directors and other administrative positions.

Colombian labour law requires all employers (BIC and non-BIC companies) to guarantee adequate health and safety standards. Depending on the size of the company, its economic sector and its number of employees, certain occupational, health and safety obligations would be applicable. Also, pursuant to constitutional and international obligations, directors must guarantee the existence of internal policies regulating and promoting equality and protecting against discrimination for gender, race, nationality, sexual preferences, cultural or political beliefs.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

The introduction of Law 1901/2018 is meant to increase directors' responsibilities towards ESG considerations, but they are only applicable to companies adopting the BIC denomination. The full repercussions of the adoption of this denomination are yet to be determined since only 300 companies have been granted BIC status. To promote the adoption of BIC status, the government has been offering new economic and tax incentives (e.g. special lines of credit and tax benefits when reporting revenue to shareholders via dividends).

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

BIC companies must prepare and disclose an annual report including the performance of their ESG obligations, including employee, environmental and corporate governance yearly performance indicators and overall policies. This report must be submitted to the highest corporate body and must be uploaded to the BIC company's website or be available at its registered office in case it does not have a website.

Even though directors of non-BIC companies do not have general ESG reporting obligations, the elaboration of sustainability reports is considered to be governance good practice.

Czech Republic

- ***Lucie Halloova***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

In general, directors do not have direct obligations aimed specifically at the ESG agenda. The implementation of ESG-related processes is only voluntary.

Directors of banks, insurance and reinsurance companies, pension companies, health insurance companies, asset managers and companies that issue investment securities that are traded on a European regulated market have certain reporting obligations in relation to ESG matters. (See question 4 for further information.)

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

Directors are generally obliged to ensure the company's compliance with all statutory obligations. This includes compliance with workplace health and safety regulations, anti-discrimination rules, and prevention of criminal acts such as bribery and corruption being committed by a company or for its benefit.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

The European Commission is currently working on a Corporate Sustainability Reporting Directive (CSRD) that should replace the currently applicable Non-Financial Reporting Directive (NFRD) that has been transposed to the Czech Act on Accounting in 2017. It is expected that the CSRD will be applicable to all larger companies meeting at least one of the following criteria:

— more than 250 employees and an annual turnover above EUR 50 million;

— annual balance sheet exceeding EUR 43 million;

— publicly traded.

The CSRD is at the beginning of the legislation process. It is currently envisaged to be applicable from 2024. Transposition to Czech national law will be required.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Non-financial information reporting

Banks, insurance and reinsurance companies, pension companies, health insurance companies, asset managers and companies that issue investment securities that are traded on a European regulated market have reporting obligations in relation to ESG matters if they have total assets of CZK 500 million or more, or an annual aggregate net turnover of CZK 1 billion or more and, at the same time, the average number of their employees during a financial year exceeds 500. Directors of these companies must report on non-financial information annually.

The non-financial information reported on must include matters relating to:

— Environment;

— social and employee matters;

— human rights;

— fight against corruption and bribery.

The non-financial information must be reported on to the extent necessary to understand the entity's development, performance and position and the impact of its activities.

The non-financial information can be included in the company's annual report or consolidated annual report or can be presented as a stand-alone report.

Remuneration policy

Directors of companies that issue shares or similar securities which are traded on a European regulated market must draw up a policy regarding the remuneration of directors and managers (the "**remuneration policy**"). If the company provides a variable remuneration component to its directors and managers, the remuneration policy must include, among other things, key indicators of the company's financial and non-financial performance including criteria relating to the company's social responsibility, an explanation of how these indicators contribute to the company's business strategy, long-term interests and sustainability, and the methods of determining the extent to which the indicators have been fulfilled. The remuneration policy must be approved by the shareholders' general meeting and published on the company's website.

Engagement policy

Directors of insurance and reinsurance companies holding shares or similar securities which are traded on a European regulated market must draw up a policy of the exercising of voting rights and their further involvement in relation to the issuer (the "**engagement policy**"). The same applies to asset managers. The engagement policy must include, among other things, the way the insurance/reinsurance company or asset manager monitors significant matters concerning the social and environmental impacts of the issuer's activities and the way the issuer is managed and administered. The engagement policy must be published on the company's website.

France

- ***Alexandre Delhaye***
- ***Thibault Jabouley***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

In France, ESG reporting became mandatory for listed companies in 2001, with requirements – particularly with regard to climate change – and scope broadened in 2010 and then 2015. Extra-financial reporting was then transformed into the Extra-Financial Performance Statement (EFPS) to comply with the 2014 European directive on transparency and publication of non-financial information (NFRD).

Company managers are in charge of implementing these policies in order to comply with the legal obligations.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

All companies, regardless of their size, status or sector of activity, can implement a corporate social responsibility (CSR) approach.

Managers are in charge of reporting and their duties will vary depending on the size of the company and its related obligations.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

Since 2019, all French companies, without exception, must "take into consideration" environmental and social issues in the management of their activities. This establishes a minimum legal basis for integrating these CSR dimensions into the conduct of economic affairs. Voluntary companies can adopt the status of a company with a mission by including a raison d'être with social and environmental objectives in their articles of association. However, this requires monitoring by a specific committee, controlled by a third party.

Larger companies and listed companies are increasingly subject to specific regulations. For the past 15 years, they have been required to publish information on their environmental and social impacts (ESG reporting or EFPS). Since 2017, large companies must also put in place monitoring measures that prevent environmental (e.g. pollution), social (e.g. human rights violations) and governance (e.g. corruption) risks in their production units, subsidiaries and at their suppliers.

As suppliers or subcontractors of large companies, medium-sized companies are also increasingly encouraged to adopt such an approach. This can be seen in particular in the calls for tenders or purchasing policies of major client groups, which are increasingly demanding details of their suppliers' environmental, social and governance measures. More and more companies are taking this into account and selecting the most virtuous.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Managers are in charge of the ESG reporting, along the following axes:

Extra-Financial Performance Statement (EFPS)

The EFPS is the result of the transcription of the above-mentioned European Directive and replaced the previous CSR reporting system. Its aim is to provide a strategic steering tool for the company, both concise and accessible, focused on essential information.

Scope

Large companies – mainly Sociétés Anonymes or SAs – when turnover and workforce exceed the following thresholds:

— EUR 20 million balance sheet or EUR 40 million turnover and 500 employees for listed companies.

— EUR 100 million balance sheet or EUR 100 million turnover and 500 employees for non-listed companies.

Content

— social;

— environmental;

— anti-corruption;

— human rights.

The list of elements concerned by the declaration includes, in particular, the measures taken by companies to adapt to the consequences of climate change, the reduction targets voluntarily set in the medium and long term to reduce greenhouse gas emissions and the means implemented to this end, as well as actions aimed at fighting discrimination and promoting diversity. The EFPS shall be included in the management report and shall also be published on the company's website.

Vigilance plan

Vigilance plans were introduced in France in 2017. Large companies are obliged to publish and act in order to avoid or reduce the human rights and environmental impacts of their activities and those of their entire supply chain. The vigilance plan must be published in the company's universal registration document.

Vigilance plans are particularly scrutinised by NGOs, which are now using this legal mechanism to denounce companies' failings before the courts.

Scope

SAs employing, at the close of 2 consecutive financial years, at least 5,000 employees in France in their own or in their direct or indirect subsidiaries, or 10,000 employees worldwide.

Content

— risk map;

— regular assessment procedures for the value chain;

— appropriate actions to mitigate risks or prevent serious harm;

— a mechanism for alerting and collecting reports;

— a system for monitoring the measures implemented and evaluating their effectiveness.

Carbon/ESG footprint

The carbon/ESG footprint is intended to identify the potential for reducing greenhouse gas emissions. It must be updated every 4 years.

Scope

Companies with more than 500 employees (250 in the French overseas departments).

It must cover Scope 1, i.e. direct emissions directly linked to the manufacture of the product, and Scope 2, i.e. indirect emissions associated with energy. It is also strongly recommended that Scope 3 be covered, i.e. upstream emissions (raw material purchases, freight, employee travel, etc.) and downstream emissions (waste, product or service use, etc.). This scope generally represents 75% of a company's emissions.

During the post-COVID-19 recovery plan, the Minister for the Economy stated that he was in favour of a simplified greenhouse gas assessment requirement for companies with more than 50 employees by 31 December 2023 (1 year earlier for companies with more than 250 employees).

Professional Equality Index

The Professional Equality Index aims to put an end to professional inequalities between sexes by making it possible to uncover and understand any pay gaps at work in certain companies. Despite the principle of "equal pay for equal work" enshrined in law, women's pay remains on average 9% lower than men's.

Scope

All companies with more than 50 employees must now publish this index, based on 100 points, and transmit it to the labour administration. If a company does not comply, a financial penalty of up to 1% of its wage bill may be imposed.

Content

— pay gap between sexes;

— difference in the distribution of individual pay rises;

— number of female employees who receive a rise after returning from maternity leave;

— sex parity among the 10 highest paid employees;

— distribution gap in promotions (only in companies with more than 250 employees).

Anti-corruption plan

The aim of an anti-corruption plan is to facilitate the detection of certain offences such as influence peddling and corruption.

Scope

Companies with more than 500 employees, or which belong to a group with more than 500 employees; and also those with a turnover (or consolidated turnover) of more than EUR 100 million. In addition to companies, managers are also made responsible under this new scheme.

Content

— code of conduct defining and illustrating the various behaviours to be avoided in order to prevent acts of corruption or influence peddling;

— risk map that identifies, analyses and prioritises the company's internal and external exposure risks according to its activity and geographical areas of exposure;

- procedure for assessing the situation of customers, first-tier suppliers and intermediaries with regard to risk mapping;
- internal or external accounting control procedures designed to ensure that accounting elements (books, registers and accounts) are not used to conceal corruption or influence peddling;
- training for managers and employees most at risk, as well as an internal alert system;
- a disciplinary system to punish employees for violations of the code of conduct;
- an internal control and evaluation system for the measures implemented.

Germany

- ***Jan Schepke***
- ***Charlotte Dobers-Koch***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

As directors must comply with all mandatory provisions of the law there are numerous obligations that might also be categorised as an ESG consideration.

In all matters concerning the company, a managing director must exercise the diligence of an "orderly businessperson".

Therefore, the director must (also) adequately consider those opportunities and risks that arise for the company in connection with ESG aspects.

It has been observed that companies have begun to contractually stipulate and enforce their individual sustainability requirements towards business partners.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

It is to be assumed that ESG-due diligence will become a more and more integral part of the Legal Due Diligence to be conducted in the course of a transaction.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

The German Supply Chain Act (applicable as of 1 January 2023) establishes certain duties of care in order to curb child labour, exploitation and the destruction of nature in the global production of goods. Companies should ensure that there are no violations of human rights in their entire supply chain, including internationally.

Furthermore, increasing standards are heavily EU-driven: under the EU Disclosure Regulation (applicable as of 10 March 2021) financial market participants are obliged to publish information on the sustainability of their investment decisions. The Taxonomy Regulation to be applied from 1 January 2022 defines requirements for sustainable investments and establishes criteria for determining whether an economic activity is to be classified as environmentally sustainable in order to be able to determine the degree of environmental sustainability of an investment.

In April 2021 the European Commission proposed the Corporate Sustainability Reporting Directive to strengthen sustainability reporting. Furthermore, the EU Commission plans to present a concrete proposal for a directive on sustainable corporate governance by the end of 2021 including corporate due diligence obligations along global supply chains.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Currently only capital market-oriented companies, financial service providers and insurance companies have the obligation to report non-financially, and there are also sustainability-related disclosure obligations for such companies. Reporting in this case includes information on:

- environmental issues (e.g. greenhouse gas emissions, water consumption, air pollution);
- employee issues (e.g. gender equality, health protection, safety at work);
- social concerns (e.g. dialogue at local and regional level);
- respect for human rights (e.g. prevention of human rights violations);
- combating corruption and bribery (e.g. instruments used).

With regards to the legal form, this does not apply by law to German limited liability companies.

If there is no obligation for non-financial reporting, directors may be reporting voluntarily as companies increasingly use sustainability issues to create a positive external perception.

Hong Kong

- ***Shirley Lau***

1. Do existing directors’ duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Existing directors’ duties do not contain obligations that apply to matters which could specifically be categorised as an ESG consideration.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

The Companies Ordinance contains requirements on the contents of the annual directors’ report of a Hong Kong company. Broadly speaking, the directors’ report should contain a business review with a discussion on the company’s environmental policies and performance; the company’s compliance with the relevant laws and regulations; and an account of the company’s key relationships with, among others, its employees, customers and suppliers that have a significant impact on the company. Companies may be exempted from reporting if they fall within the reporting exemption under the Companies Ordinance.

For companies listed on The Stock Exchange of Hong Kong Limited (the “**Hong Kong Stock Exchange**”), the Rules Governing the Listing of Securities on the Stock Exchange (the “**Listing Rules**”) require that the nomination committee of a listed company has a policy concerning diversity of board members which relates to matters including gender, age, cultural and educational background.

3. What recent changes have occurred or are expected with respect to directors’ responsibilities in relation to ESG considerations?

The recent changes generally relate to companies publicly listed on the Hong Kong Stock Exchange.

In December 2020, the Hong Kong Securities and Futures Commission announced that it plans to enhance companies’ climate-related disclosures aligned with the Task Force on Climate-related Financial Disclosures (TCFD) recommendations which will be mandatory across relevant sectors by 2025. The TCFD Recommendations cover areas such as governance, strategy and risk management, and metrics and targets to assess and manage relevant climate-related risks, for which directors may be responsible.

In April 2021, the Hong Kong Stock Exchange also published a consultation paper aiming to strengthen the corporate governance practices and ESG measures, encouraging enhanced attitudes towards ESG for listed companies and their boards of directors. Gender diversity as well as climate-related risks are among the themes the Hong Kong Stock Exchange proposed to enhance.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Apart from the requirements for the contents of the directors’ report referred to in question 2 above, the Listing Rules contain the “ESG Reporting Guide” which requires a listed company to publish an ESG report annually. The ESG Reporting Guide includes mandatory disclosure requirements and “comply or explain” provisions.

Under the ESG Reporting Guide, the board of directors of a listed company is required to issue a statement containing: (i) a disclosure of the board's oversight of ESG issues; (ii) the board's ESG management approach and strategy, including the process used to evaluate, prioritise and manage material ESG-related issues (including risks to the listed company's businesses); and (iii) how the board reviews progress made against ESG-related goals and targets with an explanation of how they relate to the listed company's businesses be disclosed in the ESG report.

Hungary

- ***Aniko Kircsi***
- ***Szabina Marsi***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Hungary has complex and rapidly changing environmental regulation in place which is to be adhered to by companies operating in Hungary. As environmental considerations are an essential part of ESG obligations, in order to perform their ESG obligations, companies need to comply with a wide range of mandatory environmental regulations, and potentially with environmental management schemes (EMAS or ISO:14001, etc.) undertaken voluntarily by a company. The directors are the executive officers responsible for the management of the company, which includes the obligation to ensure that the company is in compliance with the applicable environmental and sustainability requirements. Such environmental regulation includes inter alia environmental obligations related to waste management, air, noise and vibration protection, soil and groundwater contamination and pollution matters, nature conservation, greenhouse gas emissions, environmental permitting, etc.

There are also certain employment-related issues that directors of Hungarian companies should take into consideration from an ESG perspective. For instance, the Hungarian Labour Code explicitly indicates the general principle of equitable assessment regarding employees' interests. As directors are typically the persons exercising the employer's rights over the employees of a company, and the directors are responsible for the management of the company, specific attention shall be paid to compliance with this general principle during all employment relations for the purpose of ensuring employees' welfare in the company.

Furthermore, as the persons typically exercising the employer's rights in the name of a company, directors have an obligation towards the works council of companies, where applicable, to provide information regarding the economic situation and employment conditions of employees. In this respect, it is also important to ensure that the works council can exercise its consultation right prior to decisions regarding matters relating to the interests of employees such as the determination of the order of work, principles relating to the calculation of wages, etc.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

The provisions of the Hungarian Equal Treatment Act apply to both employment and agency relationships, therefore it is the directors' responsibility to prevent the occurrence of any discrimination of employees on the grounds of any features or characteristics. The provisions of the Equal Treatment Act shall also be applied in relation to offers for the conclusion of contracts addressed to third persons not specified in advance, as well as to the provision of services/sale of goods in a place accessible to the public.

It is also important to note that under the Hungarian Labour Protection Act, it is the employer's obligation to provide safe and healthy working conditions for employees, the performance of which pertains to the responsibility of the person exercising the employer's rights, i.e. in most cases the executive officers (directors) of a company. In addition, the Labour Protection Act includes further obligations of directors that relate to ESG considerations, such as the performance of preliminary risk assessments, appointment of an employee who has appropriate professional knowledge regarding employee protection rules, information obligations, etc.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

In April 2021 the European Commission proposed a new regulatory framework regarding corporate sustainability reporting, the Corporate Sustainability Reporting Directive (CSRD), which has not yet been adopted by the respective legislative bodies of the European Union. Should such a new directive enter into force, the reporting obligation would have an extended scope (i.e. would cover additional companies), the disclosed reports would have to be audited, and reports would have to be made on the basis of mandatory EU reporting standards. Please also note that stricter (compared to NFRD, as defined below) reporting obligations are already in place for the financial sector under the Sustainable Finance Disclosure Regulation of the EU.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Companies listed on the Budapest Stock Exchange ("**BSE**") are subject to a non-binding recommendation by the BSE to: (i) start issuing annual ESG reports from 2023; and (ii) issue a time schedule by 31 December 2021 with respect to the anticipated commencement date for compliance with the BSE recommendations, the anticipated ESG category they will be aiming for and any developments they plan to reach "advanced" ESG level. Directors of listed companies are advised to take into account the non-binding recommendation.

From June 2021 another non-binding recommendation of the National Bank of Hungary ("**NBH**") covers Hungarian banks. The NBH will expect banks to start preparing for the new ESG reporting requirements under Section 449a of the EU Capital Requirements Regulation ("**CRR**") which will apply from 28 June 2022. The NBH has further stated that it is good practice for banks not formally subject to the relevant CRR section to comply voluntarily with the ESG publication requirements from June 2022. Here, too, directors of banks will be advised to comply with the NBH recommendation.

Although most of the ESG-related legislation in Hungary is non-binding, there are some acts of legislation on the level of the European Union which are – indirectly – applicable and might be taken into consideration by directors of companies in Hungary as well. For instance, pursuant to the Non-Financial Reporting Directive of the EU (2014/95/EU) ("**NFRD**"), certain large companies (entities of public interest or public relevance) are obliged to disclose certain non-financial information including, but not limited to, environmental and social matters. The purpose of the NFRD is to encourage entities of public interest to introduce a responsible approach to ESG-related issues and to make such data of companies more easily accessible to decision-makers and the public. Therefore, the NFRD sets out a high-level, minimum standard legal framework regarding the disclosure obligation and each Member State of the European Union had to transpose such rules into their respective national law with the adoption of detailed legal regulation and processes.

Accordingly, the Hungarian Parliament amended the Hungarian Accounting Act, providing that entities of public interest exceeding thresholds of a balance sheet total, net income or number of employees in 2 consecutive years shall include in their business report a non-financial statement on their actions relating to environmental, social and employment issues, along with information on measures related to the protection of human rights and fighting corruption and bribery. Such statements shall include policies, the results achieved under the policies and ESG-related risks pertaining to the activity of the company. Needless to say, compliance with this obligation constitutes a significant burden on the directors of companies of public interest as the preparation of these policies, and the non-financial statement itself, falls within the directors' responsibility.

Furthermore, the EU has also passed the Shareholders' Rights Directive II (2017/828/EU) ("**SRD II**") on the encouragement of long-term shareholder engagement, which provides for the preparation of an ESG-orientated investment strategy and policy of ESG-related commitments. The SRD II has also been implemented in Hungary by Act LXVII of 2019.

Italy

- *Pietro Cavasola*
- *Serena Carroli*

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

In Italy there is no all-inclusive legislation covering the various environmental, social and governance (ESG) obligations of companies and, therefore, of their directors who are in charge of managing the company. However many ESG obligations can be traced back to different sector regulations, i.e. the environmental consolidation act, regulations on health and safety at work, company law in the civil code, regulations on the administrative responsibility of companies etc.

On the basis of these different and heterogeneous regulations, we can identify the main obligations of a company (and therefore of its management) that apply to matters that could be categorised as ESG-related:

Environmental

— Correct waste management.

— Compliance with air emissions thresholds and, in general, with the environmental authorisations and regulations applicable to the company's plant and to its specific industrial sector.

— Compliance with the authorisations and, in general, with the regulatory legislation of the company's specific industrial sector.

Social

— Compliance with labour law regulations on duties, remuneration and, more generally, equal treatment of employees of the same level and seniority, as well as respect for human rights in the workplace.

— Compliance with legislation on health and safety in the workplace.

— Compliance with data protection (privacy) legislation.

— Production of products and services that respect the health and safety of customers, as well as the integrity and privacy of data processed in the production and marketing of products.

Governance

— Compliance with best practice principles of corporate governance.

— Respect of shareholders' rights (including those of minority shareholders) as provided by law.

— Guarantee for all shareholders of equal treatment and adoption and application of anti-takeover measures.

— Transparency of corporate decisions and choices.

— Adoption of measures aimed at avoiding anti-competitive behaviour or insider trading.

- Adoption (not actually mandatory) of the organisational model (the "**Model**") pursuant to legislative decree 231/2001 ("**Decree 231/2001**"), aimed at avoiding the commission of specific offences to the advantage and/or in the interest of the company and, therefore, at avoiding – as a consequence – the liability of the company for crimes committed by managers (see the specific section of this guide below).
- Adoption (although not mandatory) of the so-called Code of Ethics, within the framework of the Model, and of policies aimed at recognising and respecting business ethics.

Listed companies

That said, for listed companies it is possible (not mandatory) to adhere to the Corporate Governance Code adopted for listed companies (i.e. the 2020 Corporate Governance Code), which contains in articles 1 and 5 provisions of an ESG nature, i.e. that (i) the board of directors leads the company towards sustainable success, the creation of long-term value for shareholders, taking into account the interests of other relevant stakeholders relevant to the company, and that (ii) the remuneration of directors, members of the statutory auditors and top management must be functional to the pursuit of the company's sustainable success and take into account the need to dispose of, retain and motivate people with the skills and professionalism required by their role in the company. The remuneration policy is drawn up by the board of directors through a transparent procedure.

Benefit companies

It should be noted that 2016 Stability Law (i.e. law no. 208/2015) has introduced the so-called "benefit companies": companies that pursue the purpose of making a profit for their shareholders, and at the same time, use profit as a means to create benefit for other categories such as employees, suppliers and the environment.

In benefit companies, the by-laws must indicate the common benefit purposes that the company intends to pursue. Directors have specific obligations and responsibilities in addition to those typical of directors of limited liability companies and stock companies:

- The highest degree of diligence required by the nature of the office even in pursuing interests other than those related to the company and its shareholders, assessing the impact of management decisions on the further purposes set out in the by-laws.
- Identify the person or persons to whom entrusting tasks aimed at pursuing the purposes of common benefit (this task may also be entrusted to one of the directors by means of specific delegations).
- Draw up a specific report on the common benefit, to be annexed to the annual accounts of the company.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

Obligations of directors which relate to ESG considerations are mainly those reported under question 1 above.

However, there is a growing conviction in Italy – supported by financial institutions, and especially by large investment funds – that companies that base their strategies and choices on ESG criteria and are able to produce positive results for the environment and people are companies that can achieve better business results. At the same time, they are less exposed to risks. In short, a company that is able to comply with environmental and corporate social responsibility regulations is less subject to possible legal disputes.

In fact, a company that tends to conform its activity to ESG criteria should be less open to legal actions as it expresses greater commitment to:

— scientific research;

— innovation in terms of production capacity (i.e. innovation in operations and health and safety for personnel);

— transparency and trust with customers and partners;

— reduction of risks linked to accidents or inappropriate practices.

Taking into account the targets of the 2030 Agenda, the Recovery Plan adopted by the Italian Government and the Directive on corporate due diligence and accountability proposed by the EU Parliament, it is foreseeable that new obligations – and incentives – will be imposed on companies relating to the use of environmental resources and the reduction of greenhouse gas emissions (aiming at creating the conditions for their reduction to zero), respect for human rights, production innovation and digitalisation.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

Large investors think that companies with the best ESG ratings are also those that perform and cope better with the risks associated with emergencies or crisis situations. Particularly in 2020/2021, the pandemic and its economic consequences have led to a growing belief that ESG criteria can improve company performance and give companies greater control over their financial portfolios.

There is a belief that climate and business environment risk is an increasingly important component of investment risk. The more companies are able to manage their relationship with the environment, the more they are able to reduce climate-related risk factors and meet medium- and long-term objectives, even in the face of emergencies. This is a guideline to which directors of companies cannot remain indifferent to guarantee their companies financial resources.

Therefore, in the near future, new regulations – e.g. on carbon tax and on the Emissions Trading Scheme (ETS) – are expected to be adopted in Italy to incentivise and/or impose new obligations on companies (and consequently on their management) aimed at:

— promoting the transition from the type of company that consumes raw materials, energy, time and human skills to the type of company that manages a responsible relationship with matter, energy and people;

— promoting important transformation choices with regard to products and production processes, to remove from the environment the same amount of carbon dioxide that was necessary for production, and therefore, to achieve "carbon neutral" or "carbon-free" products and production processes;

— making available to consumers, including on product labelling, data of the so-called "life cycle product carbon footprint", which measures the total greenhouse gas emissions generated by a product, from the extraction of raw materials to the end of its life;

— managing the so-called "transition risk", i.e. the risks linked to the energy, digital and business transformation of companies;

— promoting the adoption of service transformation or "servitisation" models: a process that requires companies to sell, along with the product, value-added services integrated into the product itself – services that are not simply in addition to the sale of the product, but a central part of the offer itself;

— promoting the adoption of the so-called "circular economy": understood as a shift from a type of production and consumption in which each step consumes resources – i.e. raw materials and energy, until the raw materials and the energy of each product end their lifecycle, thus requiring further commitment and investment to manage their disposal – to a type of production and consumption in which the product is manufactured by using resources (among which increasingly renewables) in a more efficient way, and with a better relationship with the environment, thus to "give back" materials and energy to the environment in its lifecycle;

— promoting innovation, creating new market opportunities thanks to new processes and technologies, digitalisation and smart working.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

The attribution by rating agencies of an ESG score assessed by large investors in their investment decisions requires disclosure of non-financial information that companies with higher capitalisation are required to release to the market. This obligation does not yet exist for smaller companies, except for the limited provision of article 2428 of the Italian Civil Code which requires that the directors' reports on the annual accounts and on the consolidated annual accounts contain, where appropriate, non-financial performance indicators relevant to the company's specific business, including information relating to the environment and personnel.

Listed companies

As far as large companies are concerned, pursuant to legislative decree 254/2016, the National Commission for Companies and the Stock Exchange (the "**Consob**") has to supervise the disclosure of non-financial information such as ESG disclosure. The relevant regulation was published in January 2018 and requires large, listed companies to publish a statement on non-financial issues (the "**DNF**") such as environmental, social and personnel aspects, respect for human rights, and the fight against active and passive corruption. In addition, legislative decree 29/2019 has also required listed companies to explain how the remuneration policy for directors contributes to the long-term interests and sustainability of the company.

The Model pursuant to Decree 231/2001

It may be added that for those companies which have adopted the Model (as explained under question 1 above), information flows to the company's "supervisory board" are envisaged with regard to significant events in terms of:

— Compliance;

— an economic-financial nature;

— production and commercial activities;

— developments in technology;

— issuing of rules and regulations that could have an impact on the company's activities;

— occasional news like those, if they arise, relating to proceedings or investigations of alleged offences under Decree 231/2001;

— information – even in an anonymous form – of any origin, both internal and external to the company, concerning the possible commission of offences or violations of the Model, actual or potential.

Benefit companies

Finally, as anticipated under question 1 above, once a year directors of so-called benefit companies must draw a specific report, to be annexed to the annual accounts, by which they report to the shareholders on:

— specific activities undertaken in pursuit of the common benefit;

— how they have balanced the interests of shareholders and other stakeholders, and reasons why they have given preference to one over the other in certain circumstances;

— levels of environmental and social performance achieved;

— plans for future development.

Kenya

- ***Ashwini Bhandari***
- ***Jacinta Ngumo***
- ***Jessica Mutemi***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, i.e Environmental and Social Governance considerations e.g the environment, employee welfare, social and community issues?

Generally, the Companies Act requires directors of listed companies to include a business review in their directors' reports with information about, among other things, environmental matters (including the impact of the business of the company on the environment), the employees of the company, and social and community issues, including information on any policies of the company in relation to those matters and the effectiveness of those policies.

More specifically, the Code of Governance Practices for Issuers of Securities to the Public (the "**Code**") issued by the Capital Markets Authority (the "**Authority**") in 2015 contains guidance on ESG responsibilities and reporting. Under the Code, a board of directors is obligated to promote sustainability by ensuring that the board has formal strategies in place to promote the sustainability of the company. The company is required to give attention to the ESG aspects of the business which underpin sustainability. The Code applies to all companies that issue both debt and equity securities to the public regardless of whether or not they are listed.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

Under the Principles for Corporate Governance in Kenya, directors are required to monitor the social responsibilities of the company and promulgate policies consistent with the company's legitimate interests and good business practices.

In particular, the board of directors should:

— promote fair, just and equitable employment policies;

— promote and be sensitive to the preservation and protection of the natural environment;

— be sensitive to and conscious of gender interests and concerns;

— promote and protect the rights of children and other vulnerable groups;

— enhance and promote the rights and participation of host communities.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

In 2017, the Capital Markets Authority developed a Corporate Governance Reporting Template and Corporate Governance Scorecard for reporting, measuring and monitoring the application of the Code, which in turn ensures adherence by companies to the ESG principles. However, there is no specific format for integrated reporting and environmental, social and governance reporting. In the 2019 Corporate Governance report, the Authority noted that the Corporate Governance Scorecards and reporting templates will be reviewed and updated to require issuers to disclose the adopted frameworks used, such as the Integrated Reporting Council, the Global Reporting Initiative, G4 Sustainability Guidelines and the Sustainability

Accounting Standards Board, to help in assessing their ‘integrated reports’ and ensuring that they are consistent with the adopted frameworks.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Directors are required to work continually towards the introduction of integrated reporting. ‘Integrated reporting’ is defined as a process that brings together the material information about a company’s strategy, governance, performance and prospects in such a way that reflects the commercial, social and environmental context within which it operates. It provides a clear and concise representation of how a company demonstrates stewardship and how it creates value, now and in the future. Integrated reporting combines the most material elements of information currently reported in separate reporting strands (financial, management guidelines, governance and remuneration and sustainability) into a coherent whole.

Directors are required to consider not only the financial performance but also the impact of the company’s operations on society and the environment. The board is not just responsible for the company’s financial bottom line, but for the company’s performance in respect of its triple bottom line. The ‘triple bottom line approach’ looks beyond the company’s financial performance by taking into account the social and environmental performance of the company. This requires that the board reports to its shareholders and other stakeholders on the company’s economic, social and environmental performance.

Finally, the board is required to ensure that the company discloses its environmental, social and governance policies and implementation thereof in its annual report and website.

Luxembourg

- *Gerard Maitrejean*
- *Pawel Hermelinski*

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Directors' duties related to the Environment

Luxembourg has environmental legislation which is mainly grouped together in a collection known as the "Environmental Code". This legislation includes in particular the:

— amended law of 10 July 1999 on classified facilities;

— law of 15 December 2020 on climate, amending the amended Act of 31 May 1999, establishing a fund for the protection of the environment;

— law of 18 December 2015, amending the amended law of 21 March 2012, relating to waste products.

The Environmental Code contains certain obligations for both individuals and legal entities in particular in terms of pollution, treatment of waste, or prior authorisations to exercise certain industrial activities or activities resulting in the emission of greenhouse gas emissions. Directors shall ensure that the company complies with these rules.

Directors' duties related to Employee welfare

The Luxembourg law on commercial companies dated 10 August 1915, as amended (the "**Company Law**"), and the law of 24 May 2011 concerning the exercise of certain rights of shareholders at general meetings of listed companies and the law of 19 May 2006 on takeover bids, as amended, include several provisions in relation to employees, some of which may include employee welfare provisions:

— In the context of a cross-border merger, the management bodies of the merging companies shall prepare a report to the shareholders explaining, from a legal and economic point of view, the operation of the merger. If the merging companies have employees, the report shall also explain the consequences of the merger for them.

— A listed company shall prepare a report on the annual evolution of employee remuneration and average remuneration.

— In the context of a takeover bid, the management body shall inform and seek the opinion of employee representatives or, in the absence of such representatives, of employees themselves, in particular as regards the effects of the bid on all the company's interests and especially on employment.

— The offering document must contain the bidder's intentions regarding job retention, including any significant changes to working conditions.

In addition, the Luxembourg Labour Code contains certain obligations for employers notably in terms of labour conditions and safety. For more details on directors' duties and responsibilities, please refer to the specific paragraph below.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

Corporate governance principles

The Luxembourg Stock Exchange published on December 2017 a fourth version of its X Principles of Corporate Governance (the "**X Principles**") which aims to complete Luxembourg laws in terms of best practice in this particular field. The X Principles contain not only mandatory principles for companies whose shares are listed in Luxembourg, but also "comply or explain" recommendations and guidelines. The X Principles may be seen as a non-binding framework in terms of corporate governance for companies whose shares are not listed in Luxembourg. The X Principles contain a specific chapter (one principle and several recommendations and guidelines) relating to ESG.

On a voluntary basis, Luxembourg companies may also ratify the diversity charter and follow other non-binding recommendations published by the Luxembourg government.

Health and safety/Gender pay equality

As mentioned above, the Luxembourg Labour Code contains several provisions relating to the health and safety of employees. In simple terms, an employer must ensure that employees are safe during working time. The employer shall analyse the occupational risks, taking into account inter alia the sector of activity and the working environment. Appropriate measures shall be adopted to keep employees safe.

The Luxembourg Labour Code also contains certain provisions relating to gender pay equality and, in particular, penalties in the event of failure to comply. Indeed, every employer is obliged to ensure equal pay for men and women if they do the same work or if they do work of equal value. In addition, any discrimination based on gender, either directly or indirectly by reference in particular to marital or family status, is prohibited.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

Recent evolutions in Luxembourg

In July 2021, the Luxembourg government launched its national Pact, "Enterprises and Human Rights". Directors may choose to follow this non-binding guide to apply the general guidelines of the United Nations relating to companies and human rights. Signatories will be expected to ensure the best possible respect for human right throughout their supply chain. To this effect the guide recommends that, among other things, companies:

— raise awareness among staff;

— appoint a human rights officer;

— train relevant employees;

— develop tools to identify risks and prevent human rights violations;

— set up one or more remedies to deal with reported cases;

— publish an annual report on the measures implemented.

Recent evolutions in the European Union

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, as regards corporate sustainability reporting. This proposal aims to amend the existing reporting requirements of the non-financial reporting directive, Directive 2014/95/EU, and in particular (without limitation) to extend its scope to all large companies and companies listed on regulated markets.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Luxembourg disclosure obligations

The law of 19 December 2002 on the trade and companies register and the annual accounts of companies was amended by the law of 23 July 2016 relating to the publication of non-financial information. These provisions apply to certain large companies. These companies shall, in particular, publish an annual management report which includes information relating to ESG (e.g. diversity, environment, social questions, respect of human rights and the fight against corruption).

EU disclosures obligations

The European Union has its own legal framework in terms of ESG disclosure and reporting which is included in 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 and in 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.

On a voluntary basis

Companies which do not fall into the scope of application of the above law and regulations (i.e. companies that do not exceed the limits of at least two of the following three criteria: (i) total balance sheet of EUR 20 million, (ii) net turnover of EUR 40 million, and (iii) average number of full time employees of 250) may follow certain non-binding guidelines in terms of ESG disclosure and reporting; this information may be included in a management report attached to the annual accounts of the company or a separate communication made on the company’s website.

Mexico

- ***Enrique Lorente***
- ***Raúl Zepeda***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

The Exchange Market Act (*Ley del Mercado de Valores*) establishes the corporate governance of listed companies and outlines the duties of diligence and loyalty that directors must comply with in order to take care of a company's business.

The duty of loyalty obliges directors to consider the best interest of the company and its employees prior to taking decisions related to their responsibilities. Directors need to consider that decisions will be scrutinised with ESG in mind.

The duty of diligence imposes the following obligations on directors:

- develop decisions in good faith and in the best interests of the enterprise;
- be qualified and informed in relation to any relevant aspect required for the correct management and performance of the company;
- lead the use of the company's resources and organisation to ensure it operates at the best possible efficiency.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

The Mexico Constitution sets out that public, social and private sectors all have social responsibility with regard to national economic development. These sectors must take care of the environment when carrying out their activities.

Private pension funds (*Administradoras de Fondos para el Retiro*) must consider and evaluate ESG issues prior to making investments.

The Environmental Responsibility Act (*Ley Federal de Responsabilidad Ambiental*) establishes that companies are liable for all environmental damage caused by officers and directors during the course of company operation.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

Alongside the different laws related to corporate governance, the Mexican Chamber of Representatives has considered establishing an obligation to directors and boards of directors to identify any climate change risk within a company's day-to-day operations or activities by means of appointing an expert team; this team would be responsible for identifying and bringing any major issues to the company's CEO and board of directors.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Due to the fact that any climate risk can be taken as a material event, public companies are required by the Exchange Market Act to disclose to the public all relevant information about this specific risk.

Recently, several Mexican companies listed on the Mexican Stock Exchange have decided to follow the practice of disclosing all potential climate risks to their shareholders or to include these risks within the company's annual report.

Netherlands

- ***Bob Barnhoorn***
- ***Roman Tarlavski***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

The Dutch Civil Code requires that directors must act in the best interest of the company. Additionally, each director is under a duty of care vis-à-vis the company to "properly" perform his/her part of the management tasks assigned to him/her.

These rules do not impose a duty for existing directors that can be categorised as an ESG consideration, but the overall duty of care vis-à-vis the company to properly perform one's management tasks may require, depending on the circumstances, that the directors take ESG considerations into account during the performance of their management tasks.

Despite a plea from 25 Dutch professors calling for a social duty of care for directors enshrined in law, Dutch law does not yet provide for specific provisions regarding responsible corporate citizenship, other than the general rule to properly perform one's tasks and to act in the company's interest.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

The Dutch Corporate Governance Code (the "**Code**"), which only applies to listed companies in the Netherlands, offers additional rules for directors that relate to ESG considerations.

The Code contains principles and best practice provisions that regulate relations between the management board, the supervisory board and the general meeting. The principles may be regarded as broadly-based general views on good corporate governance. The principles are elaborated in the form of specific best practice provisions.

The principles that qualify as ESG considerations are:

— Long-term value creation. The management board must develop a vision of long-term value creation for the company and formulate an appropriate strategy in this regard. In formulating the strategy, attention must, in any event, be paid to inter alia the interests of stakeholders in aspects of business relevant to the company and its enterprise, such as the environment, social and personnel affairs, the chain in which the company operates, respect for human rights and combating corruption and bribery.

— Accountability for diversity. The supervisory board must draw up a diversity policy for the composition of the managing board, the supervisory board and the executive committee, if any. This policy must set out specific objectives in respect of diversity such as nationality, age, gender, educational background and professional experience.

— Accountability for corporate culture. The management board must define values for the company which contribute to a culture of long-term value creation, and must discuss these values with the supervisory board. The management board is responsible for ensuring that these values are embedded in, and maintained by, the company. These values will be reflected in a code of conduct, which will be published by the company on its website.

— A system for reporting abuse and irregularities. The management board and the supervisory board must be alert to signals of (suspected) abuse and irregularities within the company and its enterprise. The management board must establish a procedure for reporting suspicions of abuse and irregularities and ensure that these reports are adequately followed up. The procedure must be published on the website of the company, and the supervisory board supervises the management with regard to the processing and handling of these reports and procedures.

The Code does not constitute direct obligations, but works on the basis of the 'comply or explain' principle. Listed companies must apply the principles and best practice provisions of the Code. Under certain circumstances, listed companies may deviate from the principles and best practice provisions. In that case they must carefully explain why a provision has not been applied. In recent years major companies that are not listed have voluntarily adopted the Code and apply its principles and best practices within their businesses.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

ESG considerations have been discussed on both national and EU levels. This has led to several regulations containing ESG considerations, resulting in changes in directors' responsibilities regarding ESG considerations. Some of these regulations entered into force already (i.e. Sustainable Finance Disclosure Regulation), and others will soon enter into force (i.e. Taxonomy Regulation).

Sustainable Finance Disclosure Regulation (SFDR)

The SFDR requires financial market participants – such as asset managers, investment advisers, pension funds and fund managers – to disclose sustainability information at the entity level. Under the SFDR, market participants shall indicate how sustainability risks are taken into account in the investment process and what the expected impact of these risks is on the (sub)fund's return. If fund managers consider sustainability risks irrelevant for a certain product, they must explain why they think this is the case.

A heavier threshold applies to funds qualifying as funds with sustainable characteristics or with a sustainable objective. These funds must provide additional information on a product level in their prospectus.

The taxonomy regulations provide for a uniform taxonomy for "environmentally sustainable" economic activities. This regulation provides an EU-wide conceptual framework for investors interested in investing in economic activities with a positive impact on the environment. The regulation serves to determine to what extent an investment, such as a fund or an individual investment portfolio, is invested in environmentally sustainable economic activities. Market participants shall share this information on a product level with potential buyers.

The taxonomy regulation will enter into force on 1 January 2022. From then on, economic activities that contribute to climate mitigation or climate adaptation may be given the label "ecologically sustainable". One year later, it will also be possible to use the label for economic activities that contribute to another environmental objective, e.g. the circular economy.

National initiatives

ESG considerations-related topics are not only being discussed on the European level: various proposals for regulations have also been made in the Netherlands. The call by 25 professors for a social duty of care enshrined in Dutch law for companies and directors, as referred to under question 1 above, is particularly noteworthy. The professors argued for a social duty of care through an amendment of the statutory duties of directors. Currently, a stakeholder model applies whereby directors must act in the interests of the company and its enterprise. Among other things, the professors point out that in practice, the interests of shareholders carry more weight than one would expect on the basis of the Code. Therefore, the professors recommend a system in which all stakeholders of the company are served by the social duty of care enshrined in Dutch law.

It remains to be seen what the Dutch legislator will do with the professors' plea and if, or when, the Dutch Civil Code will provide a social duty of care. Parliament has called on the government to investigate the legal basis of a broader (including social) duty of care for directors of companies in the short term. These developments and discussions are expected to lead to more legislative initiatives in the coming years.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

These obligations consist of: (i) an obligation to report in relation to specific products; and (ii) the obligation to report relating to the company and its management. Reporting on these matters can either be done by providing additional product information, or by publishing reports and statements in the annual accounts or on the company website.

SFDR

The SFDR requires financial market participants to disclose sustainability information relating to their products and overall sustainability strategy. The overall sustainability strategy shall be published on the website of the financial market participant. For each individual product, the precontractual product information (e.g. prospectus) will be used for the disclosure of additional sustainability information.

Dutch Corporate Governance Code

As stated above, the Code only applies to listed companies and works on the basis of the 'comply or explain' principle. Private companies are not, in principle, subject to an obligation to disclose ESG-related topics. In the management report published in the annual accounts of the company, the management board has to explain its vision of long-term value creation and the strategy to achieve this, and how it has contributed to this in the past financial year. In doing so, it reports on both short-term and long-term developments. The report also provides in the diversity policy for the composition of the managing board. The code of conduct, expressing the values relating to the corporate culture of the company, shall be published on the website of the company, together with the procedure for reporting abuse and irregularities.

Peru

- ***Juan Carlos Escudero***
- ***Miguel Viale***
- ***Nicole Freire***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Although there is no specific legislation regarding ESG considerations in Perú, many companies have environmental and social commitments, which they must comply with. There are several companies whose directors include environmental and social aspects in their agendas due to the impact that it could cause in the event of failing to comply with environmental regulations.

In addition, some rules address *Corporate Governance* practice, which applies to listed (public) companies. Listed companies seeking *Corporate Governance* recognition, which is voluntary, must submit to BVL (*Lima stock exchange*) information on their corporate governance.

At the end of this year, the ESG index will be incorporated in the local market, replacing the current "Corporate Governance" index. Environmental, social and corporate governance aspects will be incorporated into the measurement (currently, only measures aspects of corporate governance).

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

There is no legal obligation for the board of directors to implement ESG considerations. However, several companies pursue a better governance practice, taking into consideration social and environmental practices. For example, it is highly common for corporations to have policies to protect against sexual misconduct, including topics related to gender pay inequality, and, further, politics encouraging diversity.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

In 2021 Act N° 31073 and its Regulation provided for the possibility of all types of companies to adopt the general interest company (BIC in the Spanish acronym) legal status, which entails having a societal and environmental purpose beyond shareholders' profit and interests. The directors of such companies must:

— ensure the real achievement of the purpose of social and environmental benefit defined in its bylaws;

— be responsible for identifying any lack of compliance with the obligations assumed by the company;

— introduce organizational transparency practices;

— entrust an independent third party with the preparation of a management report on the impact of society, about the societal and environmental purpose.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

There are no obligations in relation to ESG disclosure or reporting. Sustainability reports remain voluntary.

Poland

- ***Rafal Burda***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Directors (management board members of limited liability companies) have certain obligations that could be categorised as ESG considerations. Those obligations include:

— Environment – there are no specific obligations for directors in Poland regarding care for nature. Depending on the scope of a given company's activity, such obligations may be imposed on the company (therefore they will in most cases be exercised by its directors, or it will be the directors' obligation to entrust someone with the obligation), but no general provisions on directors' duties have been introduced.

— Social – the directors' relationship with a company's employees is subject to strict labour law regulations. The law forbids any discrimination on the grounds of gender etc. (for details please see question 2 of this section), mobbing and/or employee mistreatment. It also imposes certain rules with regard to working hours, holiday leave etc. With regard to third parties (i.e. suppliers, customers etc.), directors should act in the best interest of the company and with professional care. Directors in Poland do not have any specific obligations towards the communities where they operate.

— Governance – the general rules of a company's corporate governance are outlined in the provisions of law (please see the main part of this guide where most of those provisions are described), supplemented by the articles of association and any management board by-laws (if introduced – management board by-laws are not obligatory). In general, these include the division of duties between the shareholders and directors (and the supervisory board if applicable), and the relationships between them (including the obligation to obtain shareholders' consent for certain actions and the shareholders' right of control over directors' actions). There are no obligations regarding audit or internal control imposed on directors, although the company's annual financial statements may be subject to audit if the company: (i) employs more than 500 workers in full-time equivalents; (ii) exceeds PLN 85,000 total balance sheet assets at the end of the financial year; or (iii) exceeds PLN 170,000,000 in net revenue from the sale of goods and products for the financial year.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

If a company employs employees, labour law imposes certain ESG considerations regarding safety of the workplace, pay equalities, discrimination etc.

Firstly, directors are obliged to ensure the occupational safety and health of employees. Any violation of these rules (regardless of whether an accident occurred as a consequence or not) is punishable by fines from PLN 1,000-30,000 or approximately EUR 220-6,600.

Additionally, the law prohibits any discrimination of employees (both current and potential) on any grounds including gender, race, religion etc. As a result, no difference in salaries can be made based solely on gender.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

Currently, there are no expected changes with regard to directors' ESG duties.

However, it is possible that within a couple of years, due to the current political focus on environmental and social aspects, new ESG duties will be imposed on directors by statutory law.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

In general, there are no directors' obligations related to ESG disclosure and/or reporting.

Certain listed joint-stock companies should comply with the so-called "Good practices of the listed companies" that require periodic reports to contain information on e.g. the number of male and female employees. However, this is not an obligation imposed by law, rather by official guidelines, therefore non-compliance does not result in sanctions etc.

Portugal

− *João Caldeira*

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Yes. The main duties of the director – the duty of care and the duty of loyalty (please refer to 10. What other general duties does a director have?) – set out certain obligations that should be deemed as ESG considerations:

- Duty of care: directors must perform office so that the company complies with the applicable employment, environmental and welfare regulations.
- Duty of loyalty: directors must act in the company's interest and take into account the long-term interests of shareholders, while also considering the interests of other stakeholders such as employees.

Directors also have reporting obligations in respect of ESG matters (please see question 4 of this section).

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

Listed companies must adopt a corporate governance code on a 'comply or explain' basis – either the code approved by the Portuguese Securities Market Commission (*Comissão de Mercado de Valores Mobiliários* or "**CMVM**") or one issued by a specialised entity.

The CMVM-approved IPCG Corporate Governance Code has also been approved by the Portuguese Institute of Corporate Governance (*Instituto Português de Corporate Governance*) and has the following ESG principles:

- Corporate governance shall promote and enhance the performance of companies as well as the performance of the capital market, and shall underpin the confidence of investors, employees and the general public in the quality and transparency of management and supervision, and in the sustainable development of companies.
- Companies shall ensure diversity in the composition of the respective governing bodies and the adoption of individual merit criteria in the respective appointment processes, which shall be the exclusive competence of the shareholders.
- The company shall promote the evaluation of the performance of the executive body and of its individual members as well as the overall performance of the board of directors and of its specialised committees.
- The remuneration policy for members of the board and supervisory bodies shall allow the company to attract qualified professionals at a cost that is economically justified by their situation, induce the alignment of interests with those of the shareholders – taking into consideration the wealth effectively created by the company, the economic and market situation – and constitute a factor for developing a culture of professionalism, sustainability, promotion of merit and transparency in the company.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

The IPCG Corporate Governance Code was reviewed in 2020 with the aim of strengthening ESG considerations, namely those relating to diversity and remuneration.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Directors of companies are legally required to prepare a management report which, to the extent necessary to understand the evolution of the business, the performance or the company's position, shall cover both financial aspects and, where appropriate, non-financial performance benchmarks relevant to the company's specific activities, including information on environmental and employee matters.

Directors of large companies (those with an average of more than 500 workers during the financial year), which are entities of public interest, are obliged to report on non-financial statements included on their management report, which must contain enough information for an understanding of the evolution, performance, position and impact of a company's activities, referring as a minimum to environmental, social and worker-related issues, equality between women and men, non-discrimination, respect for human rights, combating corruption and attempted bribery, including:

— a brief description of the company's business model;

— a description of the policies followed by the company in relation to these matters, including the due diligence processes applied;

— the results of these policies;

— the main risks associated with these issues related to the company's activities including, if relevant and proportionate, its business relationships, its products or services that are likely to have negative impacts in these areas and the way in which these risks are managed by the company;

— key performance indicators relevant to the company's specific activity.

Romania

- ***Horea Popescu***
- ***Raluca Ionescu***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Environmental, Social, and Governance matters (ESG) have gained increasing attention over the past few years, with many investors investing only in companies that provide ESG performance reporting.

Generally, directors are responsible for the day-to-day management and operation of a company, including from the perspective of compliance with applicable laws and regulations relevant for the business carried out by the company. While ESG obligations or standards are not regulated as such, more and more companies are focused on observing ESG objectives and preparing internal reporting on ESG performance.

Environmental matters are a significant part of ESG obligations. Companies whose business activities are subject to observing environmental requirements should pay attention to relevant regulations in this respect, especially since there are rapid changes and developments in this field. In addition to the mandatory legal framework and requirements on packaging, waste management, dangerous/specific substances management, air and noise protection, soil and groundwater contamination and other pollution matters, nature conservation, greenhouse gas emissions, environmental permitting, etc., companies (through their directors and executives) may voluntarily undertake environmental management schemes/initiatives.

There are also employment-related issues that the directors should consider from an ESG perspective. For instance, the Romanian Labour Code, as well as other applicable laws and regulations, explicitly indicates the general principle of equal treatment between employees and equal pay. As directors are typically the persons implementing and exercising the employer's rights in relation to the employees of a company, special attention shall be paid to compliance with such general principles in handling employment relations.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

The Romanian Labour Code and additional applicable secondary legislation explicitly set forth the general principle of equal treatment between employees and equal pay. Gender equality, as well as equal opportunities and treatment for employees and prohibition of discrimination in the organisation, are also areas of focus for employers. Directors must ensure that such mandatory principles are observed and implemented at the level they manage within their companies.

Also, the Code of Corporate Governance issued by the Bucharest Stock Exchange (BVB) sets forth provisions related to the remuneration of directors and members of the management board. In this respect, any listed company must publish its remuneration policy which should include the form, structure and level of remuneration of the members of the management bodies of the company.

In addition to the above, applicable legislation also provides that all employers must ensure a safe and healthy working environment for their employees. The general responsibility for making sure that health and safety obligations are generally observed or implemented by a company pertains in most cases to its executive officers (directors).

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

In April 2021 the European Commission proposed a new regulatory framework regarding corporate sustainability reporting – the Corporate Sustainability Reporting Directive or CSRD – which has not yet been adopted by the respective legislative bodies of the European Union. In case such directive enters into force, the reporting obligation would have an extended scope (i.e. would cover additional companies), the disclosed reports would have to be audited and reports would have to be made on the basis of mandatory EU reporting standards.

In 2020 the BVB announced the launch of the first ESG-focused initiative on the Romanian capital markets, which aims to provide high-level ESG insights for companies listed on the exchange. The goal of this initiative is to make available topline ESG research and ratings for most companies listed on the BVB by using Sustainalytics' flagship ESG Risk Ratings. The initiative also aims to encourage local companies to align their business strategies with ESG practices, thus making them more attractive to local and foreign investors.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Generally, ESG performance disclosure/reporting is not expressly regulated or mandatory in Romania. However certain companies voluntarily commit to various internal reporting or include in their annual financial reporting matters concerning ESG performance to increase attractiveness to potential investors.

There are also several acts of legislation on an EU level that are indirectly applicable and might be taken into consideration by directors of companies in Romania. For instance, pursuant to the Non-Financial Reporting Directive of the EU (2014/95/EU) ("**NFRD**"), certain large companies (entities of public interest or public relevance) are obliged to disclose certain non-financial information including, but not limited to, environmental and social matters. The purpose of the NFRD is to encourage entities of public interest to introduce a responsible approach to ESG-related issues and to make the data of such companies more easily accessible to decision-makers and the public. Therefore the NFRD sets out a high-level, minimum standard legal framework regarding the disclosure obligation, and each member state of the European Union has had to transpose such rules into their respective national law with the adoption of detailed legal regulation and processes.

Furthermore, the EU has also passed the Shareholders' Rights Directive II (2017/828/EU) ("**SRD II**") on the encouragement of long-term shareholder engagement, which provides for the preparation of an ESG-oriented investment strategy and a policy of ESG-related commitments. The SRD II has also been implemented in Romania by several laws and regulations.

Russia

- ***Artashes Oganov***
- ***Nikita Lebedev***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Currently, there is no complex government regulation of matters that may be categorised as ESG considerations in Russia. Russian laws, however, address some specific issues that may be considered ESG matters and impose respective duties on the members of a supervisory board or a board of directors (the "**Board of Directors**") or the executive management body (the **"General Director**" or "**Management Board**", and together with the Board of Directors – the "**Management Bodies**"). Please see other sections of the legal guide below for more details.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

Since ESG duties are not explicitly specified in Russian law, members of Management Bodies are obliged to comply with the general requirements of Russian laws and subordinate acts related to matters such as:

— gender equality;

— prohibition of any types of employment discrimination;

— workplace safety;

— environmental development and protection.

Notwithstanding this, some additional ESG matters can be provided in the companies' articles of association and internal regulations.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

Currently, Russian law is not undergoing any 'ESG reforms'. However, ESG considerations are frequently being discussed in the Russian business community and political circles.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Russian joint-stock companies must disclose information on how they apply principles recommended by the Russian Code of Corporate Governance. If a joint-stock company's securities are admitted to trading at a stock exchange, such disclosure must also include a more detailed description of the principles being applied, the general model of corporate governance in the company, any improvements to the current model and certain other information required by the Russian Central Bank.

In addition to that, Russian public joint-stock companies are advised to disclose non-financial results of their activities related to ESG factors and the influence of such factors on financial results. This recommendation was provided by the Central Bank of the Russian Federation in its letter of 12 July 2021.

Serbia

▪ ***Marija Tešić***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Although no specific obligations are addressed to directors per se, a lot of obligations which lie with the employer are, in practice, to be fulfilled by directors (as authorised representatives).

Such important obligations dealing with employee welfare, for instance, include the obligation to provide the employee with:

— notice on the prohibition of harassment at work and rights, obligations and responsibilities of the employee and the employer in connection with the prohibition of harassment at work;

— notice on the rights of whistle-blowers and the whistleblowing procedure, as well as other issues of importance for whistleblowing and the protection of whistle-blowers.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

It is worth noting that directors sign several documents with regard to health and safety such as the:

— Risk Assessment Act;

— decision on the Appointment of person for safety and health at work;

— collective agreement on safety and health at work etc.

With regard to pay (in)equality, the Labour Law sets forth that employees are guaranteed equal pay for the same work or work of the same value (deemed work for which the same level of education is required, i.e. knowledge and skills, in which the same work contribution was achieved with equal responsibility). An employer's decision (or an agreement concluded with an employee in that regard) that is not in line with the said rule is deemed null and void, while the employee is entitled to damages in case of violation of rights thereof.

A general act of the employer (such as a rulebook), signed by the director, ascertains the elements for calculation and payment of basic salary and salary based on work performance. Thus, the employer (and consequently the director) must bear in mind the said guarantee provided by the Labour Law.

Additionally, the recently enacted Law on Gender Equality provides general rules and measures that should be applied in order to improve gender equality or to prevent prohibited discrimination based on gender. Some of those rules and measures deal with the following:

— Equal opportunities when it comes to hiring and work.

— Structure of an employer's management and supervisory bodies.

— Prohibition of termination of employment based on gender-related discrimination, e.g. in case of pregnancy, maternity leave or leave from work for childcare and leave from work for special childcare, as well as due to initiated proceedings for protection against discrimination, harassment, sexual harassment and sexual blackmail.

— Prohibition of harassment, sexual harassment etc.

— Prohibition of gender inequality during maternity leave, maternity leave, childcare leave and special childcare leave

— Prohibition of unequal wages for the same work or work of equal value etc.

While many of these measures are already envisaged by other regulations, such as the Labour Law or the Law on the Prohibition of Harassment at Work, all these measures aiming to improve gender equality should be included in all company policies, where applicable, and should ideally be embedded in all companies' actions and standards.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

The most important recent changes include enaction of the Law on Gender Equality which came into force in June 2021. According to Article 16, the proposed measures for promotion and realisation of gender equality should be laid out in the company's annual business plan as a separate section or appendix. It is prescribed that this separate section on gender equality must especially include the following:

— Short analysis of the current situation in relation to the position and status of women and men within the employer's organisation.

— Overview of the age structure.

— List of planned measures for promotion and realisation of gender equality.

— Reasons for choosing such measures and the goals they are expected to achieve.

— When the measures shall start to be implemented.

— How the implementation shall be monitored and controlled.

— When the measures shall no longer be applied.

Under the Law on Gender Equality, each employer, having more than 50 employees must undertake the following:

— Adopt the above-mentioned annual plan of gender equality measures as part of the company's annual business plan.

— Adopt a report on the realisation of planned gender equality measures as part of the company management's regular report on the realisation of the annual business plan.

— Keep records of anonymised data on gender structure of the workforce (based on a form which the Ministry has not yet published).

— Adopt a separate annual report on gender equality which is to include the records mentioned under the point above as well as an analysis of the status of gender equality and an explanation of reasons why the prescribed gender equality levels (40-50%) have not been reached.

Additionally, amendments of the Law on Safety and Health at Work are expected soon.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Employers whose annual business plans or annual reports are not publicly available are obligated to inform the Ministry about the adoption thereof, and to provide a copy of the respective parts of the annual plan and the annual report that deal with gender equality, as follows:

— Within 15 days from the date of adoption of the annual plan.

— Within 30 days from the date of adoption of the annual report.

The separate annual report on gender equality for the preceding year should be filed with the Ministry by 15 January.

Singapore

- ***Toby Grainger***
- ***Sam Ng***
- ***Eric Lai***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Broadly, directors' duties to act in a company's best interests (which include the interests of its employees generally and its shareholders) could possibly extend to ESG-related matters. Specific legislation and case law may also indirectly impose ESG-related obligations on directors/CEOs by imposing liability on companies (and consequently on their officers which include directors) that do not comply with applicable environmental sustainability, workplace safety and disclosure/reporting regimes.

Further details are elaborated on later in this guide.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

General Employee Considerations

The Companies Act (Chapter 50 of Singapore) (the "**Companies Act**") mandates that the directors of a company, in exercising their powers, are entitled to have regard to *inter alia* the interests of the company's employees generally.

Board Diversity

Under the Code of Corporate Governance (the "**CG Code**"), which applies to Singapore Exchange ("**SGX**")-listed companies on a 'comply or explain' basis, companies should ensure that their board and board committees consist of directors who, as a group, provide an appropriate balance and mix of skills, knowledge, experience and other aspects of diversity such as gender and age, so as to avoid groupthink and foster constructive debate. The board diversity policy and the progress made towards implementing such board diversity policy, including objectives, are to be disclosed in an SGX-listed company's annual report.

Workplace safety

The Workplace Safety and Health Act (the "**WSH Act**") requires employers to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of their employees at work. The Ministry of Manpower provides further guidance on an employer's responsibilities to ensure compliance, including the need to ensure:

— the work environment is safe;

— adequate safety measures are taken for any machinery, equipment, plant, article or process used at the workplace;

— workers are provided with sufficient instruction, training and supervision so that they can work safely.

Directors and CEOs may be held responsible for offences that have been committed by their company under the WSH Act. Where an offence has been committed by a body corporate, an officer of the body corporate (which includes directors) may be guilty of the offence and subject to prosecution unless he/she proves that: (i) the offence was committed without his/her consent or connivance; and (ii) he/she had exercised all such diligence to prevent the commission of the offence as he/she ought to have exercised, having regard to the nature of his/her functions in that capacity and to all the circumstances.

Environmental

The Energy Conservation Act (Chapter 92C of Singapore) (the "**EC Act**") mandates energy efficiency requirements and energy management practices for certain registrable corporations to promote energy conservation, improve energy efficiency and reduce environmental impact. This extends to corporations that have attained certain energy use thresholds and which are in prescribed sectors such as manufacturing and manufacturing-related services; supply of electricity, gas, steam, compressed air and chilled water for air-conditioning; and water supply and sewage and waste management. Such corporations must, among other things, conduct an energy efficiency opportunities assessment on each prescribed business activity or premises under their operational control. It is possible that officers of such registered corporations (including directors) could be held liable if the registered corporation commits an offence under the EC Act with the consent or connivance of an officer of the body corporate, or if such offence is attributable to any act or default on such officer's part.

Under the Carbon Pricing Act (the "**CP Act**"), any industrial facility that emits direct greenhouse gas emissions above certain prescribed limits annually has to register itself as a reportable facility and to submit certain prescribed emission reports. It is possible that officers of such registered corporations (including directors) could be guilty of an offence if the registered corporation commits an offence under the CP Act if inter alia the relevant officer had consented, connived or conspired with others to effect the commission of the offence, or where such officer knew, or ought reasonably to have known, that the offence by the corporation (or an offence of the same type) would be or is being committed and failed to take all reasonable steps to prevent or stop the commission of that offence.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

N.A.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

SGX-listed companies

Under the SGX Listing Rules, sustainability reporting is mandatory in order to provide potential investors with a more holistic assessment of a company's financial prospects and quality of management. SGX-listed companies are required to prepare and publish a sustainability report covering ESG factors annually, within 5 months after the end of their financial year.

The sustainability report must describe the sustainability practices with reference to the following primary components:

- material environmental, social and governance factors;
- policies, practices and performance;
- targets;
- sustainability reporting framework;
- board statement.

The exclusion of any primary component must be disclosed, and the alternatives undertaken must be described with accompanying reasons.

Slovakia

- ***Petra Corba Stark***
- ***Soňa Hanková***
- ***Martin Baláž***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Yes, directors of companies with an obligation to prepare annual reports must also include in each report information on the impact of the company's activities on the environment and employment, with a reference to the respective information given in the financial statements. Public interest entities with an average number of employees exceeding 500 must provide in their annual reports non-financial information regarding the development, performance, position and effect of the company's activity:

— on environmental, social and employment issues;

— on respecting human rights; and

— against corruption and bribery

("**social responsibility areas**"), whereas the respective laws give examples of information that the company needs to provide, including a brief description of the business model, and a description and results of the policy applied by the company in social responsibility areas, etc.

In addition, companies that issue securities accepted for trading on a regulated market of any EU member state must under certain conditions describe the diversity policy applied in its bodies (especially concerning the age, sex, education and professional experience of the members of those organisations), the targets of the policy, the method of its application and its results.

Certain companies, especially those active in the financial sector, might be subject to additional specific ESG-related requirements.

Although the majority of companies do not have to prepare and publish ESG-related reports, some wish to provide such information voluntarily to promote their strategies, policies and long-term vision, and by doing so, to address potential new investors and customers.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality?

Generally, directors must observe various statutory obligations which might be fully or partially related to ESG considerations, e.g.:

— Follow the statutory requirements regarding the employer's social policy (employment conditions for employees, catering for employees, recreation and education of employees, specific obligations towards employees who take care of children, pregnant employees, minor employees etc.).

— Create a social fund and use it to fund employees' specific activities (recreation, catering, travelling to work etc.).

— Observe equal treatment rules and apply adequate instruments to prevent discrimination in the workplace.

— Regularly inspect the standard of occupational health and safety, in particular the state of manufacturing and working methods and equipment in workplaces and the level of risk factors of working conditions, and maintain methods of determining and assessing risk factors under the special regulation.

— Observe the environmental, financial, accounting and other relevant obligations stipulated in the respective laws.

The scope of ESG-related obligations depends on various criteria, and directors should assess them by considering the specifics of the business and structure of the relevant entity. Directors can incur various potential liabilities because of a breach of their duties. These include:

— liability for compensation for a loss caused to the company (and subsequently to its creditors);

— criminal liability for certain criminal offences that can be attributed to directors;

— personal liability to pay a fine in the event of failing to observe employment-related obligations.

3. What recent changes have occurred or are expected regarding directors' responsibilities concerning ESG considerations?

No recent changes have occurred in Slovak law.

4. What obligations do directors have regarding ESG disclosures and reporting?

See the answer to question 1 regarding reporting information in annual reports.

South Africa

- ***Deepa Vallabh***
- ***Lebogang Molebale***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Environmental Considerations

Section 76(3) of the Companies Act No. 71 of 2008 (the "**Companies Act**") places an obligation on directors to exercise their functions in the best interests of the company and with the requisite degree of care, skill and diligence. Although these are general director duties, if a director fails to ensure that a company complies with the specific environmental law obligations set out below, the director may be held liable for a breach of these general director duties.

The National Environment Management Act 107 of 1998 (the "**NEMA**") sets out general environmental governance and decision-making principles applicable to various types of activities that may affect the environment. Section 24(N) of NEMA provides that directors of a company are jointly and severally liable for any negative impact on the environment, whether advertently or inadvertently caused by the company which they represent, including damage, degradation or pollution. Section 34(7) of NEMA provides that a person who was a director of a company at the time an offence under NEMA was committed shall be guilty of that offence and shall be liable on conviction to a fine or to imprisonment, if the said offence was a result of the director's failure to take all reasonable steps which were necessary under the circumstances in order to prevent the offence from being committed. Directors should therefore be cautious of undertaking any business activities that can cause damage to the environment. Should such damage be caused, the national or provincial department of environmental affairs must be made aware of the damage as soon as possible.

The Institute of Directors in South Africa (IODSA) develops and publishes the King Code on Corporate Governance (the "**King**"), which prescribes general standards of corporate governance which South African courts often consider when interpreting the duties of directors. Principle 3(14) of the King IV Report on Corporate Governance states that the governing body (i.e. the board of directors) should oversee and monitor, on an ongoing basis, how the consequences of an organisation's activities and outputs affect its status as a responsible corporate citizen. This oversight and monitoring should be performed against measures and targets agreed with management in the following areas:

— Environment (including responsibilities in respect of pollution and waste disposal, and protection of biodiversity).

— Society (including public health and safety; consumer protection; community development; and protection of human rights).

— Economy (including economic transformation; prevention, detection and response to fraud and corruption; and responsible and transparent tax policy).

— Workplace (including employment equity; fair remuneration; and employee health and safety).

Compliance with King IV is mandatory for entities listed on the Johannesburg Securities Exchange (JSE).

Social Considerations

Section 72 of the Companies Act requires state-owned companies, listed companies and every other company that has had a public interest score of at least 500 points in the past 2 years to appoint a social and ethics committee. A social interest score is calculated based on the number of employees a company has, its revenues, the company's third-party liabilities and the number of securities holders in the company.

The social and ethics committee may comprise no less than three members who may be directors or prescribed officers of the company. In terms of regulation 43 of the Companies Regulations of 2011 (the "**Companies Regulations**") a social and ethics committee monitors a company's activities with regard to:

— Social and economic development

— Good corporate citizenship

— The environment, health and public safety

— Consumer relations

— Labour and employment matters.

When monitoring and reporting on social and economic development, the Companies Regulations require the social and ethics committee to monitor compliance with the Broad-Based Black Economic Empowerment Act of 2003 (the "**BBBEE Act**") and the Employment Equity Act of 1998 which are pieces of legislation aimed at improving the social and economic standing of black South Africans, addressing inequalities which are a result of past racially discriminatory Apartheid laws. Complying with the BBBEE Act is not mandatory, and companies in the private sector who elect not to comply with the BBBEE Act do not face any legal consequence (unless compliance is required in terms of the licensing requirements applicable to the sector in which that company operates). Companies listed on the JSE are required to report to the public on the level of black ownership and other aspects of BBBEE.

The social and ethics committee also monitors compliance with recommendations from the Organisation for Economic Co-operation and Development (OECD) regarding corruption, the United Nations Global Compact Principles and the International Labour Organisation Protocol on decent work and working conditions.

Governance Considerations

The corporate governance practices which are expected of directors are set out in the Companies Act and King IV. Duties and responsibilities of directors are derived from both the Companies Act and common law. Good corporate governance dictates that directors act in the utmost good faith and in the best interests of their companies, including the need to exercise care, skill and diligence in the performance of their duties

King IV sets out 16 principles that an organisation should apply in order to prove that is practising good corporate governance. King IV provides that a board of directors should, among other things:

— lead ethically and effectively;

— govern ethics and establish an ethical culture;

— ensure responsible corporate citizenship;

— serve as the focal point and custodian of corporate governance.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

The Occupational Health and Safety Act No. 85 of 1993 (the "**OHSA**") governs the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery. All employers must provide and maintain a safe and healthy working environment for their employees. The OHSA appoints the chief executive officer (CEO) as the "accountable person" for health and safety.

Under Section 16 of the OHSA, the CEO has the duty and responsibility to:

— ensure proper control of health and safety duties within the organisation;

— provide and maintain a safe, risk-free and healthy work environment for employees;

— delegate when needed any related duties and responsibilities to any person under his/her control, but not accountability;

— be responsible for the management of occupational health and safety matters;

— familiarise and comply with health and safety statutory requirements stipulated by the occupational health and safety act and regulations.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

The fund management and investment sectors are in the process of revising the Code for Responsible Investment in South Africa (the "**CRISA**"). The code was launched in 2011 in response to the King III Report on Corporate Governance South Africa. King III and its predecessors provided a governance framework for companies and their boards but did not include institutional investors. In November 2020, a revised CRISA was published for comment. The IODSA is in the process of finalising revisions to the CRISA.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

The JSE requires listed companies to submit a compliance report to the BBBEE Commission within 90 days of an organisation's financial year end. Companies need to submit the report to the JSE and announce, via the stock exchange news service (SENS), that the report has been made available on their website. The report is required to include the relevant scores received by the company in the BBBEE elements of ownership, management control, skills development, enterprise and supplier development, socio-economic development and any other sector-specific element. When compiling an integrated report, listed entities usually report on their compliance with ESG matters as required by King IV.

Spain

- ***Carlos Peña***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

The latest amendment to the Spanish Capital Companies Act (the "**SCCA**") has defined the duty of diligence to include the 'interest of the undertaking', but this latter is not defined. Consequently, directors' duties as prescribed under the SCCA do not contain specific obligations regarding ESG. Despite the inclusion of the interest of the undertaking, duties are nevertheless owed to the company's interest in the most traditional view of the shareholders' interest. Traditional governance rules relating to executive pay, audits or shareholder rights are included in Spanish Corporate Law and are described in this document where appropriate.

However, the latest version of the Good Governance Code of Listed Companies, rev. June 2020, (the "**Good Governance Code**") includes recommendations on companies' policies and management as regards sustainability.

Principle 24 states that, "The company should deploy an appropriate environmental and social sustainability policy, as a non-delegable board power, and report transparently and in sufficient detail on its development, application and results."

Following this principle, Recommendation 55 states that, "Environmental and social sustainability policies should identify and include at least:

— the principles, commitments, objectives and strategy regarding shareholders, employees, clients, suppliers, social welfare issues, the environment, diversity, fiscal responsibility, respect for human rights and the prevention of corruption and other illegal conducts;

— the methods or systems for monitoring compliance with policies, associated risks and their management;

— the mechanisms for supervising non-financial risk, including that related to ethical aspects and business conduct;

— channels for stakeholder communication, participation and dialogue;

— responsible communication practices that prevent the manipulation of information and protect the company's honour and integrity."

According to Recommendation 53, "The task of supervising compliance with the policies and rules of the company in the environmental, social and corporate governance areas, and internal rules of conduct, should be assigned to one board committee or split between several."

Although these provisions affect directors' duties as they must consider them when managing the company, these policies are not mandatory. Consequently, they may be voluntarily adopted by the companies following the 'comply or explain' principle. Therefore, they will only impact: (i) listed companies that (ii) voluntarily follow the recommendations of the Good Governance Code.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

Not under Company Law. However, directors may adopt measures on these issues. In fact, the non-financial and diversity report (see question 4) must include references to measures adopted in this regard.

Please take into consideration that particular Administrative and Labour Law provisions apply.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

Future changes in this regard are dependent on the evolution of the current EU proposal for a Directive on Corporate Due Diligence (European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability). It is unclear if this proposal will ever be adopted, and if the Spanish legislator will take into consideration the current content of the proposal for future changes if it is not adopted.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

Since Law 11/2018, directors of certain companies are obliged to prepare and conveniently disclose a report on non-financial and diversity information, to be included among the annual reports to be approved by the shareholders' general meeting. This obligation applies to companies mandated to present consolidated accounts: (i) with 500 workers or more, and (ii) that are public-interest companies or that fall under the notion of large undertakings as defined under Directive 2013/34.

The non-financial and diversity information must be included in the consolidated management report or be reported separately in a specific document. The report shall include the information necessary to understand:

— development, performance and position of the group;

— impact of its activity with respect to environmental and social issues (as a minimum);

— respect for human rights;

— fight against corruption and bribery;

— respect for personnel, including measures taken, where appropriate, to promote the principles of equal treatment and opportunities for women and men, non-discrimination and the inclusion of persons with disabilities together with universal accessibility.

Turkey

- ***Döne Yalçın***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

According to the Corporate Governance Communiqué (the "**Communiqué**") published by the Capital Markets Board (the "**Board**"), public companies are subject to sustainability principles and should include statements related to conformity with sustainability principles within their corporate governance compliance reports. The following types of public companies are excluded from the scope of this liability:

— Public companies whose shares are not traded on the stock.

— Public companies whose shares are traded on stocks other than the National Market, Second National Market or Corporate Products Market.

— Among the public companies which have applied to the Board for an initial public offering, companies whose shares will be traded on markets other than the National Market, Second National Market or Corporate Products Market.

— Companies which are deemed as resident abroad according to Decree No. 32 on Protection of the Value of Turkish Currency.

With regards to the above-mentioned liability, the Board has published the Framework for Compliance with Sustainability Principles (the "**Framework**"). The Framework comprises various sustainability principles as follows:

— General Principles: relate to the strategies, policies and objectives of companies with regard to sustainability, the application and review of these strategies and policies, and the review of the process to achieve an objective.

— Environmental Principles: require that companies comply with environmental legislation and international standards such as ISO 14001, disclose the highest level of environmental and climate change management bodies and employees, identify incentives for environmental management, explain how environmental issues are integrated into labour-related matters and how environmental issues affect the value chain and customers, disclose measures and strategies to address the climate crisis, provide data on the use of renewable energy, etc.

— Social Principles: set standards for human and labour rights, health and safety at work, protection of personal data, ethical principles, social responsibility, customer satisfaction and transparency.

According to the General Principles, the board of directors is obliged to determine matters that should be prioritised with regards to ESG and ESG-related risks and opportunities. Further, the board of directors is required to prepare ESG policies in accordance with such prioritised matters, risks and opportunities.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

Even though the Communiqué and the Framework are the sole pieces of legislation on the ESG-related obligations of companies and directors, certain opinions indicate that the obligations foreseen under the Framework and the Communiqué should be valid for all companies. Additionally, some opinions set forth that the general corporate governance principles determined by the Turkish Commercial Code and similar pieces of legislation should be objectified by including the principles under the Framework within their scope.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

The Framework entered into force upon the amendment of the Communiqué in October 2020. Thus, no change or new legislation is expected in the short term. However, there is speculation that the EU's ESG-related obligations and regulations could affect Turkey indirectly via commercial terms and local regulations. Turkey's Ministry of Commerce has already published the "European Green Deal Action Plan" with the purpose of ensuring compliance with the transformative and progressive policies of the EU and of the rest of the world. Consequently, additional action plans or the embodiment of the principles and targets set out under the "European Green Deal Action Plan" could be expected.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

According to the Communiqué, public companies should include in their Annual Activity Reports:

— statements on whether they are compliant with sustainability principles;

— detailed explanations of the reasons for non-compliance;

— effects resulting from non-compliance.

Additionally, the Framework determined certain principles with regards to the reporting requirements of companies. Accordingly, companies that fall under the scope of the Framework should publish their performance, targets and actions related to sustainability once a year. Sustainability-related actions could be published in the Activity Report.

United Arab Emirates

- ***John O'Connor***
- ***Karim Fawaz***
- ***Patrick Daintry***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

While there are no direct obligations relating specifically to ESG considerations for companies, the Companies Law does indirectly require directors and executive managers of LLCs and JSCs to ensure the company complies with applicable laws. With regards to the wellbeing of employees, this requires the directors and executive management to comply with obligations in the UAE Labour Law (Federal Law No. 8 of 1980, as amended, the "**Labour Law**") which, among other things, imposes duties on employers to provide a safe environment for employees at work. While those provisions were based on law dating back to 1980, the principle remains effective and has been used throughout the COVID-19 pandemic to ensure employers maintain their working environment in compliance with all COVID-related measures for the safety and benefit of employees. Employers must provide safe, clean, well-ventilated places of work with adequate lighting, drinking water and sanitation facilities, and must maintain health insurance for all of its employees. Article 32 of the Labour Law also requires equal pay for men and women where carrying out the same work or work of "equal value".

There is a Corporate Social Responsibility framework for all companies in the UAE, however, this is only a voluntary framework and does not impose any positive obligation on directors of companies to comply (Cabinet Decision No. 2/2018 on Corporate Social Responsibility).

With respect to PJSCs, the UAE Securities & Commodities Authority released the SCA Code in 2020 which sets out a comprehensive governance framework for all PJSCs in the UAE based on principles of "accountability, fairness, disclosure, transparency and responsibility". The SCA Code specifically refers to obligations being owed to shareholders "and stakeholders", which includes employees, potential investors, creditors, suppliers etc., and "any person who has an interest with the Company".

The SCA Code places duties on the boards of directors of PJSCs to ensure compliance with the code. Among other matters, the SCA Code includes the following:

— the board must set a policy towards the local community and environment, and must ensure a balance between the objectives of the company and those of the community to promote the socio-economic conditions of the community;

— the board is obliged to prepare and disclose an "Integrated Report" (either as a stand-alone report or (more commonly) as a section of the company's annual report) which addresses, among other things, social and sustainable activities of the company;

— a "comply or explain" obligation to achieve a minimum 20% female representation on all PJSC boards;

— an obligation to ensure boards maintain an appropriate balance of experience, diversity and independence and to implement an ongoing training and development programme for board members;

— an obligation on boards to set policies on gender diversity and a set of actions to meet those objectives;

- a general obligation on the board to perform its goals in creating sustainable value for shareholders, taking into account other stakeholder interests;
- an obligation to set procedures to apply governance principles across the group and to review those provisions on an annual basis;
- an obligation to implement a mechanism for engagement with stakeholders and enabling accountability of the board towards stakeholders.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

See above.

See also our LawNow on this topic:

https://www.cms-lawnow.com/ealerts/2018/04/uae-cabinet-approves-equal-pay-legislation?cc_lang=en

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

See question 1 above. The main changes in this area have been introduced by the SCA Code for PJSCs.

Further corporate governance regulations are anticipated for LLCs pursuant to Article 6 of the FDL, however these have not yet been released. We would expect future regulations in this area to recognise ESG considerations.

See also our LawNow articles regarding the changes introduced to the Companies Law in 2020 by virtue of the FDL, which included changes relating to directors' duties and related party transactions:

https://www.cms-lawnow.com/ealerts/2020/12/uae-announces-major-changes-to-commercial-companies-law?cc_lang=en

As a general comment, the relaxation of foreign ownership restrictions introduced by the FDL (see the LawNow link above) is intended to enhance foreign investment into LLCs and PJSCs in the UAE. As such, and recognising the investor sentiment and requirements of many international investors, we anticipate that ESG considerations will increasingly feature for businesses seeking to engage further with the international investor community.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

See our answer to question 1 above.

United Kingdom

- ***Barney Hearnden***
- ***Mark Bertram***

1. Do existing directors' duties contain obligations that apply to matters that could be categorised as an ESG consideration, e.g. the environment, employee welfare?

Yes – as part of their overriding duty to promote the success of the company, directors must have regard to a number of "stakeholder factors", including the following:

— likely consequences of any decision in the long term;

— interests of the company's employees;

— impact of the company's operations on the community and the environment.

These factors therefore directly reference the environment and the welfare of employees, but the requirement to consider the long-term consequences of decisions means that matters of sustainability, and the long-term success of the company, should be at the forefront of directors' minds.

ESG issues are attracting increasing attention and as a result, there is greater pressure on directors to prioritise those considerations when discharging their duties. This has been given additional impetus by the UK's role as host for the 26th United Nations Climate Change Conference (COP26) to be held in Glasgow in November 2021.

2. Are there other obligations of directors that relate to ESG considerations, e.g. health and safety, gender pay inequality, etc?

Besides their general directors' duties, there are a multitude of other laws and regulations applicable to companies and their directors which relate to ESG considerations. These include direct obligations such as health and safety legislation, requiring companies and their directors to ensure that the company is operating safe working practices, and anti-bribery legislation imposing potential criminal penalties on companies and their directors if they employ bribery or corruption in the operation of the business. There are also reporting obligations as noted below which seek to promote high standards of ESG compliance by making information regarding the company's performance available to stakeholders. These legal obligations are supported by an increasing number of corporate governance requirements, particularly for listed companies. For example, the UK Corporate Governance Code sets out best practice for companies in respect of corporate governance and protecting shareholder interests, and includes ESG requirements such as an emphasis on diversity in the composition of the board. There are also industry-specific obligations for certain classes of company such as financial market participants and energy companies.

3. What recent changes have occurred or are expected with respect to directors' responsibilities in relation to ESG considerations?

There has been no recent change with respect to the general duties of directors, as these already encompass ESG considerations to the extent that those considerations are relevant to the long-term success and sustainability of UK companies. However, there is a continuing trend to introduce specific obligations with respect to ESG matters. For example, UK premium listed companies are currently required to report on climate-related matters on a "comply or explain" basis by reference to the framework promulgated by the Task Force on Climate-related Financial Disclosures (TCFD). The UK's Financial Conduct Authority has indicated that it expects to extend these obligations to all UK-listed companies in the near future, and is consulting on a requirement to make reporting mandatory by removing the option to "explain" any non-compliance. As the UK focuses on trying to meet its stated commitments to reduce carbon emissions, we can expect a range of further rules and regulations which are designed to change the behaviour of private sector companies. These will create an additional burden for directors who are responsible for ensuring ESG compliance.

4. What obligations do directors have in relation to ESG disclosure and/or reporting?

The disclosure and reporting obligations for directors in relation to ESG matters will vary according to the size and nature of the company. Some of the key obligations currently in place are as follows:

— Most UK companies are required to prepare a strategic report as part of their annual report and accounts, which broadly focuses on the disclosure of future strategy for the company and the key risks that it faces. For quoted companies, the strategic report must include information on environmental matters and policies, including the impact of the company's business on the environment; employees; and social, community and human rights issues. In addition, for companies which are traded companies, as well as banks and insurance companies with more than 500 employees, the strategic report must contain information on environmental, employee, social, human rights, anti-corruption and anti-bribery matters. This includes details on the company's business model, policies in relation to these matters and their outcomes; due diligence processes; the principal risks and impacts of the company's business on such matters and how they are managed.

— In addition, unless the company qualifies as a small- or medium-sized company, the strategic report must include a stand-alone "Section 172 Statement" which describes how the directors had regard to certain matters when carrying out their duty to promote the success of the company. This therefore requires companies to be open and transparent about their decision-making, with particular reference to the ESG stakeholder factors noted above.

— Companies with 250 or more employees must publish specific figures about their gender pay gap. In addition, listed companies with over 250 employees must also publish pay ratio information, comparing the pay of their CEO to the median, lower quartile and upper quartile pay of their UK employees.

— A company with a turnover exceeding GBP 36 million must publish a modern slavery statement, describing the actions it has taken to deal with slavery and human trafficking risks in its supply chain as well as in its own activities.

— Larger companies must disclose information on their carbon emissions and energy efficiency in their annual directors' report. They must also include information in that report on how the directors have engaged with employees, and how they have had regard to the interests of employees and the interests of the company's suppliers and customers during the relevant year.

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