

GIBSON DUNN

LEXOLOGY®  
Webinars

Navigating the dynamic ESG  
landscape: key UK considerations  
for boards and senior  
management  
4 November 2020

# What we will cover today

1

What is ESG,  
History and  
Recent Drivers

2

Overview of Key  
Rules,  
Regulations and  
Initiatives

3

Board Liability,  
Accountability  
and  
Expectations on  
ESG Issues

4

Market Trends &  
Emerging Rules

5

Practical  
Guidance and  
Reference  
Materials

# What do we mean by ESG?

## Environment

- Climate change
- Greenhouse gas emissions
- Sustainable resources
- Waste and pollution
- Clean technology
- Deforestation
- Biodiversity and ecosystems
- Water management

## Social

- Human rights
- Working conditions
- Employee relations
- Local communities
- Information security
- Data governance
- Health and safety
- Product safety
- Diversity
- Supply chains
- Controversial weapons

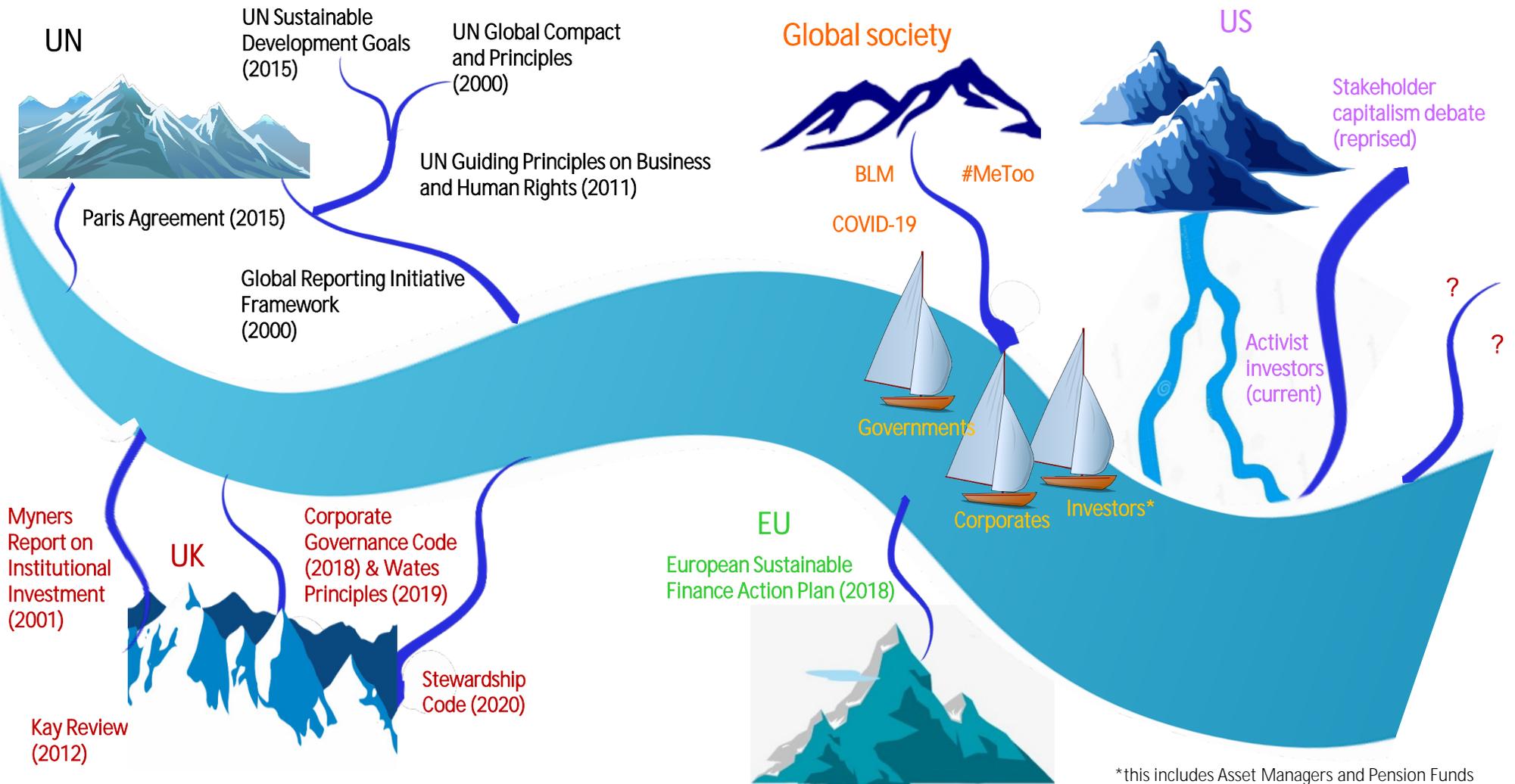
## Governance

- Financial planning/ reporting
- Systems and controls
- Board diversity
- Board structure
- Board independence
- Shareholder rights
- Anti-bribery and corruption
- Executive remuneration
- Political lobbying
- Political donations
- Tax strategy

GIBSON DUNN

Overview of key rules,  
regulations and initiatives

# The ESG landscape – history and recent drivers



# Overview of key rules, regulations and initiatives: UK



- **Corporate governance:**
  - Companies Act 2006
  - Companies (Misc. Reporting) Regs 2018
  - FRS 102: (UK/Ire Financial Reporting Standard) (updated 2019)
- **Environment:**
  - *FCA: Proposed enhanced climate-related disclosures by listed issuers\**
  - *DEFRA: Forest risk commodities – Proposed mandatory due diligence\**
- **Human rights / diversity:**
  - Modern Slavery Act 2015 (*Proposed enhanced obligations\**)
  - Modern Slavery Act 2015 (Transparency in Supply Chains) Regs 2015
  - Equality Act 2010 (Gender Pay Gap Information) Regs 2017
  - Equality Act 2010 (Specific Duties and Public Authorities) Regs 2017
  - Criminal Finances Act 2017, s13

- **Corporate governance:**
  - DTI Ministerial Statement on Duties of Company Directors (2007)
  - UK Corporate Governance Code (2018)
  - GC100 Guidance on Directors’ Duties (2018)
  - BEIS Q&A re Companies (Miscellaneous Reporting) Regs 2018
  - UN PRI memo on ESG risks in s172 CA 2006 (2019)
  - FRC UK Stewardship Code (2020)
- **Sustainable business/markets:**
  - Investment Association Principles of Remuneration (2019)
  - FCA Disclosure Guidance and Transparency Rules 2020
  - Supply chains: Home Office guidance on transparency (2020)

- **Environment:** UK Government Green Finance Strategy (2019)
- **Human rights / diversity:**
  - HM Treasury: Women in Finance Charter (2016)
  - Parker Review on Ethnic Diversity of UK Boards (2020)

Hard Law
*Proposed Law
Soft Law (Guidance/voluntary standards)
Expression of strategy

# Overview of key rules, regulations and initiatives: Europe



## EUROPE

- **Sustainable business/markets:**
  - Non-Financial Reporting Directive (2014)
  - Market Abuse Regulation (2014)
  - Taxonomy Regulation (2020)
- **Environment:**
  - *Proposed Green Bond Standard\**
  - *Proposed carbon impact benchmark regulations\**
- **Human rights:**
  - *Proposed legislation for mandatory corporate human rights due diligence\**
  - *Proposed legislation on directors' duties and sustainable corporate governance\**

- **Sustainable finance:** Sustainable Finance Action Plan (2018)

- **Sustainable business/markets:**
  - ESMA Guidelines and Technical Standards (as updated)
- **Environment:**
  - Guidance on EU Conflict Minerals Regulation (2017) [corresponding legislation to come into force 2021]\*
  - Guidelines on non-financial (climate-related) reporting (2019)
  - European Climate Pact (to be launched in 2020)

Hard Law
<i>* Proposed Law</i>
Soft Law (Guidance/voluntary standards)
Expression of strategy

# Overview of key rules, regulations and initiatives: Global



## • Sustainable business/markets:

- UN Principles for Responsible Investment (2006, but updated)
- International Organization for Standardization (ISO): Guidance on Social Responsibility (2010)
- OECD Guidelines for Multinational Enterprises (2011)
- International Organization of Securities Commission (IOSCO): Objectives and Principles of Securities Regulation (2017)
- Sustainability Accounting Standards Board: Industry Standards (2018)

## • Environment:

- UN Sustainable Development Goals (2015)
- Task Force on Climate-related Financial Disclosures: Recommendations (2017)
- Climate Disclosure Standards Board Framework (2019)

## • Human Rights:

- International Labour Organisation (ILO): Declaration on Fundamental Principles and Rights at Work (1998, but updated)
- Global Reporting Institute Standards (2000)
- UN Guiding Principles on Business and Human Rights (2011)
- ILO Principles concerning MNEs and Social Policy (2017)
- *UN Draft Binding Treaty on Business and Human Rights\**

## • Sustainable business/markets:

- UN Global Compact: Corporate Sustainability Initiative (2000)
- IOSCO: Statement on Issuer ESG Disclosures (2019)
- Davos Manifesto (2020)
- **Diversity:** 30% Club (2010)
- **Supply chains:** UN Global Compact: Decent Work in Global Supply Chains (2017)

Hard Law
*Proposed Law
Soft Law (Guidance/voluntary standards)
Expression of strategy

GIBSON DUNN

Board liability, accountability  
and expectations on ESG  
issues

# Board liability: key duties & governance requirements (1)

- Section 172 Companies Act 2006: Fiduciary duty to promote success of a company

*“A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company **for the benefit of its members as a whole**, and **in doing so have regard** (amongst other matters) to:*

*(a) the likely consequences of any decision in the long term;*

*(b) the interests of the company’s employees;*

*(c) the need to foster the company’s business relationships with suppliers, customers and others;*

*(d) the impact of the company’s operations on the community and the environment;*

*(e) the desirability of the company maintaining a reputation for high standards of business conduct; and*

*(f) the need to act fairly between members of the company.”*

- Section 174 Companies Act 2006: Duty of care:

*“A director of a company must exercise reasonable care, skill and diligence”*

- Two limb test incorporating objective and subjective elements

## Board liability: key duties & governance requirements (2)

### What has changed? What is changing?

- (i) Redefining “corporate purpose”; (ii) a move from “shareholder capitalism” to “stakeholder capitalism”; (iii) a shift from “short termism” to longer-term value enhancement
- British Academy – Eight Principles for Purposeful Business (2019)  
*“to solve the problems of people and planet profitably, and not profit from causing problems”*
- World Economic Forum – Davos Manifesto 2020: Universal Purpose of a Company in the Fourth Industrial Revolution:  
*“to produce profitable solutions to the problems of people and planet, and not to profit from producing problems for people or planet”*
- US Association of CEOs - Business Roundtable (Aug 2019): Purpose of a Corporation  
*Commitment to serve all stakeholders: customers, employees, suppliers, communities and the environment*
- COVID 19 – has brought into sharp focus the importance of integrating ESG factors into business strategy, and has in particular highlighted the importance of the ‘S’
- Sustainable business – requires a focus on the 3 Ps – Purpose, People, Planet

# Board accountability & liability: reporting requirements (1)

Key duty	Who does it apply to?	Scope	Possible changes
<b>Corporate Governance Code 2018</b>	All companies with a premium listing on a “comply or explain” basis	Mandatory reports on strategic reports and reports on payments to governments	FRC reviewing disclosures and whether companies are reporting against TCFD framework
<b>The Wates Corporate Governance Principles 2018</b>	Large private companies	Principles of leadership, directors, remuneration, and stakeholder relationships	N/A
<b>EU Non-Financial Reporting Directive 2014</b>	Large public-interest companies with more than 500 employees	Policies on environmental protection, social responsibility, human rights; anti-corruption, diversity on boards	EU has stated it wishes to review NFRD in 2020
<b>Modern Slavery Act 2015</b>	Businesses with a global turnover of £36 million or more + operates in the UK.	Requires a statement of the steps being taken to combat modern slavery.	Potential changes announced in Sept 2020
<b>Gender Pay Gap Reporting (The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017)</b>	Companies with 250 or more employees based in England, Scotland or Wales	A report must be produced on various measures of the gender pay gap	COVID could have an impact, as gender pay reporting has been suspended.
<b>Streamlined Energy and Carbon Reporting (Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018)</b>	Quoted companies + unquoted with a turnover of £36 million PA or balance sheet of £18 million PA or 250 employees or more.	Details of greenhouse gas emissions, global energy use, emissions intensity ratio, energy efficiency measures etc.	N/A
<b>CEO pay ratio (The Companies (Misc. Reporting) Regulations 2018)</b>	UK quoted companies with at least 250 UK employees	Ratio between CEO and employee pay (median, 25 <sup>th</sup> percentile, 75 <sup>th</sup> percentile)	COVID could distort figures, as many employees will have been furloughed.
<b>Section 172 statement (The Companies (Misc. Reporting) Regulations 2018)</b>	All companies (except “medium sized” companies) in Strategic Report required under s414A Companies Act 2006	How directors have had regard to the matters set out in section 172(1)(a) to (f) when performing their duty under section 172	N/A. Note however FRC & GC100 Guidance & Financial Reporting Lab Report Guidance
<b>Viability Statement (Listing Rules (FCA Handbook) &amp; Corporate Governance Code)</b>	All companies with a premium listing - in annual report	Assessment of current position and principal risks, identification of emerging risks and management or mitigation of risks	N/A. Note however FRC & Financial Reporting Lab Report Guidance
<b>Market Abuse Regulations, Listing Rules &amp; Disclosure Guidance &amp; Transparency Rules</b>	UK quoted companies	Matters material to an issuer's assets and/or which is price sensitive information – which may include ESG related risks and opportunities	FCA Technical Note clarifying disclosure obligations (CP 20/3)

# Board accountability & liability: reporting requirements (2)

## Key takeaways from legal disclosure and reporting landscape

- Corporate Governance Code 2018
  - **Principle A:** Role of the board ... role is to *promote* the *long-term sustainable success* of the company, generating value for shareholders and *contributing to wider society*
  - **Principle B:** The board should *establish the company's purpose, values and strategy*, and satisfy itself that these and its culture are aligned
- Wates Corporate Governance Principles for Large Private Companies 2018
  - **Principle 1:** Purpose and leadership – “An effective board *develops* and promotes *the purpose of a company...*”
  - **Principle 4:** Director responsibilities – These include developing systems to ensure access to information to make informed decisions on environment, employee engagement, stakeholder engagement
  - **Principle 6:** Opportunities and risk – “...*promote long-term sustainable success* of the company ...”
- S172 Reports – Deficiencies identified in early reports and Financial Reporting Lab review
  - (i) reflect on what is relevant to the company; (ii) provide a framework for how stakeholders are considered and identify trade-offs between different stakeholders; (iii) include material KPIs on key stakeholders monitored; (iv) more insight into governance practices and outcomes reporting on a range of key issues from diversity to climate change
- Viability Statements
  - Deficiencies in insights on longer-term viability assessments and scenario analysis

## Board accountability & liability: reporting requirements (3)

- Streamlined Energy and Carbon Reporting, 2019 (SECR)
  - Who it applies to ... this is not just for “E” impact companies
  - Listed companies must now report global energy use
  - Currently covers Scope 1 and 2 GHG emissions and an intensity ratio
  - Currently Scope 3 emissions (other than certain road vehicle business travel) out of scope however change is expected
- EU Non-Financial Reporting Directive (NFRD)
  - NFRD requires information on four sustainability issues – (i) the environment; (ii) social and employee issues; (iii) human rights; and (iv) bribery and corruption. Some member states have added board diversity
  - Consultation underway to amend NFRD. Areas under review include:
    - **Extending scope:** To require companies to disclose information about other non-financial matters e.g. sustainability strategy, KPIs, targets, scenario analyses, links between remuneration and sustainability, contribution to SDGs
    - **Assurance:** Strengthening the provisions regarding the assurance of non-financial information
    - **EU non-financial reporting standard:** Considering adoption of a single non-financial reporting standard. If so whether it should include sector-specific elements. To what extent should it incorporate the principles and content of existing standards and frameworks

# Board accountability: optional reporting & measurements (1)

KEY STANDARDS, PRINCIPLES & FRAMEWORKS	
TCFD (Taskforce on Climate-related Financial Disclosures)	<i>Framework providing 11 recommended disclosures of climate-related information</i>
SASB (Sustainability Accounting Standards Board) (*)	<i>77 industry standards to report on non-financial/sustainability information that have material impact on performance; 11 key sectors</i>
GRI (Global Reporting Initiative) Standards (*)	<i>Modular, inter-related sustainability reporting standards showing impact and management of economic, environmental or social factors</i>
CDP (Carbon Disclosure Project) Reporting (*)	<i>Framework for reporting against questionnaires on climate change, forests and water security. Identifies connection to other frameworks.</i>
CDSB (Climate Disclosure Standards Board) (*)	<i>Framework for reporting environmental and climate change information. Aligned with other global standards</i>
UN Global Compact	<i>10 principles covering human rights, labour, anti-corruption and environment for companies to integrate in strategy</i>
UN SDGs (UN Sustainable Development Goals)	<i>17 goals adopted by UN member states focused on ending poverty, tackling climate change and supporting economic growth</i>
IIRC (International Integrated Reporting Council) Framework (*)	<i>Framework for integrated reporting which lays out how an organisation creates value for itself and for others</i>
WDI (Workforce Disclosure Initiative)	<i>Framework for reporting issues impacting work place issues and human rights. Aligned with other global standards</i>

# Board accountability: optional reporting & measurements (2)

## LEADING & EMERGING METRICS, CLASSIFICATIONS, RATINGS & INDICES

<b>WEF Stakeholder Capitalism Metrics</b> (21 core metrics based on 4 principles of governance, people, planet and prosperity)	<b>MSCI ESG Ratings</b> (Companies rated AAA to CCC / Leaders to Laggards, according to exposure to ESG risks and how well risks managed relative to peers)
<b>Green Economy Mark</b> (Identifies London-listed companies and funds that generate 50% or higher total annual revenues from products and services that contribute to the global green economy)	<b>Sustainalytics</b> (Rates companies out of 100 based on preparedness, disclosure and performance. Sector/industry-based comparison)
<b>Future-Fit Business Benchmark</b> (Business tool designed to guide progress towards a sustainable future and promote the SDGs. It offers a holistic framing of companies' social and environmental impact)	<b>RepRisk</b> (RepRisk Index (RRI) gives a measure (0 to 100) of a company's reputational risk exposure to ESG issues. RepRisk Rating (RRR) gives a letter rating (AAA to D) that facilitates benchmarking and ESG integration)
<b>Certified 'B' Corporations</b> (Provided to organisations which achieve a specified score of at least 80 out of 200 against a set of social and environmental standards)	<b>Vigeo Eiris</b> (Evaluates organisations' integration of ESG factors in their strategies, operations and management. Uses a framework of 38 sustainability criteria, and assesses through 330 indicators applied to principles of action)
<b>Refinitiv ESG Scores</b> (Measures a company's relative ESG performance, commitment and effectiveness across 3 pillars and 10 main themes based on publicly-reported data)	<b>Inrate</b> (Surveys more than 180 ESG thematic indicators, and rates companies using a 12-step scale from A+ to D-)
<b>ISS-Oekom</b> (The ISS group's sustainability solutions assessment, providing an assessment of a company's ESG performance, with specific focus towards the SDGs. Rating scale: A+ (excellent) to D- (poor))	<b>Bloomberg Professional Services</b> (Bloomberg's ESG investing information covers 80% of global market cap and 76 countries over 450 metrics)
<b>ISS Environmental and Social Quality Score</b> (Measures and identifies risk through thorough analysis of company disclosures. Uses numeric, decile-based scores for easy comparison)	<b>Dow Jones Sustainable Indices</b> (A series of float-adjusted market capitalisation weighted indices evaluating the sustainability performance of publicly traded companies based on ESG benchmarks)
<b>S&amp;P Global Ratings ESG Evaluation</b> (An assessment of a company's ESG strategy and ability to prepare for potential future risks and opportunities)	<b>FTSE4Good Index Series</b> (A series of stock market indices launched by the FTSE in 2001, with the aim of measuring the performance of companies demonstrating strong ESG practices)
<b>GIIRS Ratings</b> (Global Impact Investing Rating System used to rate companies' and funds' ESG impact)	<b>Ecovadis Ratings</b> (Sustainability and CSR ratings)

# Board accountability: optional reporting & measurements (3)

## Standards and Frameworks

- Plethora of different standards and frameworks with different scope and approach
  - Key issue facing boards is which framework and/or standard to adopt. Note difference between the two and interplay.
  - UK – TCFD is gaining traction however these are limited to climate/ environmental matters
  - If choosing SDGs – consider those most relevant and explain the “why” and “how”
- ISS 2020 Global Policy Survey: SASB(82%); TCFD(73%); CDP(52%); GRI(49%); Other(13%)
- FTSE 350: 89 of 185 companies have included TCFD Reporting
- GRI is most commonly adopted standard – circa 6,000 companies worldwide
- In addition there are specific ESG-relevant ISO standards which companies may consider adopting

## Metrics, Ratings, Indices and Certifications

- Firms should also consider the merits of securing ESG or similar ratings, classifications and adopting reporting metrics
- This is an area where care is needed. Understanding the methodology (depth, scope, asset coverage) behind a rating is key. Ratings or scores can be misleading – notable recent examples
- New metric devised by the private sector WEF + Big Four - IBC Stakeholder Capitalism Metrics

# Expectations of boards: investor expectations

- **What boards need to know about the changing investor landscape:**
  - Boards should also be alive to the codes of best practice/ principles/ rules and regulations which apply to asset owners and asset managers which impact both how they engage with firms on ESG issues and what they expect of firms (disclosure and transparency)
  - Investors are also now utilising more “active” tools to drive engagement and change at investee companies
  - Investors also have their own views on frameworks that companies should consider reporting against
- **Key initiatives of note:**
  - Stewardship Code: Updated version requires investors to take account of material ESG factors including climate change when fulfilling their stewardship responsibilities
  - Pension Trustees/Schemes: New rules requiring SIPs to include ESG considerations which the trustees consider financially material
  - Asset Managers: IA (Investment Association), PLSA (Pensions and Lifetime Savings Association), ILPA (Institutional Limited Partners Association), AIMA (Alternative Investment Managers Association) – each of these bodies have issued industry guidance recommending integration of ESG issues into due diligence, investment and stewardship
  - Proxy Advisers: IVIS (Institutional Voting Information Service) to introduce a new section to its ESG Report highlighting what climate disclosures a company has made aligned with TCFD recommendations

# Expectations of boards: investor expectations and responsibilities

Key duty / source	Application	Scope
<b>Stewardship Code 2020</b>	Asset manager / asset owners / relevant service providers	<ul style="list-style-type: none"> <li>• "Stewardship is the responsible allocation, management, and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society."</li> <li>• 12 principles aimed at asset managers / asset owners; 6 principles aimed at service providers</li> </ul>
<b>Occupational Pension Schemes (Investment) Regulations 2005 (as amended in 2018 / 2019)</b>	Pension Scheme Trustees	<ul style="list-style-type: none"> <li>• Required to cover in pension scheme's statement of investment principles (<b>SIP</b>) the extent to which social, environmental or ethical considerations are taken into account in making investments</li> <li>• More recent amendments also require the SIP to cover "financially material considerations" which include ESG considerations</li> </ul>
<b>Pensions and Lifetime Savings Association (PLSA) - Stewardship and Voting Guidelines 2020</b>	Pension scheme investors / their service providers / companies	<ul style="list-style-type: none"> <li>• Guidance for schemes in acting as good stewards of their assets, including how to exercise votes on key issues of concern during the AGM season</li> <li>• Defined set of investment beliefs to include ESG issues</li> <li>• Key issues including voting on climate change and the individual accountability of directors</li> </ul>
<b>Institutional Limited Partners Association (v3.0) 2019</b>	Limited partners/ general partners	<ul style="list-style-type: none"> <li>• Principles for private equity aimed at enhancing engagement between LPs and GPs revised in 2019 to include guidance on non-financial disclosures and ESG integration</li> </ul>
<b>Alternative Investment Management Association Policies January 2020</b>	Hedge fund firms	<ul style="list-style-type: none"> <li>• Policy and practice guidelines issued to aid alternative investment firms to create responsible investment policies and to differentiate themselves by embedding ESG into firm management</li> </ul>
<b>Investment Association (IA) - Responsible Investment Framework/IVIS Shareholder Priorities and ESG Report</b>	Investment managers	<ul style="list-style-type: none"> <li>• Focus on "firm-level components" of stewardship, ESG integration and exclusion and "fund-level components" of impact investing, sustainability focus, exclusions, stewardship and ESG integration</li> <li>• IVIS ESG Report monitoring compliance with Guidelines on Responsible Investment Disclosures</li> <li>• IA supports disclosures against TCFDs</li> </ul>
<b>Institutional Shareholder Services (ISS) Benchmark Proxy Voting Policy 2020 &amp; 2021 Voting Policy Changes</b>	Investors	<ul style="list-style-type: none"> <li>• 2020 policy included changes on disclosure of exercise of discretion by Remuneration Committees on how they have taken account any relevant ESG factors when determining remuneration outcomes</li> <li>• Current US voting policy includes material failures in governance, stewardship, risk oversight. Plans to expand to include poor risk oversight on environmental, climate change and social issues.</li> </ul>
<b>International Corporate Governance Network (ICGN) - Statement of Shared Governance Responsibilities</b>	Investors	<ul style="list-style-type: none"> <li>• Sets out a list of governance priorities for investors which include long-term perspective, climate change, comprehensive monitoring and sustainability (among others)</li> </ul>

GIBSON DUNN

# Market trends and emerging rules

# Market trends & emerging rules: current drivers



# Market trends & emerging rules: the 'G'

- Board and director legal obligations and responsibilities
  - Changing jurisprudence? - "*... the old dichotomy between a company's financial success and its environmental profile is collapsing*" (Lord Justice Sales (Aug 2019))
  - EU - EC study on directors' duties and sustainable corporate governance (July 2020): EU-wide legislation clarifying directors' duties is expected in the near future
  - UK – Institute of Directors Centre for Corporate Governance (March 2020): Focus topics - (i) stakeholder governance; and (ii) sustainable capitalism
  - Designated board and/or senior management roles? New focus on board level skills and knowledge
- Audit and assurance
  - FRC: Reviewing how companies and auditors assess and report on their response to impact of climate change with a view to improving quality of information (Feb 2020)
  - IFRS Foundation: Consulting on the role of the Foundation in contributing to global sustainability standards including establishing a new Sustainability Standards Board
- ESG-linked executive remuneration
  - FTSE 100: circa 40% disclosed ESG linked remuneration (2019)
  - FTSE AllWorld: 9% linked to ESG

## Market trends & emerging rules: the ‘G’ (cont.)

- Activism:
  - Companies ranked in the bottom 50% on ESG performance are 24% more likely to be subject to an activist campaign (*Alvarez & Marsal report 2019*)
  - Shareholder activism: often connected with the “E” or “S”
  - Emergence of ESG-actively managed funds
  - New activist “actors” including employees and local communities
- Litigation:
  - Testing the parameters of parent company liability, informed by governance structure (*Lungowe v Vedanta*)
  - Growth of collective actions on ESG matters:
    - Contingency fees
    - Case management tools for collective actions
    - Litigation funding, including ESG specific portfolios

## Market trends & emerging rules: the ‘E’

- What is the Task Force on Climate-Related Financial Disclosures (TCFD)
  - TCFD adopts a disclosure framework for ESG into governance, strategy and risk management; not just about metrics (Scope 1, 2 and 3 GHG emissions covered)
  - Highly likely to see a move towards mandatory disclosures in the UK. Many companies already report.
- UK Green Finance Strategy 2019
- Listed Company Disclosure & Reporting (FCA CP20/3)
  - UK premium listed companies (commercial companies and SWFs) to make “comply or explain” disclosures against TCFD recommendations for accounting periods commencing on or after 1 January 2021
  - Technical Note: Clarification of UK/European disclosure obligations for ESG matters on UK issuers subject to MAR, DTR, LR and PR. Climate-related risks and opportunities widely understood to be financially material to an issuer’s assets and may need to be disclosed as well as other ESG risks and opportunities
  - FCA reviewing mandatory disclosures and expanding scope of disclosures to other ESG factors
- Other sustainability goals: UK Environmental Bill
- Net Zero by 2050 – actions being taken by both UK Government and companies
- COP 26 in 2021
- Shareholder activism, litigation and National Contact Point complaints

## Market trends & emerging rules: the ‘S’

- Trend drivers: COVID-19 and BLM. Challenge is in identifying objective measurable standards
- Ethnicity:
  - UK Government 2018 consultation on ethnicity pay gap
  - Already some voluntary data disclosures. Government response by end of 2020 - mandatory ethnicity pay gap reporting expected.
  - CBI's Change the Race Ratio campaign (Oct 2020) – driving ethnically diverse boards and management
- Gender: New private members' bill calling for lower thresholds and action plans
- Data ethics & cyber security: Reputational and operational risks of increased focus in particular for firms where data and technology is central to operations. Trust factor in play
- Employee engagement: Elevating voice of employees at board level. Employee ownership models.
- Modern slavery and human trafficking:
  - UK Government proposals to expand existing Modern Slavery regime
  - Part of a broader global trend of heightened expectations for human rights due diligence in operations and supply chain: legislation and litigation
- Looking ahead: (a) substantive due diligence litigation; (b) NCP complaints; (c) breadth of issues and nature of challenge

GIBSON DUNN

Practical guidance

# Practical guidance for boards and advisers (1)

1

## Define your purpose

- Devote regular board and management time to clearly articulate purpose of the organisation
- Define: your values, mission and vision [See e.g.: Enacting Purpose within the Modern Corporation]
- Be mindful of fatuous and meaningless statements

2

## Set your ESG strategy ... and embed it

- Conduct risk mapping
- Gather input from all stakeholders
- Set clear and measurable targets
- Embed ESG considerations when setting business plans and strategy; avoid ex post facto layering of ESG

3

## Be accountable

- Consider where the different elements of your ESG strategy lie – define roles and allocate responsibility
- Ensure a holistic approach between all parts of the business and within different parts of the group structure. Be aware of “tokenist” appointments. Identify skills gaps at board and management level
- Decide which frameworks and/or standards to adopt – be mindful of regulatory developments
- Decide what metrics, scoring or certifications to adopt or secure (if any) and proposed use
- Review scope of D&O insurance policy for ESG coverage

## Practical guidance for boards and advisers (2)

4

### Engage with stakeholders

- Pro-actively engage with different stakeholder groups. Tailor events for ESG investors e.g. Sustainability Days
- Shareholders – be mindful of their own reporting obligations/ investment guidelines and be ready to articulate what the firm is doing, how and when

5

### Policies and raising awareness

- Review and update existing company policies and guidance
- Educate management and board on ESG responsibilities, duties and stakeholder expectations
- Educate and train accountable persons on developing legislation and trends

6

### Develop a communication strategy

- Celebrate your ESG strategy and communicate it to your stakeholders
- Be clear where you are on your ESG journey – manage expectations internally and externally

7

### Collaboration

- Participate in industry forums and identify other opportunities for partnership ... ESG is a team game!

8

### Start ...

- Start with identifying what the firm is already doing and build on these ... doing nothing is not an option

# Key resources & recommended reading (1)

- [AIMA Responsible Investment Policies for Hedge Fund Firms](#)
- [AIMA Policy and Practice: ESG Considerations for AIFMsBEIS Q&A re Companies \(Miscellaneous Reporting\) Regulations 2018](#)
- [Bloomberg Professional Services Sustainability Data & Scores Overview](#)
- [British Academy – Eight Principles for Purposeful Business 2019](#)
- [CBI's Change the Race Ratio](#)
- [CDP \(Carbon Disclosure Project\) Reporting](#)
- [CEO pay ratio \(The Companies \(Misc. Reporting\) Regulations 2018](#)
- [Climate Disclosure Standards Board Framework 2019](#)
- [Companies \(Directors' Report\) and Limited Liability Partnerships \(Energy and Carbon Report\) Regulations 2018](#)
- [Companies \(Misc. Reporting\) Regulations 2018](#)
- [Companies Act 2006 \(Strategic Report and Directors' Report\) Regulations 2013](#)
- [Companies, Partnerships and Groups \(Accounts and Non-Financial Reporting\) Regulations 2016](#)
- [COP 26](#)
- [Corporate Governance Code 2018](#)
- [Criminal Finances Act 2017 - Criminal Finances Act 2017](#)
- [Davos Manifesto 2020](#)
- [DEFRA: Forest risk commodities – Proposed mandatory due diligence](#)
- [Disclosure & Transparency Rules](#)
- [Dow Jones Indices](#)
- [DTI Ministerial Statement on Duties of Company Directors 2007](#)
- [Ecovadis Ratings](#)
- [Enacting Purpose Initiative](#)
- [Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#)
- [Equality Act 2010 \(Specific Duties and Public Authorities\) Regulations 2017](#)
- [ESMA Guidelines and Technical Standards \(as updated\)](#)
- [European Climate Pact \(to be launched in 2020\)](#)
- [European Sustainable Finance Action Plan 2018](#)
- [FCA Consultation on Listed Company Disclosure & Reporting \(CP20/3\)](#)
- [FCA Disclosure and Transparency Rules 2020](#)
- [FCA: Proposed enhanced climate-related disclosures by listed issuers](#)
- [FRC UK Stewardship Code 2020](#)
- [FRS 102: \(UK/Ire Financial Reporting Standard\) - \(updated 2019\)](#)
- [FTSE4Good Index Series](#)
- [Future-Fit Business Benchmark Factsheet](#)
- [GC100 Guidance on Directors' Duties 2018](#)
- [Gender Pay Gap Reporting \(The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017\)](#)
- [Global Reporting Initiative Framework 2000](#)
- [Green Economy Mark Issuers](#)
- [Green Economy Mark Factsheet](#)

# Key resources & recommended reading (2)

- [Guidance on EU Conflict Minerals Regulation 2017 \[corresponding legislation to come into force 2021\]](#) and [Guidance on EU Conflict Minerals Regulation 2017 \(regulations explained\)](#)
- [Guidelines on Non-Financial \(Climate-Related\) Reporting 2019](#)
- [HM Treasury: Women in Finance Charter 2016](#)
- [IIRC \(International Integrated Reporting Council\) Framework](#)
- [IA Responsible Investment Framework/IVIS Shareholder Priorities and ESG Report](#)
- [ILO Principles concerning MNEs and Social Policy 2017](#)
- [ILO Declaration on Fundamental Principles and Rights at Work \(1998, but updated\)](#)
- [International Organization for Standardization \(ISO\): Guidance on Corporate responsibility \(2010\)](#)
- [Inrate website](#)
- [Institutional Limited Partners Association \(v3.0\) 2019](#)
- [International Corporate Governance Network \(ICGN\) - Statement of Shared Governance Responsibilities](#)
- [IOSCO: Statement on issuer ESG disclosures 2019](#)
- [ISS Benchmark Proxy Voting Policy 2020 & 2021 Voting Policy Changes](#)
- [ISS Environmental & Social Disclosure Quality Score Overview](#)
- [ISS 2020 Global Policy Survey](#)
- [Kay Review 2012](#)
- [Listing Rules](#)
- [Modern Slavery Act 2015](#)
- [Modern Slavery Act 2015 \(Transparency in Supply Chains\) Regs 2015](#)
- [MSCI ESG Ratings](#)
- [Myners Report on Institutional investment 2001](#)
- [Non-Financial Reporting Directive 2014](#)
- [Occupational Pension Schemes \(Investment\) Regulations 2005 \(as amended in 2018 / 2019\)](#)
- [OECD Guidelines for Multinational Enterprises 2011](#)
- [Paris Agreement 2015](#)
- [Parker Review on Ethnic Diversity of UK Boards 2020](#)
- [Pensions and Lifetime Savings Association \(PLSA\) - Stewardship and Voting Guidelines 2020](#)
- [Proposed carbon impact benchmark regulations](#)
- [Proposed Green Bond Standard](#)
- [Proposed legislation for mandatory corporate human rights due diligence](#)
- [PLSA Stewardship Guide and Voting Guidelines 2020](#)
- [Refinitiv ESG Data Overview](#)
- [Refinitiv ESG Scores Methodology](#)
- [RepRisk website](#)
- [Stewardship Code 2020](#)
- [Supply chains: Home Office guidance on transparency 2020](#)
- [Sustainalytics website](#)
- [S&P Global Ratings ESG Evaluation](#)
- [Sustainability Accounting Standards Board: Industry Standards 2018](#)

# Key resources & recommended reading (3)

- [Sustainable Finance Action Plan 2018](#)
- [Task Force on Climate-Related Financial Disclosures](#)
- [Task Force on Climate-related Financial Disclosures: Recommendations \(2017\)](#)
- [Task Force on Climate-related Financial Disclosures: recent status report](#)
- [Taxonomy Regulation 2020](#)
- [UK B Corporation Community](#)
- [UK B Corporation Certification](#)
- [UK Corporate Governance Code 2018](#)
- [UK Environmental Bill](#)
- [UK Ethnicity Pay Gap Reporting Government Consultation 2018](#)
- [UK Government Green Finance Strategy 2019](#)
- [UK Green Finance Strategy 2019](#)
- [UK Modern Slavery Act proposed changes 2020](#)
- [UN Draft Binding Treaty on Business and Human Rights 2020](#)
- [UN Global Compact and Principles 2000](#)
- [UN Global Compact: Corporate Sustainability Initiative 2015](#)
- [UN Global Compact: Decent Work in Global Supply Chains](#)
- [Task Force on Climate-related Financial Disclosures: recent status report](#)
- [Taxonomy Regulation 2020](#)
- [UN Guiding Principles on Business and Human Rights 2011](#)
- [UN Principles for Responsible Investment](#)
- [UN Sustainable Development Goals 2015](#)
- [US Association of CEOs - Business Roundtable \(Aug 2019\): Purpose of a Corporation](#)
- [Viability Statement \(Listing Rules \(FCA Handbook\) & Corporate Governance Code\)](#)
- [Vigeo Eiris website](#)
- [Wates Principles 2019](#)
- [WDI \(Workforce Disclosure Initiative\)](#)
- [WEF Stakeholder Capitalism Metrics](#)

GIBSON DUNN

Q&A

# Speaker biographies



**Selina Sagayam**  
Partner, Gibson Dunn

Selina Sagayam is a partner in Gibson Dunn's international corporate team. Her practice focuses on international corporate finance transactional work, including public and private M&A, joint ventures, international equity capital markets offerings and advisory work focused on corporate governance, shareholder activism and securities law advice. Regarded as one of the leading public M&A advisers in the UK, Ms. Sagayam has advised on hostile, competitive and recommended takeovers. Ms. Sagayam is also noted for her expertise in financial services and regulatory advice. She advises boards and senior management of international corporations, exchanges, regulators, investment banks, and financial sponsors (private equity and hedge funds) on such issues. Her experience as a senior secondee at the UK Takeover Panel and also as a non-executive director of a FTSE250 company has positioned her uniquely in her practice area. Ms. Sagayam established and co-chairs the firm's UK ESG Practice Group.



**Susy Bullock**  
Partner, Gibson Dunn

Susy Bullock is a partner in Gibson Dunn's international litigation team. Ms. Bullock specialises in commercial litigation and investigations, and business and human rights. Previously Ms. Bullock was Head of Litigation for Europe, the Middle East and Africa at UBS and had responsibility for all litigation and contentious regulatory matters in the EMEA region for the bank including commercial and white-collar criminal litigation, as well as certain internal investigations. In a business and human rights context, Ms. Bullock has supported the Thun Group of banks since 2016 and has also participated in various consultations of the UN Office of High Commissioner for Human Rights. Ms. Bullock can advise clients on sustainability and corporate social responsibility matters such as supply chain issues and investigations, non-financial disclosures and Modern Slavery Act 2015 compliance, and disputes. Ms. Bullock co-chairs the firm's UK ESG Practice Group.



**Anna Howell**  
Partner, Gibson Dunn

Anna Howell is a partner in Gibson Dunn's international corporate team, a co-chair of the Oil & Gas practice, and a member of the firm's Energy & Infrastructure, M&A, Private Equity and UK ESG practice groups. Ms. Howell advises on complex cross-border transactions and advisory work in the energy sector with a particular focus on alternative energy, renewables, gas and liquefied natural gas (LNG). Over her 25+ year career she has advised high-profile clients on some of their most prestigious and challenging mandates, including first entries into both mature and emerging markets throughout Europe, Africa, Latin America, Asia Pacific, and the Middle East. Ms. Howell has advised clients on re-use and repurposing in the context of decommissioning as well as switching to cleaner fuels, energy efficiency, sustainability and emissions trading. Ms. Howell spent over 11 years practising in Asia and has worked in London, Singapore, Hong Kong and Beijing.