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INTRODUCTION

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Stibbe is a leading, independent, international law firm with main offices in Amsterdam, Brussels and Luxembourg, as well as a branch office in London. It provides the highest-quality service in legal advice, transactions and litigation. The dedicated multidisciplinary teams are trusted legal advisers to clients that range from national and multinational companies and financial institutions to government organisations and other public authorities. The firm handles transactions, disputes and projects across a wide range of sectors. A thorough understanding of clients' commercial objectives enables the team to provide suitable and effective advice on complex legal issues and challenges. Stibbe works closely together with other international top-tier firms on cross-border matters outside its home jurisdictions; the firm's independence allows it to team up with any foreign law firm to suit clients' needs and preferences.

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INTRODUCTION

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2025: A Year of ESG Reporting, Due Diligence on ESG and Global ESG Evolution

As we navigate through the 2020s, the ESG landscape continues to evolve at a rapid pace. The year 2025 stands out as a turbulent period, marked by significant uncertainty in regulatory and political developments and shifting priorities across the globe. This introduction to Chambers and Partners' 2025 ESG guide aims to provide an overview of the key trends and themes that are shaping the ESG discourse globally.

The rise (and fall?) of EU corporate sustainability legislation

2025 has undoubtedly been the year of the Omnibus packages, which aim to amend key corporate sustainability legislation.

The adoption by the EU of the Corporate Sustainability Due Diligence Directive (CSDDD) and the Corporate Sustainability Reporting Directive (CSRD) represented a milestone in mandatory due diligence and reporting on sustainability issues. The CSDDD requires companies to identify, prevent and mitigate adverse human rights and environmental impacts in their operations and supply chains. The CSRD mandates companies to report sustainability information based on a standardised set of disclosure requirements grounded on a double materiality approach. The two Directives set a new standard for corporate accountability and transparency.

However, amid growing geopolitical unrest and uncertainty, former European Central Bank president Mario Draghi raised the alarm regarding the EU economy's future and Europe's deteriorating competitiveness in what has become known as the Draghi report. One of Draghi's recommendations to increase the competitiveness of European companies was to reduce red tape and administrative burdens. The European Commission (EC) heeded the call. Following the 2025 Work Programme and the EU Competitiveness Compass, the EC issued the so-called Omnibus packages, with Omnibus I containing proposals to de-scope, delay and simplify certain sustainability legislation including the CSDDD and CSRD. The Council of the European Union has already adopted its position on the EC's proposals, but the position of the European Parliament (EP) has been reopened and will be put to a vote in November 2025. Once the EP has adopted its final position by plenary vote, the three institutions will enter into trilogue negotiations.

The final outcome of those discussions remains to be seen. However, based on the definite positions of the EC and the Council and the initial position of the EP (as it stood at the time of writing), reductions in the scope of both the CSDDD and CSRD are probable. It is also likely that, for the CSDDD, we may see some limitations in the due diligence mapping exercise of possible adverse impacts and the deletion of a common civil liability regime at EU level. Regarding the CSRD, the degree of assurance required from independent assurance providers and the requirement for all in-scope companies to report on their taxonomy alignment may be amended. Furthermore, the EC's mandate to adopt sector-specific reporting standards may be deleted. The European Sustainability Reporting Standards (ESRS), intrinsically linked to the CSRD, are also to be amended, and some form of cap on the information that may be requested from SME business partners is anticipated.

The CSDDD and the CSRD are not the only pieces of legislation subject to the Omnibus process, though they have received the most publicity and face the most extensive changes. The EU Taxonomy Regulation and the Carbon Border Adjustment Mechanism, for instance, were included in the same Omnibus package, and subsequent Omnibus packages have followed with proposals either to limit the scope of certain regulations or to postpone certain requirements such as the due diligence regime under the Batteries Regulation.

Some critics have denounced the Omnibus packages as blatant deregulation, and although the effectiveness of the EC's simplification efforts is debatable, it would be premature to qualify the Omnibus packages as "the fall" of EU corporate sustainability legislation, since neither the CSDDD nor the CSRD has been repealed. Companies within the narrowed scope will have to comply with their obligations. Under the CSDDD, companies are still required to take far more extensive measures to prevent or end adverse impacts than under any existing binding legislation, unlike the

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OECD Guidelines and the UN Guiding Principles on Business and Human Rights, which are not binding.

Furthermore, other EU corporate sustainability legislation, apart from some postponements, has, for now, remained unchanged, such as the Conflict Minerals Regulation, the Deforestation Regulation (EUDR), the Batteries Regulation, the Forced Labour Regulation and the Ecodesign for Sustainable Products Regulation (ESPR).

Climate litigation

We have not observed a surge in new climate litigation, but with many cases still pending or being filed, climate litigation continues to evolve. In 2025, there have been major developments globally worth highlighting as well.

Advisory opinion on climate change obligations of states at the International Court of Justice

On 29 March 2023, the UN General Assembly adopted the request led by Vanuatu for the International Court of Justice (ICJ) to deliver an advisory opinion on the obligations of states in respect of climate change and submitted the request to the ICJ. The request specifically asked for an opinion on the responsibility of states towards (vulnerable) states – particularly Small Island Developing States – and towards present and future generations affected by the adverse effects of climate change. A large number of states submitted written statements or gave oral statements during the public hearings in December 2024.

On 23 July 2025, the ICJ delivered its landmark advisory opinion. A key finding of the ICJ was the equal footing of obligations derived from customary international law and other treaties, such as the obligation to do no harm, with those derived from the UN climate treaties – namely, the Framework Convention, the Kyoto Protocol and the Paris Agreement. The ICJ found that states are under stringent due diligence obligations regarding climate change, such as establishing progressively ambitious Nationally Determined Contributions (NDCs) under the Paris Agreement, collectively capable of limiting global warming to 1.5°C, and making their best efforts to achieve those NDCs. Another key finding of the ICJ was the applicability of the customary rules on state responsibility to breaches of obligations regarding climate change. The ICJ underlined that although the shared and cumulative nature of contributions to climate change presents difficulties for attribution and causality, this did not make it impossible to determine these factors. This advisory opinion is expected to lead to more inter-state climate litigation in the future.

Lliuya v RWE

On 28 May 2025, the Higher Regional Court of Hamm (Oberlandesgericht Hamm, Nordrhein-Westfalen) decided in the case of the Peruvian farmer Lliuya against German energy company RWE. In 2015, Lliuya filed a tort claim against RWE, arguing that RWE's cumulative greenhouse gas emissions had contributed to glaciers near his property melting, increasing flood risks. Lliuya argued that RWE should be held liable for 0.47% of the mitigation costs, corresponding to RWE's historical contribution to global greenhouse gas emissions. Though initially dismissed by the Regional Court of Essen, the Higher Regional Court of Hamm deemed the case admissible and proceeded to the evidential phase.

Ultimately, the Higher Regional Court rejected Lliuya's claim, stating that the actual flood risk to his property was not sufficiently consequential: two scientists specialising in alpine natural catastrophes estimated the actual chance of a flood reaching the claimant's house in the coming 30 years at only 1%, and even then, the water would rise no higher than 20 centimetres.

However, the Higher Regional Court underlined that although this specific claim was rejected, companies can be held liable under German tort law for their contribution to global climate change and consequent impacts and risks. The Higher Regional Court even added that the significant distance between RWE's operations and the claimant's property was not an inherent legal challenge. This does open the possibility for other claims to succeed in the future and companies to consider potential unforeseeable claims related to their operations, specifically because the court deemed the location of a claimant not an inherent legal hurdle. This case sets an important precedent for German tort law, but its relevance will ultimately depend on how other courts assess the full set of facts in each specific case. This consideration by the Higher Regional Court does seem to fit in with a budding trend in civil climate litigation, seen in *Milieudefensie v Shell* in 2024. In that case, the Court of Appeals of The Hague, although it rejected the specific claim, did recognise the special responsibility of companies such as Shell, which, in the Court's view have contributed significantly to climate change while simultaneously possessing the means and influence to mitigate the negative impacts of climate change, which we will discuss in more detail below.

Milieudefensie cases against Shell and ING Bank

In November 2024, the Court of Appeals of The Hague overturned the injunction previously granted by the District Court of The Hague in the case of the Dutch NGO Milieudefensie against Shell. The Court of Appeals concluded that companies like Shell have a special responsibility to mitigate the threat of dangerous climate change based on the indirect effect of soft-law instruments and traditionally horizontal human rights through an open norm in Dutch tort law; however, the specific order for Shell to reduce its emissions was overturned. The Court of Appeals stated that Milieudefensie had insufficiently made the case for why Shell would not meet its own reduction targets for scope 1 and 2 emissions, or why a specific reduction target on scope 3 emissions would be effective when other market participants could take over its activities. Additionally, the Court of Appeals mentioned that there was no scientific consensus on reduction targets for specific companies.

Milieudefensie has appealed this latest decision at the Dutch Supreme Court, arguing, among other things, that the Court of Appeals maintained an overly narrow framework in assessing the reduction orders. The Dutch Supreme Court is expected to give its judgment in 2026. What may be interesting to note in this context is that the ICJ, in its advisory opinion, stated that a lack of full scientific consensus does not justify an omission to act regarding the obligations of states. The Dutch Supreme Court may take that into consideration.

In March 2025, Milieudefensie also initiated proceedings against the largest bank of the Netherlands, ING, citing ING's portfolio of loans to and investment in fossil fuel companies, among others. Milieudefensie alleges that ING does too little to mitigate the threat of dangerous climate change, basing its claim on many of the same grounds used in the case against Shell. Since the Court of Appeals in that case did mention that a case against specific new investments in oil or gas fields would be more feasible due to a lock-in effect, it will be interesting to see whether that will play a role in the case against ING. ING is scheduled to file its response to Milieudefensie's claims in early 2026.

Global ESG trends and regulatory developments

North America

In the USA, the installation of the second Trump administration has had far-reaching consequences for the country's ESG policies. The USA has withdrawn from the Paris Agreement, and the government plans to significantly roll back climate policies, such as eliminating greenhouse gas emission standards. In January 2025, President Trump signed an executive order entitled Ending Illegal Discrimination and Restoring Merit-Based Opportunity targeted at diversity, equity and inclusion (DEI) policies in federal and private-sector hiring. Twenty-eight states have now passed laws limiting or prohibiting DEI policies, and several companies, such as Amazon, Ford and Walmart, have rolled back or eliminated their DEI programmes. US-based companies have urged their international subsidiaries to do the same.

Canada, on the other hand, has been proactive in integrating ESG considerations into its regulatory framework while also having to deal with the challenges of global economic and geopolitical unrest. The Canadian Securities Administrators (CSA) has introduced climate-related disclosure guidelines, emphasising the importance of transparency and accountability. Canada also expanded its legal framework against greenwashing in 2025, requiring companies to substantiate sustainability claims under threat of steep penalties and creating a private right of action. In Canada, like in Europe, this has led to legal risk concerns among companies and to "greenhushing".

Furthermore, regarding social equity, the Indigenous Loan Programme was officially launched, allowing indigenous communities to benefit from the government's high credit rating and receive lower interest rates. The programme is intended to create economic opportunities and support indigenous communities in developing their own economic priorities.

Europe

Although Europe continues to lead the way in ESG regulation, global political unrest reached Brussels this past year. As described above, the EU has started an intensive simplification process of key parts of its corporate sustainability legal framework, even before some of those laws would apply, denounced by critics as deregulation. The EU Sustainable Finance Disclosure Regulation, which sets standards for financial market participants, is also under review.

Nevertheless, the EU retains an extensive regulatory framework for corporate sustainability and ESG. Though the scope and intensity of some laws may be reduced, the CSDDD, the CSRD, the Taxonomy Regulation, the EUDR, the ESPR, the Batteries Regulation, REACH, the European Green Deal and the Clean Industrial Deal, to name a few, have a significant impact on how companies view, arrange and envision their operations. Finally, the increased focus on greenwashing – such as through the proposed EU Green Claims Directive – has garnered much attention across sectors. Some companies do not report all their best efforts, known as "greenhushing", due to fear of greenwashing claims.

Iceland, Liechtenstein, Norway, Switzerland and the UK have their own set of advanced ESG regulations, partly driven by trade agreements and relations with the EU. We also see the effects of the Omnibus packages in these countries; for example, the Swiss government has suspended ongoing legislative processes to align national regulations with EU developments. In the Balkans, ESG regulations and standards are slowly developing, predominantly driven by trade relations with the EU, EFTA and the UK.

Asia-Pacific

ESG seems to be undergoing a boom in the Asia-Pacific region, driven by both regulatory initiatives and market demand. In East Asian countries such as China, India, Indonesia, Japan, Malaysia, Singapore, South Korea and Vietnam, we see an increase in both public policies and regulations and private initiatives such as launching and expanding sustainable and transition investment funds and bond programmes, regulatory frameworks for renewable energy growth, mandatory quotas for sustainable aviation fuel, and industry frameworks for the net-zero transition, enhancement of ESG disclosure requirements and integration of ESG considerations into the corporate governance framework. In this regard, we see a rapid growth in countries adopting or planning to adopt the reporting standards of the International Sustainability Standards Board (ISSB).

The region's rapid economic growth and increasing environmental challenges make ESG a critical area of focus.

In Australia and New Zealand, economic uncertainty and geopolitical tensions have changed the political discourse. Both countries have climate change laws and are among the first to experience migrants explicitly fleeing there due to the effects of climate change: inhabitants of island states in Polynesia and Micronesia who are threatened by rising sea levels. Australia has adopted the ISSB, and 2025 will be the first financial year for which the first group of companies will have to report. New Zealand has its own Climate-Related Disclosures regime, with most companies reporting for the second time in 2025. Regulators are investigating whether the regime should be streamlined with the ISSB to align with overseas jurisdictions.

For island states in Polynesia and Micronesia, rising sea levels are an existential threat leading Vanuatu to initiate the UN General Assembly resolution that requested the ICJ to form an advisory opinion on states' obligations regarding climate change.

In the Middle East, we are also seeing developments. The United Arab Emirates have launched a Net Zero 2050 Strategy, and Saudi Arabia has set 2060 as a goal for net zero. However, Saudi Arabian state-owned oil giant Aramco has pledged to only reduce its scope 1 and 2 emissions to net zero. Recent publications also claim that Qatar (alongside the USA) is exerting pressure on the EU to further decrease CSDDD obligations by threatening trade restrictions, most importantly, on liquefied natural gas (LNG).

At the same time, concerns persist regarding human rights and labour conditions and practices in Asia, such as instances of forced labour (de facto or de jure) and child labour.

Africa

ESG factors have become increasingly important in Africa, especially considering that the region has been identified as one of the most vulnerable to the adverse effects of climate change. It is also in the field of environmental sustainability that we see the clearest examples of legislation and government policies focusing on energy transition, security and efficiency, across the spectrum of different African states. Since 2016, Benin, Gabon, Kenya, Mauritius, Nigeria, South Africa, Uganda and Zambia have adopted stand-alone climate legislation, while the Democratic Republic of Congo (DRC), Egypt, Ghana, Morocco and Tanzania have incorporated climate change provisions into existing legal frameworks.

In general, we observe that African states such as Egypt, Ghana, Kenya, Nigeria and South Africa are currently forerunners in either the adoption of existing or the creation of new ESG standards and reporting frameworks. As in Asia, there is rapid growth in the number of countries adopting or planning to adopt the reporting standards of the ISSB.

Regarding Africa, we also observe widespread concerns regarding human rights and labour conditions and practices.

It must be noted that the proliferation of ESG policies on the African continent is quite a different story, and lack thereof is not necessarily due to unwillingness. Economic development and governmental stability differ greatly across the continent, with some African states being in particularly precarious situations. With multiple widespread issues such as extreme poverty, unemployment, energy and food insecurity, low connectivity and a lack of infrastructure, for many companies and individuals ESG may seem like a "luxury" they cannot afford in efforts to survive, an issue which is not nearly as prevalent or pressing in, for example, Europe or North America.

Moreover, Africa illustrates the sometimes contradictory nature of ESG: the global demand for certain minerals for the green transition in industrialised states has led to serious concerns about labour conditions, local environmental impact, corruption, child labour and human rights abuses in, for example, the DRC. There are also concerns that the spillover effect of European legislation, such as the CSDDD, will not lead to improved conditions but to severance of relations and loss of income.

Latin America

In Latin America as in Africa, ESG issues are gaining traction – albeit at a slower pace compared to other regions. Brazil, Chile, Colombia and Mexico are leading with regulatory initiatives on ESG themes across the board.

Climate change legislation is the most prevalent type of ESG regulation in the region as opposed to other types of ESG-related legislation, with Argentina, Brazil, Chile, Colombia, Guatemala, Honduras, Mexico, Paraguay and Peru having all enacted climate change laws.

Brazil, Chile, Colombia and Mexico have also adopted legislation to improve corporate transparency and sustainability. Brazil, Chile and Mexico have introduced mandatory ESG reporting standards for certain companies, while Colombia has introduced a solid legal framework for green finance, including disclosure requirements for issuers and its own green taxonomy. Argentina, Costa Rica and El Salvador have followed suit with ESG regulations that remain voluntary but continue to progress in creating awareness.

In Chile, an extended producer responsibility law has been adopted covering, among other things, textiles and batteries, while in Colombia and Peru, proposals on laws for enhanced waste management are pending.

Key themes in 2025

Climate change and environmental sustainability

Climate change remains a central theme in the ESG discourse. The increasing frequency of extreme weather events and the distortion in value chains caused by climate change underline the urgent need to transition to a low-carbon economy. Mitigating these effects and managing the financial, physical and transition risks associated with climate change continue to drive regulatory and corporate action. Companies are under pressure to set ambitious carbon reduction targets and strengthen their climate resilience.

Social responsibility and human rights

Social issues, including human rights, labour practices and community engagement, are gaining prominence. The CSDDD's focus on human rights due diligence highlights the growing importance of social responsibility in corporate governance. Companies are expected to adopt more robust policies to address social risks and ensure ethical practices throughout their supply chains. Furthermore, the role of companies' operations in relation to violent conflicts is starting to become a subject of investigation and litigation across several jurisdictions.

Governance and accountability

Good governance is the cornerstone of effective ESG management. Companies are being held to higher standards of accountability, with increased scrutiny from regulators, investors and stakeholders. This is reflected in the recent growth of ESG and sustainability provisions within corporate governance codes around the world. Board diversity, executive compensation and anti-corruption measures are key areas of focus, as companies seek to build trust and demonstrate their commitment to ethical governance.

Outlook for 2026 and beyond

Looking ahead to 2026, several key developments are expected to shape the ESG landscape:

- *Geopolitical unrest:* Although the regulatory landscape in the EU is expected to stabilise, we do not expect that the period of significant geopolitical unrest is behind us. The violent conflicts and humanitarian crises of 2025 are likely to persist into 2026, with the role of companies in relation to those situations becoming a growing point of focus in certain jurisdictions for both public investigators and civil society. Civil cases and criminal investigations and cases have already been observed in at least France, Sweden and the USA.
- *Global economic trends:* Economic conditions in different regions will influence ESG priorities. By way of example, the ongoing energy transition and the push for sustainable finance will drive investments in green technologies and infrastructure, while policymakers balance the interest to address generally high inflation levels.
- *Climate targets:* It has already been widely reported that the climate goals of the Paris Agreement seem to be dropping out of sight. There has also been a call from more than 15,000 scientists to act sooner rather than later. We are thus at a crucial point; additional measures may have to be taken to meet the targets. This could put additional pressure on companies.
- *Technological advancements:* Innovations in technology, such as AI and blockchain, are expected to improve ESG data collection, analysis and reporting. These advancements will enable companies to manage their ESG risks and opportunities more effectively. However, concerns remain regarding the fast proliferation of AI, such as its environmental footprint, incidents of racial profiling, the spread of misinformation and the use of AI in violent conflicts.
- *Stakeholder engagement:* The role of stakeholders, including investors, customers and employees, will remain crucial in driving ESG performance. Companies that actively engage with their stakeholders and respond to their concerns will be better positioned to succeed in the evolving ESG landscape. Attention to the rights of indigenous peoples will likely grow in importance for stakeholder engagement.
- *Diverging ESG regulations:* Companies operating across multiple jurisdictions are facing increasing regulatory pressure from a variety of ESG regulatory initiatives, posing impediments to global trade.

In conclusion, 2025 has been a year of unrest for ESG developments. As we move forward, companies will need to navigate a complex, dynamic and at times seemingly capricious regulatory environment, while embracing the opportunities presented by the global shift towards sustainable and responsible business practices.

BRAZIL

Law and Practice

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Contents

Mello Torres unites the expertise of professionals with extensive experience in the corporate and financial sectors and the dedication of lawyers with a distinguished academic background. The firm stands out for its technical rigour, strategic vision and commitment to delivering sophisticated and business-oriented legal solutions. Its main practice areas include tax, corporate, mergers and acquisitions (M&A), environmental, ESG, mining, litigation and arbitration, banking and project finance, infrastructure, public and regulatory law, labour, real estate, competition and compliance. With a multidisciplinary team and an integrated approach, Mello Torres offers comprehensive legal advice combining market knowledge, precision and innovation. Guided by ethics, sustainability and long-term value creation, the firm provides legal excellence and strategic impact in every engagement, reinforcing its position as a trusted partner for clients navigating complex business and regulatory environments in Brazil and abroad.

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1. Introduction

1.1 General ESG Trends

Brazil's legal and regulatory landscape on environmental, social and governance (ESG) matters continued to evolve at an accelerated pace throughout 2024, despite ongoing political polarisation and institutional fragmentation. The year saw stronger co-ordination between public authorities and private-sector stakeholders, as well as a further consolidation of Brazil's commitment to climate governance, sustainable finance and corporate transparency. Collectively, these initiatives reflect Brazil's strategic intent to position itself as a leading jurisdiction in the global sustainable economy, marking a significant turning point in the consolidation of ESG principles within the country's economic, legislative, regulatory and policy frameworks.

In the environmental dimension, a landmark legislative milestone was achieved through the enactment of Federal Law No. 15,042/2024, which established the Brazilian Greenhouse Gas Emissions Trading System (*Sistema Brasileiro de Comércio de Emissões de Gases de Efeito Estufa* – SBCE). This law lays the foundation for a regulated carbon market in Brazil, providing legal certainty for carbon credit transactions and reinforcing the country's commitment to its decarbonisation and low-carbon transition agenda. In addition, the enactment of Federal Law No. 15,103/2025, which instituted the National Energy Transition Policy (*Política Nacional de Transição Energética* – PNTE), along with the Energy Transition Acceleration Programme (*Programa de Aceleração de Transição Energética* – "Paten"), introduced legal and policy mechanisms to incentivise green investments and co-ordinate national strategies for a just and inclusive energy transition.

In the social dimension, 2024 witnessed advancements in legislative and regulatory measures promoting gender diversity, equity and occupational health, thereby reinforcing corporate accountability in governance structures. Among the most significant was the enactment of Federal Law No. 15,177/2025, which mandates that at least 30% of corporate board positions in large and publicly traded companies be held by women, and the updates to Normative Ruling No. 1 of the Labour and Employment Ministry, expanding companies' obligations to include the identification, prevention and mitigation of psychosocial risks in the workplace.

In the governance and financial spheres, the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários* – CVM) introduced a series of pivotal regulatory updates through Resolutions Nos. 217, 218 and 219. These measures formally incorporated mandatory sustainability-related financial disclosures aligned with the first two IFRS Sustainability Disclosure Standards from the International Sustainability Standards Board (ISSB) – IFRS S1 (General Requirements for Disclosure of Sustainability-related Financial Information) and IFRS S2 (Climate-related Disclosures) – representing a decisive step towards strengthening market transparency, investor confidence and the alignment of Brazilian companies with global ESG-related disclosure practices.

1.2 Environmental Trends

Throughout 2024, Brazil made remarkable strides in advancing the environmental dimension of the ESG agenda, enacting key regulations and policy measures to modernise and strengthen its environmental governance framework. These initiatives reflect a co-ordinated national effort to align Brazil's domestic regulatory and policy structures with its international commitments, and to accelerate the country's transition towards a low-carbon, resilient and sustainable economy.

Establishment of the Brazilian Greenhouse Gas Emissions Trading System

A defining milestone of the year was the enactment of Federal Law No. 15,042/2024, establishing the SBCE. The SBCE adopts a cap-and-trade mechanism, inspired by leading international models, most notably, the European Union Emissions Trading System (EU ETS), setting maximum greenhouse gas (GHG) emission limits for specific sectors and entities. Companies whose emissions exceed their assigned caps must offset the surplus by acquiring or trading carbon credits within the regulated market. The law aligns Brazil's climate governance structure, reinforcing the country's National Climate Change Policy and its commitments under the Paris Agreement.

Launch of the ESG Parliamentary Front at Brazil's National Congress

Another institutional milestone was the launch of the ESG Parliamentary Front (*Frente Parlamentar ESG na Prática* – FPESG) in November 2024, formally established as a nonpartisan initiative within the National Congress. Comprising 189 deputies and nine senators, the FPESG aims to advance ESG-related legislation, strengthen socio-environmental governance and promote accountability in corporate sustainability practices, including efforts to prevent greenwashing. Aligned with the United Nations 2030 Agenda for Sustainable Development, the FPESG seeks to enhance dialogue and co-operation among public authorities, private entities and civil society organisations. Its creation represents an important step towards institutionalising ESG principles in Brazil's legislative agenda.

National Energy Transition Policy and the "Paten" Programme

In early 2025, the federal government enacted Federal Law No. 15,103/2025, creating the Paten programme to advance Brazil's energy transition and sustainable development. Implemented through a Green Fund and tax settlement mechanisms tied to reinvestment in green projects, Paten complements the PNTE and aims to co-ordinate climate, energy and industrial policies, mobilising an estimated BRL2 trillion in green investments over the next decade.

1.3 Social Trends

In 2024, Brazil experienced significant regulatory and policy advances in the social pillar of the ESG framework, reflecting a growing institutional commitment to diversity, inclusion, social protections and workers' well-being. The period was marked by the enactment of progressive federal legislation, the issuance of ministerial regulations and ongoing judicial developments, which include the following.

Gender and Racial Diversity on Corporate Boards

A landmark noteworthy measure was the enactment of Federal Law No. 15,177/2025, which mandates that women must hold at least 30% of the positions on corporate boards of directors, and that black or disabled women must occupy at least 30% of those positions. This legislative development aligns with global trends in promoting gender equity and corporate governance reform, aiming to foster more inclusive leadership structures in Brazilian corporations.

Psychosocial Risk Management and Workplace Mental Health

In August 2024, the Labour and Employment Ministry amended Normative Ruling No. 1 to expand the obligations relating to workers' occupational health. The revised regulation, effective as of 26 May 2026, requires companies to analyse, identify, prevent and mitigate psychosocial risks to which their workforce, including outsourced workers, may be exposed.

By incorporating these risks into employers' Risk Management Programmes (*Programas de Gerenciamento de Riscos*), the amendment represents a paradigm shift in Brazilian labour regulation, elevating mental health and well-being to the same level of importance as traditional occupational safety risks (eg, physical, chemical and biological agents).

Strengthening Social Inclusion Through Public Procurement – School Feeding Programme

Another important social policy advancement was the enactment of Federal Law No. 15,226/2025, which increased from 30% to 45% the minimum percentage of resources from the National School Feeding Programme (*Programa Nacional de Alimentação Escolar*) that must be allocated to the procurement of food directly from family farming and rural enterprises.

The law further prioritises purchases from indigenous and *quilombola* communities and from formal and informal women's groups, thereby reinforcing social inclusion and supporting vulnerable and traditional populations.

Work Schedule Reform and Well-Being at Work

Legislative proposals under consideration include adopting a "5–2 work schedule" (five days of work followed by two consecutive days of rest), particularly in sectors such as commerce and healthcare, which traditionally follow the "6–1" regime (six days of work followed by one day of rest).

Although these proposals remain under congressional debate, they reflect a growing recognition of the need to align and integrate Brazilian labour standards with contemporary occupational health matters, enabling rest, flexibility and employee productivity as key factors for sustainable employment relations.

Maternity and Paternity Leave Developments

In the area of paternal protection, Federal Law No. 15,222/2025 introduced the possibility of extending maternity leave by up to 120 days after hospital discharge in cases where the mother or newborn is hospitalised for more than two weeks, provided that a causal link between the hospitalisation and childbirth is established.

Moreover, paternity leave is also expected to evolve in the near term. Following the Brazilian Supreme Federal Court (*Supremo Tribunal Federal* – STF) decision recognising a constitutional omission in existing legislation governing paternity leave, the 18-month period granted to Congress to address the matter has expired. Consequently, the STF formally notified the National Congress to report on the status of pending bills on paternity leave regulation.

1.4 Governance Trends

Throughout 2024 and early 2025, Brazil experienced substantial progress in the governance dimension of the ESG agenda, driven by the increasing institutionalisation of transparency, integrity and accountability standards within both the public and private sectors. These developments reflect the consolidation of ESG principles in the dissemination of sound corporate practices, particularly among financial institutions and private companies.

Enhancement of Corporate Disclosure and ESG Reporting Obligations

In 2024, the CVM adopted a landmark regulatory framework aligning Brazilian disclosure standards with international sustainability reporting benchmarks. The CVM mandated sustainability disclosures aligned with ISSB standards (with mandatory reporting starting in 2026), and the Brazilian Stock Exchange (B3 – Brasil, Bolsa, Balcão) updated its listing rules to include diversity and ESG policy requirements for publicly traded companies ("Listed Companies").

The Office of the Comptroller General (*Controladoria-Geral da União*) advanced Brazil's integrity and anti-corruption agenda by issuing new guidelines to promote consistency and efficiency in corporate compliance programmes. One such example is the Integrity Programme Guide: Guidelines for Private Companies – Volume II, which provides direction to the private sector, enabling companies to consolidate integrity assessment criteria, gain a clearer understanding of potential risks and enhance their internal compliance programmes.

Expansion of Corporate and Group Liability

Brazilian jurisprudence also evolved significantly in 2024 regarding corporate liability under the Anti-Corruption Law (Federal Law No. 12,846/2013), notably affirming that joint liability may extend across an entire corporate group, including to parent companies, subsidiaries, affiliates and consortium members – see Special Appeal No. 2209077/RS of Brazilian Superior

Court of Justice (*Superior Tribunal de Justiça*). This decision strengthens the judiciary's interpretation of collective responsibility in the context of corruption and administrative misconduct, signalling heightened exposure for corporate groups operating through complex ownership or contractual structures.

Judicial and Regulatory Scrutiny of Governance Failures

Brazilian authorities also intensified oversight of corporate governance practice through both regulatory enforcement and judicial action. High-profile cases, such as the suspension of Petrobras board members for conflicts of interest, highlighted the growing judicial scrutiny of governance failures. Simultaneously, authorities intensified their focus on greenwashing and irregularities in carbon credit markets, signalling a broader convergence between environmental regulation and corporate governance enforcement. ESG-related criteria also began influencing public procurement rules.

1.5 Government and Supervision

In Brazil, the ESG transition has been advanced through a decentralised, multi-institutional governance structure encompassing federal, state and municipal levels of government, as well as a diverse range of regulatory and supervisory authorities. Currently, there is no single centralised authority vested with global responsibility for ESG-related matters. Instead, each regulatory body exercises its statutory and regulatory competencies within the scope of its legal mandate, enacting rules and standards applicable to the entities and/or sectors under its jurisdiction.

Nevertheless, certain authorities stand out due to the broad reach and/or cross-sector relevance of their regulations.

CVM

The CVM is one of the primary institutional drivers of Brazil's ESG regulatory evolution, given its broad oversight of the capital markets, including investment funds and Listed Companies across different economic sectors.

In recent years, the CVM has consolidated its leadership in advancing the ESG agenda in Brazil, particularly by promoting greater transparency and accountability in corporate disclosures. A landmark development occurred in October 2024, when the CVM enacted Resolutions Nos. 217, 218 and 219, establishing mandatory sustainability-related financial disclosure obligations for Listed Companies.

These resolutions formally align Brazil's disclosure framework with the ISSB standards, specifically, IFRS S1 and IFRS S2, marking a decisive step towards global regulatory convergence.

The CVM's regulatory efforts reflect a broader institutional commitment to integrating ESG principles into corporate governance, enhancing investor protection and reinforcing market integrity.

1.6 Market Participants

As a general principle, ESG laws and regulations in Brazil have cross-sectoral effects, influencing a wide range of industries across the national economy. In the coming years, however, the strongest regulatory impacts are expected in high-emission and resource-intensive sectors, as well as in industries subject to stringent environmental licensing, compliance and disclosure obligations.

At the same time, as Brazil advances in consolidating its sustainability and climate governance framework, some sectors are also poised to benefit, particularly those able to leverage low-carbon innovation, reforestation and biodiversity-based business models. In this context, forestry and sustainable agribusiness are emerging as strategic opportunities within the national ESG agenda, combining regulatory compliance with economic diversification, investment attraction and long-term value creation.

Listed Companies

Listed Companies will face a significant increase in regulatory requirements starting in January 2026, following the adoption of the new sustainability disclosure framework introduced by the CVM through Resolutions Nos. 217, 218 and 219, enacted in October 2024. These rules require the reporting of sustainability-related financial information in accordance with the IFRS S1 and IFRS S2 standards, which have been locally incorporated into Brazil's regulatory framework as the Brazilian Sustainability Pronouncements Committee (*Comitê Brasileiro de Pronunciamentos de Sustentabilidade* – CBPS) pronouncements CBPS 01 and CBPS 02. This new report standard will profoundly reshape corporate governance and transparency practices, compelling issuers to integrate climate and sustainability-related risks and opportunities into their financial disclosures. Consequently, Listed Companies will be subject to enhanced scrutiny and increased accountability before investors, regulators and other stakeholders, marking a decisive step towards aligning Brazil's capital market with global ESG disclosure standards.

Energy Sector

The energy sector, encompassing oil and gas, electricity and biofuels, will remain at the forefront of ESG-driven regulatory transformation. With the enactment of the PNTE in 2024, Brazil reinforced its commitment to a low-carbon energy matrix, emphasising renewable generation, energy efficiency and technological innovation. Under this framework, companies in the energy and fuel industries must adapt their governance mechanisms and investment strategies to meet stricter emission-reduction targets and enhanced sustainability reporting standards. As a result, the sector will face heightened compliance expectations, more rigorous regulatory oversight and increasing market pressure to demonstrate credible decarbonisation pathways, consolidating its position as a central pillar of Brazil's climate transition.

Agriculture and Forestry

Among the most exposed to ESG regulations, the agriculture and forestry sectors are well positioned to benefit from Brazil's sustainability agenda. Given their environmental footprint and importance to the national economy, these sectors are expected to be significantly influenced by evolving ESG standards, particularly regarding land use, carbon credits, deforestation control and biodiversity-based value chains.

By integrating environmental restoration, carbon sequestration and sustainable land management with Brazil's legal and policy frameworks, agribusiness can effectively transform compliance obligations into drivers of innovation, investment and competitiveness.

1.7 Geopolitical Developments

In Brazil, the evolution of the national ESG agenda has been closely tied to shifts in political priorities, international co-operation and trade-related pressures, all of which collectively determine the country's regulatory direction and institutional commitment to sustainability.

Under the current federal administration, Brazil has undertaken a renewed political effort to reposition itself as a global leader in climate and environmental governance. This effort has been characterised by strengthening environmental protection agencies and reactivating international co-operation, such as the Amazon Fund and bilateral climate finance mechanisms supported by Germany, Norway and other international partners.

At the international level, trade and regulatory pressures have also become powerful drivers of ESG compliance and policy modernisation in Brazil. The new EU Directive 2024/1760 on Corporate Sustainability Due Diligence (CS3D), published in July 2024, exemplifies this trend. The Directive imposes human rights and environmental due diligence obligations across the entire value and supply chain, representing a significant force to drive change in the Brazilian ESG landscape.

In this context, Brazil is expected to further align its national policies and regulatory instruments with international ESG and due diligence frameworks, particularly those originating from the European Union and multilateral climate agreements.

2. Corporate Governance

2.1 Developments in Corporate Governance

In the coming year, Brazil is expected to deepen its focus on ESG-related corporate governance, with key developments including preparations for mandatory sustainability disclosures aligned with the ISSB standards starting in 2026, prompting companies to enhance board oversight and integrate ESG into strategy. Regulatory bodies such as the CVM and B3 are pushing for greater board diversity, ESG-linked executive compensation and robust internal controls.

Integrity programmes are becoming more central, especially for firms engaging in public procurement, as anti-corruption enforcement intensifies. Voluntary initiatives such as the Business Integrity Pact and increased scrutiny from investors and regulators will pressure companies to strengthen transparency, data governance and risk management. These shifts reflect a maturing ESG landscape where governance is increasingly tied to corporate performance, regulatory compliance and market credibility.

2.2 Differences Between Listed and Unlisted Entities

Listed and unlisted companies have particularities that grant different degrees of flexibility in the ordinary management of their businesses. Unlisted companies are mainly subject to the rules set forth under Brazilian law, specifically the Brazilian Civil Code (Federal Law No. 10,406/2002) and the Brazilian Corporations Law (Federal Law No. 6,404/1976), which provide general provisions intended to ensure consistency of corporate activities. These include, for example, the maintenance of corporate books, publication of mandatory notices, and filing of corporate acts with the relevant Board of Trade.

In addition to these obligations, Listed Companies must comply with a broader and more detailed regulatory framework, designed to ensure that their conduct aligns with current political, economic and social expectations. Institutions that play key roles in this supervision are: (i) the CVM, whose authority derives from the Brazilian Corporations Law; (ii) B3; and (iii) other self-regulatory or specialised entities.

CVM Resolution No. 80/2022, for instance, requires Listed Companies to include ESG-related information in their Reference Form, specifically under Items 1.9, 2.10 and 8.1 of Annex C. Meanwhile, B3, under the Novo Mercado Regulation, requires that at least two independent directors serve on the board of directors (Articles 15, 16 and 17), as well as the presence of independent members in other governance bodies, such as the audit committee. Listed Companies must also adopt policies addressing strategic, operational, regulatory, financial, political, technological and environmental risks.

In summary, by becoming a Listed Company, it is essential that practices, culture and values align with market standards, particularly regarding governance disclosure, handling of sensitive information, and risk assessment. These measures broadly fall under what are now commonly referred to as “ESG practices”.

The decision to pursue a listing must therefore be carefully evaluated, ensuring full preparedness to comply with enhanced obligations. Failure to comply may result in sanctions by the CVM or other authorities, and even delisting.

2.3 Role of Directors and Officers

Brazilian law is silent on metrics or requirements for connecting ESG measures to the legal duties and responsibilities of directors and officers. Nonetheless, from the practical and governance standpoints, as senior management plays a central role in defining the organisation’s culture, strategic direction and ethical standards, they are often decisive in determining the degree to which ESG principles will effectively integrate an organisation’s corporate governance and operational practices.

The adoption of ESG measures can significantly contribute to an organisation’s people management strategies and enhance its market reputation. By integrating ESG principles into its operations, the company can create a more responsible, inclusive and transparent work environment. These measures not only reflect a commitment to ethical practices but also serve as valuable tools in attracting and retaining talent, fostering greater employee engagement, reducing absenteeism, and ultimately improving overall productivity and operational efficiency. In a competitive market, such efforts can also strengthen the employer’s brand and position the organisation as a desirable place to work.

2.4 Social Enterprises

As in other jurisdictions, a company can be structured in a manner different from traditional corporate forms, with a specific purpose and focused on social or cultural initiatives, whether for-profit or not-for-profit. However, in Brazil, such corporate structures are not governed by an extensive set of laws, rules or regulations.

The main laws applicable to these entities are: (i) the Brazilian Civil Code (Federal Law No. 10,406/2002); (ii) the Public Records Law (Federal Law No. 6,015/1976); and (iii) the Law on Civil Society Organisations of Public Interest (Federal Law No. 9,790/1999).

Thus, although there is legislation addressing such entities, the regulatory framework remains incipient. With growing discussions surrounding ESG matters in Brazil, we may see greater interest in clearly defining the obligations, rights and other terms applicable to associations, foundations, co-operatives and social organisations.

2.5 Shareholders

In Brazil, ESG obligations are increasingly shaping corporate governance and redefining the relationship between companies and their shareholders. The incorporation of ESG criteria into corporate strategy expands the traditional scope of fiduciary duties under Brazilian law. Directors and officers must now consider not only shareholders' economic interests but also broader stakeholder and sustainability impacts, consistent with the principles of transparency, accountability and long-term value creation set out in the Brazilian Corporations Law and CVM regulations.

From a legal perspective, ESG factors now shape disclosure requirements, risk management policies and corporate transactions. Shareholders are demanding greater visibility on how companies identify and address ESG-related risks, particularly in capital markets and M&A contexts, where due diligence increasingly incorporates ESG metrics.

This evolution enhances more active stewardship and engagement, reinforcing a governance model where the protection of shareholder value is intrinsically linked to the effective management of environmental and social risks.

3. Sustainable Finance

3.1 Progress in Green Financing

Changes in the Brazilian landscape have been under way since COP28 (2023 United Nations Climate Change Conference), during which Brazil committed to improving its domestic framework and strengthening its ESG agenda. One of the key commitments was the Sustainable Taxonomy, designed to identify and classify sustainable economic activities based on empirical evidence. This initiative seeks to promote a green economy and prevent greenwashing (false claims of sustainability without effective implementation).

A major milestone was Federal Law No. 14,904, which sets guidelines for climate change adaptation plans, placing sustainability and environmental protection at the core of national policy. Complementarily, in October 2024, the CVM issued Resolutions Nos. 217, 218 and 219, creating a new obligation for publicly held companies, investment funds and securitisation companies: the preparation and disclosure of annual sustainability-related financial reports. These resolutions formally incorporate CBPS 01 and CBPS 02, derived from IFRS S1 and IFRS S2 issued by the ISSB.

Additionally, in November 2025, the federal government advanced this agenda by publishing Federal Decree No. 12,705/2025 and establishing the Brazilian Sustainable Taxonomy (TSB), a voluntary framework that sets technical criteria for identifying sustainable economic activities. The TSB aims to enhance regulatory certainty, guide investment decisions and mitigate greenwashing risks. Although voluntary for now, this instrument is expected to increasingly shape public policy, including potential use in tax incentives, credit lines and financial product labelling. Covering multiple priority sectors, the TSB strengthens Brazil's alignment with global sustainable finance initiatives, and sustainable taxonomy is expected to remain a central topic at COP-30.

Undeniably, Brazil's political and economic landscape is clearly shifting towards stronger corporate accountability on ESG practices, increasing transparency and enabling investors to better understand what is truly happening inside companies.

3.2 Sustainable Finance Framework

Certain laws must be observed for different types of financing transactions (whether granting or obtaining funds), including: (i) the Brazilian Civil Code; (ii) the Brazilian Corporations Law; (iii) the National Financial System Law (Federal Law No. 4,595/1964); (iv) the Business Environment Law (Federal Law No. 14,195/2021; (v) the New Foreign Exchange Framework (Federal Law No. 14,286/2021); and (vi) the Cryptoassets Law (Federal Law No. 14,478/2022).

Considering the delegated regulatory authority, it is also essential to comply with the rules issued by the Brazilian Central Bank (*Banco Central do Brasil* – BACEN), the CVM, B3, the National Monetary Council (*Conselho Monetário Nacional* – CMN) and, more recently, the CITSB. In addition, companies may be required to follow regulations from market-driven entities, such as the Brazilian Financial and Capital Markets Association.

Each of the above-mentioned frameworks guides the appropriate structuring of financing transactions, and the selected approach must align with the strategic objectives of the company receiving the funds. In practice, each funding model entails distinct legal requirements, risk allocation and operational procedures.

While the Brazilian Civil Code provides general guidelines for the granting of collateral, the CVM regulates and supervises public offerings of securities, such as debentures, investment fund quotas, tender offers, CRI, CRA, CR and tokenised assets.

The same logic applies to companies registered as securities issuers before the CVM. Thus, the applicable legal framework will vary depending on the financing route chosen, and the particularities of each transaction must be carefully assessed to ensure compliance and efficient execution.

3.3 Access to Green Financing

Brazil has been making steady progress towards facilitating access to sustainable finance, though legal and regulatory changes are still being consolidated, leaving certain barriers to be addressed.

In all cases, to access this type of financing, particularly following the recent position adopted by the CITSB, the borrowing company must demonstrate proper eligibility, present a clear investment project and, above all, demonstrate that the project's outcomes align with sustainability objectives. For example, in small hydroelectric projects, it is essential to demonstrate that the activation of the hydroelectric project complies not only with the applicable environmental legislation but also contributes to the local ecosystem and promotes socioeconomic benefits for the community (eg, job creation).

Accordingly, it can be said that, with the latest initiatives from the CVM (regarding the preparation of periodic ESG reports) and other governmental authorities, access to sustainable finance, though still somewhat restricted, is becoming progressively easier, but only for those companies truly committed to the ESG agenda and not merely seeking financing due to tax incentives (eg, Federal Law No. 12,431/2017 concerning incentivised debentures).

3.4 Stranded Assets and Non-Bankables

From an economic and financial standpoint, carbon-intensive assets (such as oil, gas, coal, cement, and steel) tend to become stranded assets, losing value and shortening their useful life. Consequently, it becomes increasingly costly to secure the financial resources to fund activities associated with them.

This financing difficulty may lead to a rapid withdrawal of capital, causing supply bottlenecks and price volatility, with inflationary and energy security effects that harm everyone, especially the most vulnerable groups, who lack access to renewable energy sources.

To mitigate these risks and ensure a just and inclusive transition, it is essential for the government, with the active participation of civil society, to develop programmes and public policies aimed at mapping distributive impacts and implementing compensatory measures for the most vulnerable groups until the ESG transition is completed and universal access to renewable energy sources is achieved.

3.5 Challenges Ahead

In the coming years, Brazil's sustainable finance sector will face complex structural and market challenges. Beyond the risks of greenwashing (arising from misleading environmental claims and insufficient transparency), significant barriers remain to expanding access to green capital. Small and medium-sized enterprises often lack the financial and technical capacity to meet ESG reporting requirements or to comply with the conditions attached to sustainable finance instruments. In this context, such companies are expected to face additional challenges in adapting to the new disclosure requirements introduced by the CVM, which has adopted the international IFRS S1 and IFRS S2 sustainability disclosure standards, set to take effect in January 2026.

The effective scaling of sustainable finance at the national level will depend on establishing a coherent regulatory and institutional framework, supported by credible green taxonomies, transparent disclosure standards and long-term financing mechanisms, all of which are still under development in Brazil. It will be essential to bridge these gaps to strengthen investor confidence, mitigate material and reputational risks related to ESG matters/practices, and ensure that sustainability commitments translate into concrete, measurable outcomes. Overcoming these challenges will be critical for Brazil to fully leverage capital markets as catalysts for advancing the ESG agenda, for example.

4. ESG Due Diligence

4.1 Soft Law Becoming Hard Law

In Brazil, there is a clear trend of soft law principles, initially adopted as voluntary ESG or governance guidelines, progressively becoming binding legal standards. Over the past few years, regulatory bodies such as the CVM, BACEN and the *Superintendência de Seguros Privados* (SUSEP) have incorporated sustainability-related recommendations into mandatory disclosure and compliance frameworks.

For example, CVM Resolution No. 59/2021, amended by CVM Resolution No. 168/2022 (which replaced the former Reference Form), now requires Listed Companies to report ESG practices and climate-related risks, transforming previously voluntary disclosure standards into enforceable obligations. Similarly, BACEN Resolutions Nos. 4,943/2021 and 4,945/2021 codify socio-environmental risk management and governance requirements that were once guided only by market best practices.

In the corporate and M&A context, due diligence processes increasingly rely on ESG benchmarks derived from global soft law sources, such as the OECD Guidelines and the UN Global Compact, which are gradually influencing contractual provisions and risk allocation.

This evolution demonstrates a consistent regulatory shift: principles once treated as aspirational now have legal and financial consequences. The line between soft and hard law is narrowing, reinforcing the institutionalisation of ESG and governance norms in Brazil's corporate and capital markets environment.

4.2 Towards Vertical Responsibilities

In Brazil, due diligence requirements across the value chain have significantly intensified, driven by regulatory, compliance and reputational considerations. The trend extends beyond traditional financial and legal reviews to include broader assessments of corporate governance, integrity, anti-corruption controls, data protection and human rights compliance.

This intensification is partly due to the evolving international regulatory landscape, as seen in the due diligence requirements set forth under the EU CS3D.

At the national level, recent legislation and enforcement trends, such as the Brazilian Anti-Corruption Law (Federal Law No. 12,846/2013), the General Data Protection Law (*Lei Geral de Proteção de Dados*), and the increasing scrutiny from public authorities and investors have elevated the expectation that companies monitor the conduct of their suppliers, distributors and business partners.

In M&A and financing transactions, due diligence now routinely examines counterparties' governance structures, internal controls and past compliance track record. This shift reflects a broader understanding that value-chain exposure can create successor liability, financial losses and reputational damage, particularly in transactions involving state-controlled entities or cross-border operations.

As a result, companies are adopting more structured third-party risk management frameworks and contractual mechanisms, such as audit rights and compliance certifications, to ensure continuous oversight of their value chain.

4.3 Partner Selection

The increased emphasis on governance and compliance within the value chain is directly shaping how Brazilian companies select and manage their business partners. Companies are becoming more selective, prioritising counterparties with corporate governance, transparent ownership structures and verifiable compliance programmes.

For example, in M&A and debt transactions, counterparties are often required to complete detailed integrity questionnaires and adopt compliance undertakings as conditions precedent to closing or funding.

Financial institutions and private equity investors are also demanding continuous monitoring and periodic reporting, aligning commercial relationships with international governance standards.

In the social sphere, there has been recurring coverage of labour authorities' efforts and their impact on organisations (legal liability and reputational exposures), including practices adopted by direct business partners and those inserted into the supply chain, especially regarding the labour used and the work conditions offered.

Considering this scenario, organisations have been more careful not only in the selection but in the monitoring and maintenance of their business partners. The growing use of contractual safeguards (such as anti-corruption and data protection representations and warranties, as well as termination rights and penalties for compliance breaches) is noteworthy.

Ultimately, the focus on governance-related due diligence is redefining supply chain strategy: companies increasingly favour partners that minimise compliance risk and enhance long-term transactional stability and governance across the value chain.

4.4 ESG in M&A Due Diligence

ESG factors have become increasingly material in Brazilian M&A transactions, influencing valuation, due diligence scope, deal structure and post-closing integration. While ESG is not yet a statutory requirement in the negotiation or approval of mergers and acquisitions, it has become a key indicator of legal and commercial risk. Investors and lenders now expect robust ESG due diligence to identify potential environmental liabilities, governance weaknesses and social compliance issues, particularly in sectors such as energy, infrastructure, agribusiness and manufacturing.

From a legal standpoint, ESG considerations are shaping contractual provisions, such as representations and warranties, indemnity clauses and covenants, reflecting the allocation of sustainability-related risks. Additionally, private equity and institutional investors are increasingly incorporating ESG compliance undertakings and reporting obligations into shareholders' agreements and financing documents.

Regulatory developments, including CVM Resolution No. 59/2021, as amended by CVM Resolution No. 168/2022, and BACEN's sustainability governance rules, further reinforce the need to integrate ESG criteria into transaction planning. Although ESG remains partly driven by market practice rather than hard law, it now plays a central role in assessing long-term value and reputational resilience, making it an essential component of both legal risk management and deal strategy in Brazilian M&A.

5. Transparency and Reporting

5.1 Key Requirements

In Brazil, certain types of companies and/or entities are required to disclose ESG-related information, as follows:

- Public companies and mixed-capital companies are required to annually disclose an integrated or sustainability report and a gender equality policy, which must include information on gender diversity within the company (Federal Law No. 13,303/2016, as amended by Federal Law No. 15,177/2025).
- Corporations (both listed and unlisted) must disclose information on gender diversity in their annual management report, which must be made available at least one month prior to the annual general shareholders' meeting (Federal Law No.

6,404/1976, as amended by Federal Law No. 15,177/2025).
- Publicly traded companies are required to annually submit a Reference Form (*Formulário de Referência*), which contains a wide range of corporate disclosures, including ESG-related information such as the company's sustainability report, materiality indicators, diversity within the company, and risk factors associated with ESG aspects (CVM Resolution No. 59/2021). Starting in 2027, with respect to the 2026 fiscal year, publicly held companies will be required to prepare and disclose a Sustainability-Related Financial Information Report, in accordance with the IFRS S1 and IFRS S2 standards, as internalised by the CBPS and approved by the CVM (CVM Resolution No. 193). Also, publicly traded companies (excluding CVM Category B issuers, small-sized companies, tax-incentivised entities and sponsored BDR issuers) are required to adopt ESG-related governance measures set forth in the Issuers Regulation of B3, including diversity in the board of directors and officers, and performance indicators linked to ESG topics in variable compensation. Alternatively, companies that do not implement these measures must provide explanations in their Reference Form.
- Financial institutions and other entities authorised to operate by BACEN are required to annually prepare and disclose a Report on Social, Environmental and Climate Risks and Opportunities (pursuant to BACEN Resolution No. 139/2021 and Normative Instruction No. 153/2021), and to prepare and disclose a Social, Environmental and Climate Responsibility Policy (pursuant to CMN Resolution No. 4,945/2021).
- Insurance companies, open pension entities, capitalisation companies and local reinsurers must comply with the sustainability requirements established under SUSEP Rule No. 666/2022. These requirements include preparing and disclosing a sustainability policy, a materiality assessment for risk management and an annual sustainability report.

5.2 Transition Plans and ESG Targets

Federal Law No. 15,042/2024 established the SBCE, aimed at reducing and eliminating national GHG emissions fairly and cost-effectively, with a view to promoting sustainable development and climate equity. Operators of facilities and emission sources located in Brazilian territory (excluding primary agricultural production and its directly associated infrastructure) that emit:

- 10,000 tonnes of CO_2 equivalent per year are required to prepare a monitoring plan and submit emission reports; and
- 25,000 tonnes of CO_2 equivalent per year are required to prepare a monitoring plan, submit emission reports and periodically reconcile their obligations.

The SBCE managing authority will be responsible for reviewing, monitoring plans, GHG emission reports and periodic reconciliation reports of obligations.

Furthermore, under CVM Resolution No. 193/2022, the report by publicly traded companies must be conducted in accordance with the IFRS S1 and IFRS S2, as internalised by the CBPS).

In particular, IFRS S2 recommends disclosing information on climate transition plans that companies may have, action plans to achieve them, their associated risks, and the strategies defined to meet the proposed climate targets.

As noted in **5.1 Key Requirements**, the adoption of IFRS sustainability standards by publicly traded companies will become mandatory for the 2026 fiscal year, starting in 2027.

5.3 Regulation of ESG Labels

In Brazil, ESG matters are regulated and supervised through a decentralised institutional framework involving multiple governmental agencies and entities at different levels. Within this context, various authorities issue regulations establishing ESG-related requirements, including those governing the promotion and advertisement of sustainability practices. Consequently, several legal instruments regulate this subject.

One such instrument is the Consumer Protection Code, which sets out consumer rights and the obligations of manufacturers, distributors and sellers of goods and services – including the duty to provide truthful information regarding a company's practices. Accordingly, a company may not advertise social or environmental ("sustainable") practices that are not genuine. If misleading advertising is published, the company will be held liable and subject to sanctions (eg, fines) imposed by the competent authorities.

In the field of advertising, any entity intending to promote its sustainability practices must comply with the rules established in Annex U of the Brazilian Advertising Self-Regulation Code issued by the National Council for Advertising Self-Regulation (*Conselho Nacional de Autorregulamentação Publicitária* – CONAR). Annex U requires that any advertisement related to sustainability be clear, precise and concrete, based on practices already implemented.

In summary, both the Consumer Protection Code and Annex U aim to prevent greenwashing practices, protect the public from false or misleading information, and preserve fair competition in the marketplace.

Regarding ESG labels, in Brazil, these refer to the criteria and standards used to assess a company's ESG performance, indicating its commitment to sustainability and responsible business practices. Such labels are applied to various financial products and corporate reports to demonstrate alignment with the United Nations Sustainable Development Goals and to attract investors who prioritise ESG factors.

In Brazil, an ESG label applies only to companies that meet the legal requirements established under Federal Decree No. 12,063/2024, which created the Brazilian Green Seal Programme to certify products and services that comply with predefined sustainability standards.

5.4 Supervision

In Brazil, the ESG transition is promoted, regulated and supervised through a decentralised institutional framework involving multiple governmental agencies and entities at different levels. Each authority operates within its respective area of competence, issuing regulations applicable to the entities and/or sectors under its jurisdiction.

Nevertheless, the main regulators overseeing the disclosure of ESG-related information in Brazil are the CVM, B3, BACEN and SUSEP.

Under Federal Law No. 15,042/2024, the SBCE managing authority is responsible for reviewing, monitoring plans, GHG emission reports, and periodic reconciliation reports of obligations within the scope of the SBCE.

Pursuant to Federal Decree No. 12,063/2024, which implemented the Green Seal Programme to certify products and services that meet predefined sustainability requirements, the green seal will be granted by conformity assessment bodies accredited by the National Institute of Metrology, Quality and Technology (*Instituto Nacional de Metrologia, Qualidade e Tecnologia* – INMETRO) to products and services that comply with the sustainability criteria set forth in Brazilian technical standards issued under the Green Seal Programme.

Regarding sustainability marketing claims, any party intending to promote its sustainability practices must comply with the rules set forth in Annex U of the Brazilian Advertising Self-Regulation Code issued by CONAR.

According to Annex U, sustainability claims, statements or advertisements must: (i) correspond to concrete practices actually adopted, avoiding vague concepts that may lead to misleading or overly broad interpretations of the advertised conduct; (ii) be truthful, verifiable, and supported by evidence of the social and environmental benefits claimed; (iii) present accurate and precise information expressed clearly and objectively; (iv) be substantiated by supporting data and external sources that endorse – or even take responsibility for – the social and environmental information communicated; (v) be significant in terms of the overall impact that the company and its brands, products and services exert on society and the environment throughout their entire life cycle, from production and commercialisation to use and disposal; (vi) avoid communicating claims of absolute or unbeatable superiority; and (vii) clearly identify the cause(s) and the official or third-sector entity(ies) involved in any partnership with the company or its brands, products or services.

5.5 Enforcement

From a legal perspective, there is a long way ahead for Brazilian legislation to integrate ESG matters, and, for that reason, there are still few entities capable of sanctioning companies for false or misleading ESG-related disclosures.

Under the new CVM regulations and interpretations, any misleading or false information arising from corporate disclosures by Listed Companies relating to ESG matters may be subject to administrative enforcement proceedings and penalties.

Other authorities are trying to implement new forms of monitoring and sanctioning companies that do not comply with this new global scenario, such as CONAR and the Consumer Protection and Defence Foundation (*Fundação de Proteção e Defesa do Consumidor* – PROCON), which are currently strong advocates for ESG matters.

5.6 Expected Progress

In the coming years, Brazilian companies are expected to make significant progress regarding ESG reporting obligations. The current administration has promoted policies that have resulted in notable advances in the ESG regulatory landscape. At the same time, market pressure and increasing investor demand for transparency are expected to drive companies towards higher reporting standards. The growing adoption of international frameworks, such as the ISSB standards and the European Union's Corporate Sustainability Reporting Directive, will further influence local practices, potentially fostering greater alignment between Brazilian and global disclosure requirements.

Despite these advances, several challenges remain:

- Capacity constraints for small and medium-sized enterprises (SMEs): Many SMEs lack the financial and technical resources to comply with evolving ESG reporting requirements, which may overlap across different jurisdictions. Access to qualified professionals is limited and costly, while implementing reporting systems and collecting and verifying ESG data can be prohibitively expensive.
- Political and regulatory uncertainty: Rising political tensions, both nationally and internationally, have made it difficult to pass and enforce consistent ESG regulations, creating additional complexity and unpredictability for companies.
- Data quality and integration: Ensuring the accuracy and completeness of ESG data, particularly regarding indirect impacts such as Scope 3 emissions and supply chain practices, remains a significant challenge. Companies must integrate ESG data across multiple departments and systems to produce reliable reports.

6. Climate and ESG Litigation

6.1 Instruments for ESG Litigation

ESG-related litigation in Brazil can be initiated through a broad range of judicial and/or administrative mechanisms, depending on the matters effectively involved or alleged. These mechanisms are available to both public authorities and private individuals or entities, and may include court proceedings, administrative investigations, or enforcement actions before regulatory bodies.

From a legal perspective, access to the judiciary is notably extensive in Brazil, as several actors are granted standing to initiate ESG-related claims. These include the Public Prosecutor's Office (*Ministério Público Federal* – MPF), civil society organisations, non-governmental entities, professional associations, and even citizens acting in defence of collective or diffuse interests (ie, public interest).

In the judicial sphere, the primary legal mechanism is the class action (*ação civil pública*), a specific type of lawsuit designed to protect collective rights in areas such as environmental protection, labour conditions and consumer relations. Constitutional review actions (*ações do controle concentrado de constitucionalidade*), which challenge the validity of laws or regulations that conflict with ESG or sustainability principles, also serve as important judicial instruments. Other available actions include popular Aactions (*ações populares*) and ordinary individual lawsuits, depending on the nature of the affected right or alleged harm. Criminal lawsuits may also apply when the conduct in question constitutes an environmental crime, as defined by the Environmental Crimes Law (Federal Law No. 9,605/1998).

Administratively, ESG-related issues may be pursued before the relevant regulatory or supervisory authorities through formal submissions, complaints or petitions for investigation. In cases involving greenwashing, for instance, consumers may file complaints against a brand or company before PROCON, CONAR or the MPF. Depending on the case, such complaints may lead to investigative or enforcement proceedings, potentially resulting in administrative sanctions, compliance orders or formal recommendations.

In Brazil, greenwashing practices fall within the scope of the Consumer Protection Code, which prohibits misleading or abusive advertising and protects consumers from deceptive marketing practices, including those relating to environmental or sustainability claims.

6.2 Climate Activism

Non-governmental organisations (NGOs) and activists are increasingly influential in shaping Brazil's ESG agenda. In recent years, their engagement has evolved beyond traditional advocacy and public awareness campaigns towards more strategic, institutionalised forms of action, particularly through public-interest litigation aimed at compelling public authorities and private entities to comply with environmental, social and climate-related obligations.

Within this context, NGOs have emerged as leading plaintiffs in lawsuits seeking to enforce environmental and labour legislation and to ensure the implementation of public policies relating to sustainability and social justice. A notable example is Class Action No. 5157467-55.2024.8.21.0001, filed in July 2024 against the State of Rio Grande do Sul, in which an NGO seeks to compel the state government to adopt a just energy transition plan. Another significant case is the judicial interpellation on carbon offset transparency (*IDEC v GOL Airlines*), further described in **6.3 Greenwashing**, which illustrates the growing use of legal instruments by civil society organisations (including NGOs and consumer associations) to promote transparency and accountability in corporate sustainability claims.

As a growing wave of ESG-related judicial and administrative claims gains momentum in Brazil, civil society organisations have become stakeholders in enforcement and accountability. Moreover, as ESG regulations continue to expand nationwide and cases become more complex and legally sophisticated, NGOs are consolidating their position as critical actors of the ESG practices adopted by both public authorities and private companies, while simultaneously influencing corporate behaviour and the formulation of more structured and coherent public and private policies aimed at strengthening sustainability and climate governance across the country.

6.3 Greenwashing

Legal Recommendation for the Suspension of Carbon Credits Projects in the Brazilian Amazon

In August 2024, the MPF issued Legal Recommendation No. 01/2024, recommending the suspension of all ongoing carbon projects within indigenous and traditional territories located in the Brazilian Amazon that are legally designated as specially protected areas under applicable environmental law. The recommendation was grounded on alleged irregularities in projects developed under the Reducing Emissions from Deforestation and Forest Degradation mechanism (REDD+), supported by studies and assessments conducted among indigenous peoples and traditional communities, including riverine and extractivist populations, who reported that their representative leaders had not been duly consulted. According to the MPF, the lack of consultation constitutes a breach of the right to free, prior and informed consent established under International Labour Organization Convention No. 169, ratified by Brazil. The recommendation drew significant national and international attention and prompted responses from private entities, governmental bodies and civil society organisations active in Amazon-related initiatives. In November 2024, given diverging interpretations and institutional positions, the matter was brought before the judiciary through Class Action No. 1040956-39.2024.4.01.3200, filed by the MPF against the State of Amazonas and the National Foundation for Indigenous Peoples (FUNAI). No judicial ruling has been rendered yet.

Operation Greenwashing

In 2024, the Federal Police advanced with Operation Greenwashing, an ongoing investigation into the illegal commercialisation of carbon credits generated from unlawfully occupied federal lands in the Amazon. It was conducted across six states (Rondônia, Amazonas, Mato Grosso, Paraná, Ceará and São Paulo), with support from the National Institute for Colonisation and Agrarian Reform (INCRA), the Federal Revenue Service (RFB), the National Civil Aviation Agency (ANAC) and the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA). The fourth phase of the operation, launched in December 2024, targeted deforestation and other environmental crimes, including illegal wildlife hunting, within the Iquiri National Forest (Porto Velho/Rondônia).

Judicial Interpellation on Carbon Offset Transparency: IDEC v GOL Airlines

In January 2025, the Brazilian Institute for Consumer Protection (IDEC) filed a judicial interpellation against GOL Linhas Aéreas S.A., alleging misleading environmental claims related to the company's voluntary carbon offset programme, "Meu Voo Compensa". The proceeding forms part of a broader set of actions brought by IDEC targeting alleged greenwashing practices and questioning the veracity of GOL's statements on GHG neutrality and the integrity of the carbon credits used and promoted as sustainable. In March 2025, in its defence (March 2025), GOL denied any greenwashing practices, asserting that its sustainability initiatives are transparent, independently audited and based on internationally recognised methodologies, including the GHG Protocol and Verra-certified credits. The company further emphasised that its sustainability reports are verified by Ernst & Young and that its communications seek to inform consumers and reaffirm its commitment to ESG principles and voluntary emissions reduction. It is worth noting that IDEC is a nonprofit consumer protection organisation that has advocated for stricter greenwashing regulation in Brazil, underscoring the growing influence of civil society associations and NGOs in shaping and enforcing the ESG agenda nationwide.

6.4 A Turbulent Future Ahead

In Brazil, proceedings involving ESG matters still occur in limited numbers. Nonetheless, recent research indicates a shifting landscape, particularly regarding climate-related litigation, as evidenced by data from the Panorama of Climate Litigation in Brazil report (2024), prepared by researchers at the Pontifical Catholic University of Rio de Janeiro (PUC-Rio).

This shift can be associated with the gradual strengthening of Brazil's regulatory landscape over the past few years, as ESG issues have gained increasing importance within the country's well-established legal framework.

Despite the expected rise in ESG-related proceedings in the coming years, such cases are likely to remain significantly less representative when compared to the volume of the 'traditional litigation' already consolidated over decades. Nevertheless, ESG-related issues are gaining in importance within the scope of this 'traditional litigation', serving as guiding or supplementary elements to initiate discussions or raise legal arguments, as well as to support judicial reasoning by Brazilian courts, alongside legal provisions not directly related to ESG matters, for example.

Trends and Developments

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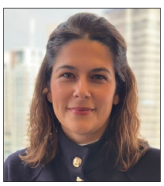
Giovanna Parga Martinez, Antonio Andrade and Clara Souza
Mello Torres

Mello Torres unites the expertise of professionals with extensive experience in the corporate and financial sectors and the dedication of lawyers with a distinguished academic background. The firm stands out for its technical rigour, strategic vision and commitment to delivering sophisticated and business-oriented legal solutions. Its main practice areas include tax, corporate, mergers and acquisitions (M&A), environmental, ESG, mining, litigation and arbitration, banking and project finance, infrastructure, public and regulatory law, labour, real estate, competition and compliance. With a multidisciplinary team and an integrated approach, Mello Torres offers comprehensive legal advice combining market knowledge, precision and innovation. Guided by ethics, sustainability and long-term value creation, the firm provides legal excellence and strategic impact in every engagement, reinforcing its position as a trusted partner for clients navigating complex business and regulatory environments in Brazil and abroad.

Authors



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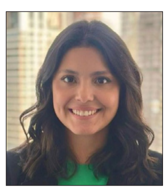

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Workers' Mental Health and Changes to Normative Ruling No 1 ("NR-1"): A Strategic Imperative in the ESG Landscape

The COVID-19 pandemic deeply impacted people's mental health across the globe. Social isolation, a pervasive sense of insecurity, and overwhelming uncertainties stemming from the pandemic's economic and social fallout left an indelible mark on global society. Yet, from the legal, institutional and people management standpoints, the crisis triggered by the COVID-19 pandemic also served as a catalyst, prompting both individuals and organisations to acknowledge that the traditional boundaries between personal and professional well-being were blurred and to reexamine the importance of mental well-being as an essential element of occupational health.

Likewise, mental health, long regarded as a peripheral or even a taboo subject in professional settings, has also been elevated to the forefront of public and corporate concern. Within this context, a collective consciousness has been awakened about the need to safeguard our well-being, acknowledge the fragility of our psychological health, and adopt a more integrated and empathetic approach in professional environments. This shift reflects a growing recognition that mental health is not merely an individual issue but a collective responsibility with significant implications for organisational productivity, culture and social welfare. Indeed, statistics indicate a staggering 68% increase in social security leave requests over the last ten years. This trend confirms the growing and undeniable need to look after the mental health conditions of the working population.

In Brazil, data shows that of the 179,991 temporary disability benefits recognised as of an occupational nature ("B91") granted by the Brazilian Ministry of Social Security in 2024, approximately 5% (9,827) were directly linked to mental and behavioural disorders. This statistic is particularly concerning, underscoring the significant burden of mental illness within the working population. It is also pointed out by the Pan American Health Organization (PAHO) that depression holds the top spot among these disorders, especially for women. Alarmingly, PAHO's research indicates that depression is twice as common in women as it is in men, highlighting a gender disparity that requires further research and targeted interventions. These figures also show a global trend where mental health challenges are increasingly recognised as leading causes of disability and lost productivity.

As a supportive measure to mitigate the detrimental impacts mentioned above, the provision of benefits related to well-being has transitioned from a niche offering to a widespread market practice. Research conducted by McKinsey Health reveals that nine out of ten companies now offer these benefits, an indication that organisations are recognising the value of investing in their employees' psychological health and starting to adopt proactive strategies on the matter. These benefits are diverse and include, for example, subsidising therapy and gym memberships, meditation and massage sessions, wellness retreats, organising running groups, and granting leave without salary deductions.

The expanded scope of NR-1 and its legal implications

Building on this momentum, in August 2024, the Brazilian Federal Government enacted significant adjustments to Normative Ruling No 1 (NR-1) of the Ministry of Labour and Employment (*Ministério do Trabalho e Emprego* – MTE). The revised regulation expressly requires companies to start analysing, identifying, preventing and mitigating psychosocial risks to which their workers may be exposed. This development represents a paradigm shift in Brazil's occupational safety and health framework.

Firstly, because the explicit inclusion of psychosocial risks broadens the scope of employers' responsibility beyond those professionals directly employed by them, in a manner that encompasses their entire "staff" (including those without employment status, as occurs with outsourced workers), companies are likely to increase the emphasis on governance and compliance within the selection, monitoring and management of the chain of production partners, and to prioritise counterparties with corporate governance, transparent ownership structures and verifiable compliance programmes and standards.

Furthermore (and most importantly), workers' mental and emotional well-being has now been formally elevated to the same level of importance as traditional categories of occupational hazards, namely, physical, chemical, biological and accident-related risks. This legal recognition also validates the line of understanding on the part of the Brazilian Labour Courts that recognises employers' liability whenever there is a link between the work environment conditions or the activities performed by the worker and the mental health issue raised by the worker. As a result, more proactive monitoring, with the implementation of robust internal policies, is needed from the organisations, as a safe and healthy workplace mitigates legal exposures.

Notwithstanding, under the new wording of NR-1, psychosocial risks need to be reported jointly with the other typical "ergonomic risk factors" identified in the Risk Management Programmes (*Programas de Gerenciamento de Riscos* – PGR). This expansion is groundbreaking as it now includes factors that can directly affect the mental health of both direct and indirect employees, such as stress, a non-supportive work environment that offers low or no room for professional growth, exposure to situations of harassment and recurring internal conflicts, low wages, and subjection to exhausting work schedules. However, the introduction of these requirements has generated debates, doubts and practical challenges for employers. For one, the new wording of NR-1 has the potential to classify a mental illness as an occupational disease, which makes the involvement of a technical and multidisciplinary team absolutely essential to evaluate whether there is a link between the psychosocial illness and the employee's professional activities. Establishing this link is not straightforward – considering the subjective nature of mental health conditions, combined with the multifactorial causes of psychological distress – and demands a thorough analysis due to the legal implications that it may trigger, such as the employee's entitlement to job protection and the consequence of restriction to terminate without cause and also the possibility of interrupting work activities when a reported severe and imminent risk to a worker's life or health is not remediated (an aspect that was already contemplated in the original wording of the regulation).

Furthermore, by having the obligation to identify, detail and assess the severity, probability and levels of psychosocial risks, companies will also be forced to address difficult and highly sensitive matters. A prime example is the necessity for readiness, including an action plan to be executed, in the event of employee suicide. This is an incredibly sensitive situation that should be handled in accordance with the company's protocols for crisis intervention and support, not only for ethical reasons but also to mitigate significant legal and reputational risks. In this context, it is important to point out that Brazilian Labour Courts have already issued judgments recognising employers' liability and determining the payment of moral damages in such cases, even prior to the amendment's effectiveness, indicating a broader jurisprudential trend towards corporate accountability in mental health matters.

The discussions were so intense that the MTE decided to postpone the effectiveness date of this amendment to 26 May 2026. This deferral represents an acknowledgement of the magnitude of the necessary systematic changes and of companies' need for more time to enable proper compliance with the new regulatory landscape.

Looking forward: the new frontier of workplace regulation

As a result of psychosocial risks being encompassed in the category of "ergonomic risk factors", it is expected that the Brazilian Government will also take advantage of the postponement of the regulation's effectiveness date to update the relevant systems and/or applicable orientation manuals. This is a crucial step to enable the regulation to be fully effective. In the future, the psychosocial risks identified by companies are expected to be automatically reflected in the e-Social system (specifically in the events connected to Occupational Safety and Health – SST) and in the Electronic Professional Social Security Profiles (*Perfil Profissiográfico Previdenciário Digital* – PPP Digital) of the workers. This digital integration is essential for creating a comprehensive, traceable record of an employee's exposure to all types of occupational risks, as required for granting social security benefits.

Even though the regulation's effectiveness is set for May 2026, Brazilian law is already clear in imposing on employers the duty to care for the work environment. Therefore, companies can still be exposed to inspections by labour auditors, especially those that operate in sectors considered "high-risk" by the MTE, such as telemarketing, financial services and healthcare facilities. These inspections can aim, among others, at enabling comfortable, safe, healthy and ergonomic workspace conditions, as well as the efficient organisation or performance of work itself, as already provided for by NR-17 (which provides rules and requirements to allow the adjustment of the work conditions to the workers' psychophysical characteristics). This means that a proactive approach is not only prudent but highly advisable and legally strategic.

As mentioned earlier, discussions about the validity of employee dismissals – whether due to a potential right to job protection after returning from sick leave or the presumption of a "discriminatory" termination of employees with mental illnesses (such as depression and bipolar disorder) – cannot be disregarded either. The legal risks are real and present. Furthermore, claims for moral damages, as well as inquiries from the Labour Prosecutor's Office (*Ministério Público do Trabalho* – MPT) and/or labour unions about the practices adopted by companies, which may further result in collective lawsuits, are a looming threat. These issues cannot be ignored, even before the new wording of NR-1 becomes effective. The new regulation will likely result in a more explicit legal landscape for such individual and collective actions.

Strategic and preventive measures

From a corporate governance perspective, the quality of the work environment also directly impacts key performance indicators such as employee retention, engagement and productivity. The McKinsey Health studies also point out that toxic culture is the primary cause of adverse outcomes for organisations. For example, it is linked to a high intention to quit (ie, 73% of employees in toxic workplaces plan to leave), a significant rate of burnout (70%), widespread distress (69%), and elevated levels of depression (64%) and anxiety (62%). These numbers are not just statistics; they represent a significant "drain" on human potential and a substantial financial cost to businesses. A toxic workplace leads to higher turnover, costs with dismissals and consequent recruitment, absenteeism and, under more extreme scenarios, even negative impacts on the organisation's image and reputation.

In view of this data, investing in a positive workplace culture and proactively managing psychosocial risks is not merely a compliance matter. Still, it can be strategic for long-term business success and sustainability. For this reason, companies should consider adopting preventive mental health measures as part of their compliance and business strategies. These measures may include:

- employee awareness campaigns and leadership training to equip the workforce with the necessary skills to identify, address, support and acknowledge available resources to address mental distress and self-care matters;
- creation of dynamics and/or programmes that strengthen the bonds between people, social cohesion and team connection (for instance, team-building events, happy hours, wellness initiatives, off-site events, themed breakfasts, running groups

and voluntary group activities) to foster employees' sense of belonging and build resilient support networks within the workplace;
- establishing transparent and confidential spaces (such as anonymous whistleblowing channels) in which the worker can report psychological safety concerns without fear of retaliation;
- periodic review of remuneration structures to ensure fairness, competitiveness, employees' value and the reduction of financial anxiety; and
- policies promoting a culture that respects work–life boundaries and encourages effective use of breaks, pauses, rest periods and vacation time.

Beyond mitigating labour legal exposures, ensuring a healthy work–life balance also contributes to the ESG agenda. In other words, these measures not only help in the organisation's defence from a legal perspective, but also foster safer, a more equitable and sustainable workplace and society. In this sense, investment in employee well-being should no longer be viewed as a discretionary benefit, but rather as a strategic imperative and essential for ensuring both compliance and long-term sustainability.

Concluding remarks

The new wording of NR-1 helps create a new standard for corporate responsibility. It represents a watershed moment in Brazilian labour and social security regulation, redefining corporate responsibility for workers' mental and emotional well-being. The postponement of the ruling's effectiveness until 2026 should not be perceived as an opportunity for deferral, but rather as an essential preparatory period for building the technical, legal and cultural frameworks required for compliance.

Ultimately, the integration of psychosocial risk management into occupational safety standards aligns Brazil with international best practices and signals a decisive shift towards a more holistic and human-centred approach to labour regulation. This progressive stance not only protects the fundamental rights of workers but also drives innovation in people management, contributing to a more productive, resilient and socially responsible economy.

CANADA

Law and Practice

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Contents

McMillan LLP is a leading business law firm serving public, private and not-for-profit clients across key industries in Canada, the United States and internationally. With recognised expertise and acknowledged leadership in major business sectors, the firm provides solutions-oriented legal advice through its offices in Vancouver, Calgary, Toronto, Ottawa and Montréal. The team advises clients on key environmental, social and governance aspects of their business, from M&A in the clean energy space (and M&A opportunities driven by environmental considerations) to EDI and sustainable investment strategies. The firm believes in the importance of doing business differently and help its clients to understand not only the risks of environmental, social and governance inaction but the opportunities available for growth and differentiation.

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1. Introduction

1.1 General ESG Trends

Key ESG Developments in 2025

In 2025, Canada's ESG legal landscape reflects a shift from accelerated regulatory expansion to a cautious pause, as policymakers reassess and align domestic disclosure requirements with evolving international standards and market conditions. A balancing act between progress and growing uncertainty is occurring, as global economic and geopolitical turbulence have tempered earlier momentum toward ambitious sustainability commitments.

Legislative changes have been especially significant: amendments to the Competition Act, effective June 2024 and expanded in June 2025, explicitly target greenwashing by requiring businesses to substantiate environmental claims, which supplement recently introduced steep new penalties (up to 3% of worldwide revenues), and creating a private right of action, including for activists, consumers, and competitors. While designed to promote transparency, these amendments raised concerns of uncertainty, which resulted in "greenhushing": many businesses, particularly in oil and gas and financial services (that invest in oil and gas businesses), scaled back and even withdrew public ESG commitments to avoid litigation risk.

In June 2025, the Commissioner of Competition issued guidance which sought to provide certainty and limit the scope of enforcement, including limiting enforcement to consumer-facing marketing, rather than disclosures mandated under securities laws and other regulatory regimes. As of late 2025, no cases have yet been filed.

As a most recent development, to respond to this market uncertainty and drive investment, on 5 November 2025, as part of the federal budget, the Canadian government announced its plans to further amend the Competition Act to remove the standard to substantiate claims that many businesses believed was difficult if not impossible to comply with, and to remove the private right of action, thus re-inserting the Commissioner of Competition as the "gatekeeper" of enforcement of greenwashing claims.

Meanwhile, the Ontario Securities Commission (OSC) initiated a Tribunal application against a fund manager for alleged false ESG marketing, marking a new front in enforcement under the Securities Act. In parallel, the Canadian Securities Administrators (CSA) paused work on its mandatory climate disclosure rule in April 2025, after the US SEC retreated from similar measures. The federal government likewise deferred implementing previously announced CBCA amendments that would have mandated climate disclosures for large private corporations.

Confidence in the financial sector was rattled when major Canadian banks withdrew from the UN-backed Net-Zero Banking Alliance in 2024, and uncertainty deepened in September 2025 when Prime Minister Carney declined to reaffirm Canada's 2030 Paris Agreement targets. ESG remains central to Canadian businesses, but the path forward is now more contested than linear.

ESG and Indigenous Communities

The federal Indigenous Loan Guarantee Program (the "ILG Program") was officially launched on 21 February 2025. First announced in the government's 2023 Fall Economic Statement and again in Budget 2024, the ILG Program initially offered CAD5 billion in loan guarantees to Indigenous communities. In March 2025, the federal government expanded the ILG Program, doubling the funding to CAD10 billion and broadening the sector eligibility beyond just natural resources and energy into "major projects across all sectors of the economy", excluding gaming.

Under the ILG Program, loans provided to Indigenous communities by financial institutions and other lenders will be guaranteed by the Canadian government, allowing these communities to benefit from the government's AAA credit ratings and consequently receive lower interest rates than they may otherwise have received. The ILG Program is intended to create economic opportunities, support Indigenous communities in developing their own economic priorities and to ensure right-holders are a part of Canada's accelerated push to build.

In May 2025, the Canada Indigenous Loan Guarantee Corporation (CLIGC), created to facilitate the ILG

Program, issued its first loan guarantee, covering CAD400 million of a CAD736-million investment to a partnership of 36 First Nations in British Columbia to support the investment of a 12.5% ownership interest in Enbridge's Westcoast natural gas pipeline system.

Further emphasising the continued growth in Indigenous equity ownership, particularly in the energy and infrastructure sectors, provincial procurement programmes, like the BC Hydro Call for Power initially launched in 2024 and again in 2025, have mandated requirements and incentives for Indigenous equity participation. The 2025 Call for Power, announced in July 2025, builds on the 2024 Call, which was the first in over 15 years and resulted in ten selected projects totalling nearly 5,000 GWh, and featuring Indigenous equity ownership between 49% and 51%.

AI Code

In 2023, Canada launched the Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems (the "AI Code") to achieve accountability, safety, fairness and equality, transparency, human oversight and monitoring, and validity and robustness in the development of AI. The AI Code is voluntary. As of 21 March 2025, 46 companies, including Lenovo, Mastercard, CIBC and Telus, have signed the AI Code.

Additional federal initiatives include Canada's Artificial Intelligence Safety Institute (AISI), announced in November 2024, intended to bolster Canada's capacity to address AI safety risks. The AISIA is just one component of the broader CAD2.4 billion investment announced in Budget 2024 that seeks to help researchers and businesses develop and adopt AI responsibly.

Despite the growing concerns related to AI and its management, Bill C-27, the Artificial Intelligence and Data Act (AIDA), intended to update Canada's digital privacy and data protection laws, died upon the prorogation of Parliament in early 2025. Therefore, Canada's current data privacy legislation, the Personal Information and Electronic Documents Act (PIPEDA) remains in effect, and the government will need to re-introduce Bill C-27 (or a similar bill) in a future for it to have another chance to become law.

At the individual level, organisations are increasingly expected to have AI governance structures, risk assessments, oversight, transparency and monitoring in place, directly tying into the "governance" piece in ESG. Also emerging as a key area of concern is the exponential energy demand of AI data centres. With analysts forecasting that data centres could consume up to 8% to 10% of global electricity by 2030, and regulatory authorities increasingly focused on how best to manage such demand, there does exist an opportunity for Canada to lead the way as a hub for AI data centres due to its abundance of renewable-energy sources.

1.2 Environmental Trends

There have been significant developments in the E of ESG in a variety of areas, including regulation of plastics, clean electricity and the right to repair.

Plastic and "Forever Chemicals" Regulations

Plastic regulations

Canada's progress towards its objective of zero plastic waste by 2030 continued in 2025, with the government's publication of its Proposed Roadmap to Extend the Life of Plastics in End-of-Use Electronics (the "Proposed Roadmap") and the introduction of a new National Standard of Canada, CSA R117:24: Plastics Recycling: Definitions, measuring and reporting (the "CSA Plastics Standard") by the CSA Group, a not-for-profit standards organisation that leads the advancement of standards in the public and private sectors. The Proposed Roadmap, with the final version expected to be published in 2025, focuses on three priority action areas: data collection, collaboration and innovation, and aims to promote the repair and reuse of electronic products to reduce plastic waste. The CSA Plastics Standard aims to establish a consistent definition for plastics recycling.

In June 2025, Canada also launched the official reporting platform for its Federal Plastic Registry. The Registry, which requires companies to register and report on plastics supplied in Canada for the 2024, 2025 and 2026 years, is intended to inform Canada's extended producer responsibility and is part of Canada's broader strategy to reduce plastic pollution and promote a circular economy.

Forever chemicals regulations

On 5 March 2025, the federal government published its Final State of PFAS Report (the "Final Report") and proposed Risk Management Approach for Per- and Polyfluoroalkyl Substances (PFAS), Excluding Fluoropolymers (the "Risk Management Approach"). In the Final Report, the government concluded that the entire class of PFAS, excluding fluoropolymers, meet one or more criteria for designation as toxic substances under the Canadian Environmental Protection Act, 1999, indicating imminent stricter regulations for the "forever chemicals". Adding PFAS (excluding fluoropolymers) to the List of Toxic Substances in Schedule 1 of CEPA will empower the federal government to create regulations that restrict the use, manufacture, import and release of the listed substances.

Together, the Final Report and Risk Management Approach propose a precautionary, class-based approach to PFAS regulation, in which regulatory measures would apply to all substances under the PFAS class rather than specific varieties of PFAS. These PFAS regulations will reshape many sectors by restricting the manufacture, import, use, and sale of PFAS-containing products and directly targeting businesses reliant on these substances in their operation.

Businesses are advised to be aware of both federal and provincial regulations impacting their operations related to PFAS, as these changes may heighten litigation risks and public scrutiny.

Clean Energy Regulations

The Clean Energy Regulations are a key component of Canada's 2030 Emissions Reduction Plan, aimed at achieving net-zero emissions by 2050.

On 17 December 2024, the government released the finalised Clean Electricity Regulations (the "Regulations"). Key updates include the introduction of alternative mechanisms for achieving compliance, which includes revising emission limits to an absolute emissions approach expressed as an annual emission limit, the introduction of a compliance credit system to enable long-term compliance strategies, staggered timelines for compliance, and streamlined procedures for operating high-emission units during emergencies. Beginning in 2035, the Regulations will set limits on carbon dioxide pollution from almost all electricity generation units that use fossil fuels, with the goal of ensuring a net-zero electricity system by 2050, a key tenant of Canada's Clean Energy Strategy.

Right to Repair

In Budget 2024, the government of Canada committed to launch consultations on a right to repair (RTR) policy for home appliances and consumer electronics. The goal of this policy is to improve product durability and repairability so that devices work longer and harmful electronic waste is reduced. This consultation period is one part of a process to develop a fulsome federal approach to the RTR.

The federal government intends the RTR policy be based on the principles of repairability, interoperability and durability.

1.3 Social Trends

Modern Slavery Act

This year marked the second year of reports submitted pursuant to the Fighting Against Forced Labour and Child Labour in Supply Chains Act (the "Modern Slavery Act") which targets forced labour and child labour by mandating certain entities to report on the measures they are taking to prevent and mitigate the risks of forced and child labour in their supply chains.

In late 2024, Public Safety Canada published updated guidance on the Modern Slavery Act reflecting feedback provided by entities and others. The guidance clarified three central aspects of the reporting requirements: (i) who must report; (ii) what the report must contain; and (iii) how the report must be filed.

Human Rights Due Diligence

Building upon the Modern Slavery Act, the federal government is considering developing human rights due diligence (HRDD) legislation.

In Canada's 2024 Fall Economic Statement, the government announced its intention to introduce supply chain due diligence legislation that would require entities operating in Canada to engage with and scrutinise their supply chains for risks to fundamental human and labour rights and require businesses to take definitive action to address and resolve such risks, where found. No reported progress has been made, including wider industry and public consultation, on the proposed HRDD legislation, nor is such progress likely forthcoming.

The federal government has proposed an allocation of CAD25.1 million over two years, starting in 2025 and 2026, to Global Affairs Canada and the Canada Border Service Agency to support the implementation of proposed legislative amendments to strengthen Canada's import ban on products produced by force labour.

Federal UNDRIP Action Plan

In 2023, the federal government launched the 2023-2028 Action Plan (the "Action Plan") to implement the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). The Action Plan "outlines a whole government roadmap for advancing reconciliation with Indigenous Peoples through a renewed, nation-to-nation, government-to-government, and Inuit-Crown relationship based on recognition of rights, respect, cooperation, and partnership as the foundation for transformative change". The plan is not a static document but must continue to develop in consultation with First Nations, Inuit and Métis.

Developed over two years of consultation with First Nations, Inuit and Métis, the Action Plan outlines 181 measures organised into five chapters that address shared and specific priorities of Canada's Indigenous Peoples. The Action Plan stems from the UNDRIP Act, which mandates alignment of Canadian laws with UNDRIP and requires annual progress reports.

In August 2025, the second progress report was released. Some concrete measures in the report include:

- the incorporation of a non-derogation clause in the federal Interpretation Act, ensuring that all federal laws are interpreted in a way that doesn't infringe Aboriginal and treaty rights;
- the creation of an Indigenous-led independent advisory committee;
- the release of an Indigenous Justice Strategy aimed at reducing overrepresentation in criminal justice;
- measures to improve federal services in Indigenous languages; and
- ensuring stewardship and co-management with Indigenous partners in federal parks and protected heritage places.

How the federal government continues to collaborate with Indigenous communities to achieve the goals of the Action Plan remains to be seen. Given the importance of Indigenous matters to ESG in the Canadian context, readers should review how the federal government is working towards reconciliation through the Action Plan and the annual progress reports.

1.4 Governance Trends

A key development in terms of governance started in 2022, when Corporations Canada updated requirements for businesses incorporated under the Canada Business Corporations Act (CBCA) to disclose information to shareholders and Corporations Canada on the diversity of their boards of directors and senior management teams. Corporations must specifically report on the four designated groups defined in the Employment Equity Act, which includes:

- women;
- Indigenous Peoples;
- persons with disabilities; and
- members of visible minorities.

The introduction of new guidelines around climate risk management published by the Office of the Superintendent of Financial Institutions (OSFI) enhance the governance aspect of ESG. As of 2025, Canadian banks, insurance companies and federally regulated financial institutions (FRFI) are required to disclose climate-related risks and opportunities. Board members are now also charged with ensuring that management's approach to climate-related risks is both precise and effective.

On 20 February 2025, the OSFI issued a letter to industry announcing updates to its Guideline B-15: Climate Risk Management, which applies to federally regulated financial institutions. The updates ensure interoperability with corresponding requirements of the CSSB standards and set out OSFI's governance and risk management expectations for climate-related risks and the disclosure requirement of climate-related risks.

1.5 Government and Supervision

The ESG transition in Canada is propelled by all levels of government, as well as various regulatory bodies. The CSA is the umbrella organisation of Canada's provincial and territorial securities regulators whose objective is to improve, co-ordinate and harmonise regulation of the Canadian capital markets. To date, the CSA has been primarily responsible for the development of ESG regulations applicable to reporting issuers wishing to access the Canadian capital markets.

The CSA has established several regulations for reporting issuers related to ESG disclosures and practices, including:

- National Instrument 51-102, which mandates disclosure of environmental risks which are material to an issuer;
- National Instrument 52-110, which sets independence requirements for audit committees; and
- National Instrument 58-101, which requires disclosure of corporate governance practices, including diversity metrics.

The CSA has also issued guidance to reporting issuers over the years regarding ESG disclosure obligations. This includes guidance on environmental reporting (CSA Staff Notice 51-333), climate-related risks (CSA Staff Notice 51-358), and on the concerns of overly promotional ESG disclosure (CSA Staff Notice 51-364) and disclosure practices by investment funds as they relate to ESG (CSA Staff Notice 81-334 (Revised) ESG-Related Investment Fund Disclosure). CSA guidance does not impose any new standards but is published to clarify existing obligations of issuers in the context of a growing focus on ESG-related issues.

The CSA had previously published for comment proposed National Instrument 51-107 – Disclosure of Climate-related Matters (NI 51-107), which sets out a proposed framework for Canada's first mandatory climate-related disclosure rules. However, in light of global economic and geopolitical developments, including the US Securities and Exchange Commission's decision on 27 March 2025 to withdraw its defence of its climate disclosure rules, the CSA announced that it has paused its efforts to develop a mandatory climate-related disclosure rule for reporting issuers.

Notwithstanding this uncertainty, certain branches of the security regulators in Canada are continuing to focus on ESG-related matters.

Stock exchanges in Canada may also impose additional ESG requirements with respect to listed issuers. See **2.2 Differences Between Listed and Unlisted Entities** for further discussion.

Other regulatory bodies, such as OSFI, which oversees and regulates federally registered banks, insurers, pensions plans, and trust and loan companies, play an important role in regulating ESG in Canada. OSFI's climate reporting regulations require FRFIs to report GHG emissions, including Scope 3 emissions. See **1.4 Governance Trends**.

Additionally, a variety of recommendations, guidelines and standards have been or are being developed by government agencies.

Lastly, supervisory authorities, such as the Canadian Association of Pension Supervisory Authorities' (CAPSA) play a significant role in this transition.

1.6 Market Participants

As Canada deepens its commitment to a net-zero economy, ESG-related laws and regulations are reshaping how industries operate. While all sectors have felt the effects of federal and provincial measures, three stand out as particularly exposed in 2025: energy, financial services, and mining.

Energy

The energy sector remains the most heavily regulated when it comes to climate policy.

Most notably, the federal government announced the cancellation of the federal consumer fuel charge, effective 1 April 2025, ending the consumer carbon tax and rebate programme. British Columbia likewise chose to eliminate its provincial consumer carbon tax, also on 1 April 2025.

Yet, the industrial carbon pricing systems that apply to large emitters remain fully in force. The Output-Based Pricing System (OBPS), established through the output Based Pricing System Regulations under the Greenhouse Gas Pricing Act, creates a price incentive for industrial emitters (such as those in the energy sector) to reduce their GHG emissions, spur innovation, maintain competitiveness within the industry and protect against the risk of industrial facilities moving from one region to another to avoid paying a price on carbon pollution. The OBPS continues to cover jurisdictions such as Manitoba, Prince Edward Island, Yukon and Nunavut, while provinces like Alberta, British Columbia, Saskatchewan and Quebec maintain their own pricing regimes. For major producers, the financial incentive to cut emissions has therefore not gone away.

In addition to the OBPS, there is the OBPS Proceeds Fund, which is a programme that assists Canada in returning proceeds from the OBPS strain of the carbon tax scheme to their jurisdiction of origin.

As mentioned previously, the federal government finalised the Clean Electricity Regulations in late 2024, setting binding emissions standards for fossil-fuel fired generation starting in 2035.

Methane is another focal point for Canada's energy goals. In particular, Canada's Methane Strategy is a key initiative aimed at significantly reducing methane emissions in the energy sector, originally introduced in the 2030 Emissions Reduction Plan and updated in 2023 with a regulatory framework. The draft Enhanced Oil and Gas Methane Regulations, released in December 2023, target a 75% reduction in methane emissions from oil and gas operations compared to 2012 levels by 2030. These Regulations propose stricter emissions monitoring, risk-based inspection schedules and mandatory annual third-party audits, with the first requirements set to take effect in January 2027.

Meanwhile, in June 2024, legislation was enacted implementing the carbon capture, utilisation and storage investment tax credit (CCUS ITC), the clean technology investment tax credit (Ct ITC), the clean hydrogen investment tax credit (CH ITC), and clean technology manufacturing investment tax credit (CTM ITC), each offering significant tax incentives for clean energy and promoting investment in emissions-reducing technologies. The government has announced that it expects these clean economy tax credits to support CAD200 billion of private capital investment in Canada over the next five years.

In line with the increased focus on capital investment in Canada, in 2025, governments across the country announced numerous initiatives to fast-track and prioritise certain infrastructure projects. In British Columbia, for example, two key bills received royal assent in May 2025: Bill 14: Renewable Energy Projects (Streamlined Permitting) Act, and Bill 15: Infrastructure Projects Act. Bill 14 established the BC Energy Regulator as the primary permitting agency for renewable energy projects and transmission lines, and streamlined the approval process for certain renewable energy projects, including by excluding certain projects from the provincial environmental assessment process. Bill 15 provides legislative and regulatory tools the Province can use to advance decisions on infrastructure projects that are deemed to be in the public interest.

In a similar vein, across the country, Ontario enacted Bill 5: Protect Ontario by Unleashing our Economy Act, 2025, which aims to "streamline approval processes" and "cut red tape and duplicative processes that have held back major infrastructure". At a federal level, Bill C-5: One Canadian Economy Act, received royal assent in June 2025. This Bill enables an accelerated regulatory process for infrastructure projects which the federal government designates as in the national interest. While streamlining approvals, Bill C-5 also aims to protect the environment and the rights of Indigenous peoples, including those rights recognised and affirmed by Section 35 of the Constitution Act, 1982 and set out in UNDRIP.

Financial Services

Canada's financial sector is experiencing ESG pressures less from new legislation than from enforcement against greenwashing. Proposed legislation, including the Act to Enact the Climate-Aligned Finance Act, which sought to mandate large companies to disclose climate-related risks, never passed before Parliament and was dissolved in early 2025.

Despite a lack of tangible developments in legislation, in practice, banks, asset managers and issuers now face higher reputational and legal risks if their climate commitments lack robust governance and evidence. The emphasis has therefore shifted from aspirational pledges to tangible and defensible proof.

Mining

The mining sector sits at the intersection of risk and opportunity when it comes to ESG-related issues. On the one hand, it has long-faced scrutiny over environmental impacts, Indigenous rights, and community relationships. On the other hand, the mining sector is increasingly recognised as indispensable to Canada's low-carbon future due to its abundant reserves of critical minerals like lithium, nickel, cobalt, graphite, copper and rare earth elements that are essential inputs for things like EV batteries to solar panels.

Canada's Critical Minerals Strategy underpins this dual narrative. In 2025, the federal government launched the Critical Minerals Infrastructure Fund which provides up to CAD1.5 billion in federal funding until 2030 for clean energy and transportation infrastructure projects necessary to enable the sustainable development and expansion of critical minerals in Canada.

The first tranche of CMIF funding was announced in Spring 2025 and included multiple Indigenous-led or co-developed projects, highlighting the practical link between reconciliation and resource development.

Initiatives like the CMIF present a valuable opportunity for the Canadian mining industry to become a leader in sustainably developing the critical minerals required to meet the transition to a low carbon economy. Such initiatives also signal that Indigenous equity ownership is rapidly becoming the new normal in major projects.

The mining industry continues to face significant challenges as companies are charged with enhancing their sustainability practices and minimising their carbon footprints to align with the government's net-zero targets. Regulatory processes now demand stronger independent oversight, and Indigenous groups are pressing for early involvement in design, monitoring and risk assessment. Companies that fail to meet these expectations face growing legal and reputational risks.

Programmes such as the Towards Sustainable Mining Initiative (the "TSM Initiative") implemented by the Mining Association of Canada, are in part a response to the challenges faced by the mining sector and have become a de facto benchmark for ESG performance in Canadian mining. The TSM Initiative, which has been adopted in countries like Finland and Spain, focuses on key performance indicators to ensure compliance with ESG initiatives and strengthen Indigenous and community relationships.

1.7 Geopolitical Developments

The progression of Canada's ESG movement in 2025 continues to be shaped by the country's political landscape and response to global geopolitical pressures. National priorities such as energy security, Indigenous reconciliation, and the transition to a green economy remain central drivers, but the past year has brought several new regulatory and geopolitical dynamics that heighten ESG considerations across both industry and the government, driving the development of ESG regulation and voluntary ESG progress.

Domestically, the federal government's decision to eliminate the federal consumer carbon tax while maintaining industrial carbon pricing through the OBPS highlights how domestic affordability concerns and regional pressures influence climate policy and political viability. At the same time, the government's advancement of the Clean Electricity Regulations and updated methane rules reinforces that the net-zero transition remains a structural commitment.

On the legislative and policy side, newly introduced legislation like the Modern Slavery Act, amendments to the Competition Act and its recently released June 2025 guidance requiring substantiation of all environmental claims, including forward-looking commitments, and the government's pledge to introduce mandatory HRDD legislation demonstrate that ESG is no longer peripheral, but woven directly into Canada's legislative and regulatory frameworks.

Globally, geopolitical conflicts have intensified the ESG lens on Canadian financial institutions and corporations.

The continued war in Ukraine and conflicts in the Middle East continue to raise questions about responsible investment, defence-sector exposure and supply chain integrity. In 2025, major Canadian pension funds and banks faced heightened public scrutiny over holdings in defence and energy companies tied to conflict zones.

At the same time, the federal government has reframed trade and investment policy around supply chain security. The expansion of the ILG Program and the launch of the CMIF in 2025 both carry geopolitical undertones: they are designed not only to advance reconciliation and domestic development but also to position Canada as a secure supplier of critical minerals.

In 2025, Canada's ESG landscape reflects a growing convergence between domestic politics and global geopolitics. For Canadian companies and investors, these means ESG strategy is becoming inseparable from sanctions compliance, supply-chain risk management and reputational resilience in an increasingly volatile geopolitical environment. Both the government and businesses must therefore remain agile, aligning policies with climate and social priorities while navigating rapidly shifting global political currents.

2. Corporate Governance

2.1 Developments in Corporate Governance

The CBCA has added a new requirement to increase transparency to fight money laundering and tax evasion. As of 22 January 2024, corporations created under the CBCA are required to provide information regarding Individuals with Significant Control (ISC) over the business to Corporations Canada. This disclosure is mandatory upon the inception of the company and must be updated annually in conjunction with the submission of annual reports. Certain other corporate statutes in various provinces and territories have also implemented requirements to produce transparency registers, subject to varying disclosure requirements.

These developments are in addition to the previously enforced requirements under Section 172.1 of the CBCA that promote accountability regarding diversity of boards of directors and senior management, which have been in effect since 2020.

2.2 Differences Between Listed and Unlisted Entities

Corporate governance requirements in Canada differ for listed and unlisted companies. Many unlisted companies are not "reporting issuers" in Canada and are not subject to the corporate governance requirements imposed by the CSA for listed entities and other reporting issuers. For example, listed entities are required under NI 58-101 to make diversity-related disclosure in their annual disclosure documents on a comply-or-explain basis and are also subject to certain independence requirements imposed by the CSA.

Further, listed entities are subject to the policies and rules of the applicable stock exchange in which they are listed and may be subject to different corporate governance rules and standards depending on the stock exchange in which they are listed.

Stock exchanges can also impose additional disclosure requirements. For example, the TSX and TSX-V policies require the timely disclosure of material information, which encompasses both material facts and material changes relating to a company, which can include ESG considerations such as environmental matters and climate change-related risks. The timely disclosure obligations in the exchanges' policies exceed those found in securities legislation.

2.3 Role of Directors and Officers

Directors have an obligation to consider any issue that may impact the best interests of a corporation. ESG developments in corporate law are expanding what constitutes the best interest of a corporation beyond simple financial considerations. For example, Section 122 (1.1) of the CBCA, which has been in place since 21 June 2019, states that directors and officers may consider the interests of stakeholders, such as employees, consumers and the environment, when exercising their powers and performing their duties.

Under Canadian securities laws, directors and officers of a reporting issuer are responsible for the issuer's compliance with timely and continuous disclosure rules and must approve certain documents filed with the securities regulator(s). Attention must be paid to the preparation of issuer disclosure documents, including the ESG-related disclosures therein, as Canadian securities laws in certain provinces and territories provide a right of damages or rescission against directors and certain officers, among others, for misrepresentations in certain disclosure documents.

The Modern Slavery Act mandates specific Canadian entities to report their efforts to eliminate forced and child labour within their corporate structure and supply chains. It also requires that a director or officer approve these reports and provides for severe monetary penalties for failure to file, including possible personal liability on the directors of the entity.

2.4 Social Enterprises

Canadian companies can be incorporated both federally and provincially (or territorially). British Columbia is the only Canadian jurisdiction that has adopted the business form of a "benefit company", which was created in June 2020 through an amendment to the British Columbia Business Corporations Act. Benefit companies are for-profit companies that must include a "benefit statement" and a "benefit provision" in their incorporation documents. In these documents, the company must specify the public benefits the company will promote, as well as declare its commitments to conduct its business in a "responsible and sustainable manner" and to promote the specified public benefits it has committed to. Benefit companies in British Columbia must submit benefit reports that measure the company's performance in implementing their social responsibility commitments against a third-party standard of their choice.

Each province has its own legislation governing the incorporation and regulation of not-for-profit corporations. A not-for-profit may also be incorporated federally under the Canada Not-for-Profit Corporations Act.

The law concerning charities and not-for-profits has not often been considered by Canadian courts. However, it is generally accepted that a not-for-profit must fall into one of the four "heads" of charitable purposes to benefit from certain tax advantages. Those heads were originally set out in *Tax v Pemsel*, an 1891 House of Lords case, and confirmed by the Supreme Court of Canada in *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR. Those four heads are:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; and
- other purposes beneficial to the community and not falling under any of the preceding heads.

2.5 Shareholders

There are increasing expectations for directors of corporations to consider a broader group of stakeholders, rather than focusing only on value maximisation for shareholders. At the same time, the increase in ESG-focused shareholder activism shows that some shareholders are pushing for further ESG action by companies.

3. Sustainable Finance

3.1 Progress in Green Financing

On 18 December 2024 the CSSB released the official versions of the first Canada-specific ESG reporting standards – the CSDS, CSDS 1 and CSDS 2. CSDS 1 and CSDS 2 mirror the disclosure standards released by the ISSB, with minor modifications relating to implementation timelines.

The CSDS were developed to implement the ISSB standards with modifications appropriate to the Canadian context, however, the CSDS are not mandatory. The CSA has not yet incorporated the CSDS into its rules. In April 2025, the CSA issued a statement that, due to recent global unrest, the adoption of any CSDS provisions was halted indefinitely.

In addition to the CSSB, the federal government announced, on 9 October 2024, its plan to establish a sustainable investment taxonomy (the "Taxonomy").

At a high level, the Taxonomy will be a set of guidelines that categorise sustainable economic activities with the goal of facilitating sustainable financing and investment and is intended to help Canada reach its sustainability targets of net-zero emissions by 2050 and limiting global temperature rise to 1.5°C.

3.2 Sustainable Finance Framework

To access the Canadian capital markets and raise capital in Canada, Canadian public companies which are not "venture issuers" are required to disclose matters such as the composition of the board (including the number of independent directors), any ethical business mandates on the board and matters related to the number of women on the board of directors in executive positions under Form 58-101F1 – Corporate Governance Disclosure. Lesser standards are applicable to those companies which are "venture issuers" under Canadian securities laws.

On 23 April 2025, the CSA announced that it was pausing work on proposed amendments to Form 58-101F1, noting that it would monitor domestic and international regulatory developments with respect to diversity-related disclosures and expect to revisit the project in future years.

3.3 Access to Green Financing

Access to green financing is still limited in Canada. One method of green financing is Canada's Green Bond programme, which began in March 2022 to mobilise capital in support of its climate and environmental objectives. In its initial release, the programme saw extensive demand, which led to a final book order of over CAD11 billion.

In November 2023, the government updated its Green Bond Framework to align with Canada's 2030 Emissions Reduction Plan, with updated priorities in terms of expenditures. Despite government green bonds being popular, corporate green bonds have yet to make as significant an appearance in Canada, as they have in other major financial jurisdictions.

3.4 Stranded Assets and Non-Bankables

The evolving ESG landscape provides significant challenges but also significant opportunities to the Canadian oil and gas sector, noting that the Canadian oil and gas sector has in recent years made significant investments and taken action to meet these challenges. The June 2024 amendments to the Competition Act to introduce greenwashing provisions and the political landscape, however, have created an uncertain regulatory standard.

The Canadian oil and gas sector is a global leader in investments and action in respect of the transition towards ESG goals, including investing in methane reduction, carbon capture technology and other technologies. For example, businesses are engaged in Canada's Hydrogen Strategy (announced in 2020), which is one of the ways in which the country aims to achieve net zero by 2050. The strategy includes a vision of growing the hydrogen sector up to a revenue over CAD50 billion. According to the federal government, low-carbon hydrogen has attracted over CAD100 billion in potential investments as of May 2024.

The uncertainty about the scope and enforcement of the amendments to the Competition Act to combat greenwashing raise significant challenges to the oil and gas industry's ability to communicate publicly about ESG plans, objectives and initiatives. In June 2024, many of the leading oil and gas companies removed statements about environmental goals and plans from their websites and social media pages and other public disclosure, typically citing concerns over the new greenwashing provisions in the Competition Act. As stated by Pathways Alliance, a consortium of Canada's largest oil sands producers with a goal of achieving "net zero by 2050," it makes it difficult for all Canadian companies who "want to communicate publicly about the work they are doing to improve their environmental performance", due to the "significant uncertainties" around the requisite methodology that must be used to substantiate public statements regarding actions that improve the environment or mitigate the effects of climate change, as it is not a defence that the claim is in fact true. This trend continued in 2025, with the Royal Bank of Canada announcing the retirement of its "Sustainable Financing Framework", citing, in part, the uncertainty arising from the standards set out in the new greenwashing provisions in the Competition Act.

The federal government's evolving policy has supported the oil and gas sector's active participation in achieving ESG goals (eg, Canada's Hydrogen Strategy) but significant challenges remain including a lack of certainty with respect to a holistic regulatory regime to support such innovation and transparency (eg, the greenwashing amendments to the Competition Act). What will prevail remains to be seen.

As a most recent development, to respond to market uncertainty and drive investment, on 5 November 2025, as part of the federal budget, the Canadian government announced its plans to further amend the Competition Act to remove the standard to substantiate claims that many businesses believed was difficult if not impossible to comply with, and to remove the private right of action, thus re-inserting the Commissioner of Competition as the "gatekeeper" of enforcement of greenwashing claims.

3.5 Challenges Ahead

As ESG policy increasingly becomes regulated, businesses face new challenges in keeping pace with both mandatory and other standards. Similarly, reputational pressures are forcing businesses to address ESG concerns.

Canada has not seen the aggressive anti-ESG movements that have occurred in other jurisdictions, such as the USA. As a result, anti-ESG sentiment is not a major consideration for businesses in Canada. According to a recent study published in September 2025, 62% of institutional investors surveyed replied that they had not changed their investment process because of ESG pushback in the USA. At the same time, 24% of institutional investors are monitoring or planning for potential changes, but not due to ESG pushbacks alone. The 14% of investors who have made tactical shifts have specified that their shifts are primarily because of geopolitical risk or valuation concerns.

4. ESG Due Diligence

4.1 Soft Law Becoming Hard Law

There is an increase in soft law becoming hard law in Canada. The greenwashing amendments to the Competition Act, the coming into force of the Modern Slavery Act and developments in plastics regulations and PFAS are major examples in which soft law became hard law.

Moving forward, this trend can be expected to continue, though experts have indicated that this shift is being tempered by political, economic and geopolitical uncertainty. One recent example of a shift is the 5 November 2025 announcement by the Canadian government that the greenwashing provisions in the Competition Act will be amended to reduce uncertainty by removing a standard that many believed was uncertain and to remove the private right of action to challenge alleged greenwashing. However, even where laws are not yet mandatory, voluntary guidelines, standards and norms are doing a lot of "heavy lifting." Many argue that even when formal legislation isn't yet in place, markets, investors, procurement and regulatory bodies increasingly treat soft law compliance as de facto hard law requirements.

4.2 Towards Vertical Responsibilities

The Modern Slavery Act's reporting requirements have led to businesses implementing supply chain codes of conduct that are increasing due diligence requirements throughout the value chain. Similarly, the potential development of mandatory human rights due diligence legislation in Canada would create hard law due diligence requirements throughout the value chain. This indicates that due diligence requirements are likely to continue to increase moving forward.

4.3 Partner Selection

It is likely that recent supply chain disruptions, some of which are caused by geopolitical tensions, have caused businesses to turn their minds to human rights and geopolitics when working with their supply chain partners. This is especially the case when enforcement actions against human rights violations in the supply chain are becoming prevalent.

Looking ahead, the emergence of voluntary Scope 3 GHG emission reporting requirements in the CSDS may make businesses further consider the amount of emissions of their supply chain partners and whether these partners engage in any carbon capturing activities. Businesses may also consider whether their supply chain partners are able to provide data of their own GHG emissions in the first place.

4.4 ESG in M&A Due Diligence

Specific ESG considerations that simultaneously carry legal liability risks are increasingly included in the M&A due diligence process. Consequently, ESG considerations are often addressed in representation and warranty clauses. However, this does not necessarily extend to all ESG considerations, especially not to those that do not create a material risk.

In Canada, representations and due diligence analyses regarding the existence of disputes with Indigenous groups or First Nations is particularly prevalent in the natural resource sector, specifically with respect to Indigenous land and rights claims associated with land.

Matters related to data and privacy considerations, which were considered one of the more "traditional" ESG considerations in M&A due diligence, continue to be prevalent. Social considerations, such as workplace-related representations, also face scrutiny in M&A due diligence.

On the other hand, a recent review of M&A circulars in Canadian public companies suggests that ESG considerations only appear in a small minority of circulars, suggesting that broader ESG considerations are not yet considered material risks for shareholders.

5. Transparency and Reporting

5.1 Key Requirements

There are a variety of disclosure obligations applicable to reporting issuers (generally, public companies/entities) in Canada. There are various ways to become a reporting issuer and having securities listed on a Canadian exchange is one method. There is no national securities regulator in Canada; rather, each province and territory has its own securities laws. Certain disclosure requirements are harmonised across jurisdictions in the form of National Instruments.

The CSA's current regulatory framework is largely silent on environmental and social disclosure. However, National Instrument 51-102-Continuous Disclosure Obligations requires reporting issuers to disclose any "material" information in their continuous disclosure documents. Material information includes information that, if omitted or misstated, would influence a reasonable investor's decision to buy, sell or hold a security. ESG-related information, to the extent that it is "material", must be disclosed. This sort of disclosure often includes disclosure concerning environmental liabilities that might have a financial impact on the issuer.

NI 58-101 and National Policy 58-201 Corporate Governance Guidelines (collectively, the "Corporate Governance Disclosure Rules") impose certain corporate governance disclosure obligations on reporting issuers. The Corporate Governance Disclosure Rules require reporting issuers to disclose certain information about various corporate governance principles, including diversity of board composition on a "comply-or-explain" basis.

As indicated in **3.1 Progress in Green Financing**, the CSSB's development of the CSDS is a significant step forward in terms of Canada-specific voluntary disclosure, while also closely aligning such disclosures with the ISSB's disclosures that are intended to be a global baseline for voluntary reporting. The CSA is ultimately responsible for deciding whether the CSDS (or another standard) will be mandatory in Canada and, if so, which entities will need to comply with the standards and over what time period. As noted, the CSA's work in this regard is currently paused.

Lastly, the federal government has indicated an intention to amend the CBCA to mandate climate-related financial disclosure for large, federally incorporated private companies. Whether these amendments come to fruition remains to be seen, however, particularly in light of the recent pauses from other regulatory bodies.

5.2 Transition Plans and ESG Targets

There is currently no obligation for Canadian companies to publish transition plans or commit to targets. However, there are frameworks in place to encourage voluntary actions in this respect. For example, any business operating in Canada may voluntarily join the government of Canada's Net-Zero Challenge (the "Net-Zero Challenge").

Net-Zero Challenge participants agree to set a target of net-zero emissions by 2050 for their Scope 1, Scope 2 and, if applicable, Scope 3 emissions. Participants further agree to establish two sets of sequential interim targets (eg, 2035 and 2045). As the programme is voluntary, the only penalty for a participant's failure to meet minimum requirements or timelines is removal from the programme.

5.3 Regulation of ESG Labels

Both the Competition Act and the Consumer Packaging and Labelling Act play a role in restricting certain sustainability claims and imposing certain conditions on ESG labels.

The recent amendments to the Competition Act expressly tackle greenwashing in addition to the Competition Act's existing, more general deceptive marketing provisions regarding false or misleading representations. A representation can take the form of a statement or claim regarding a product, business or business interests and can be made in written, oral, electronic or other form of media.

The Consumer Packaging and Labelling Act does not specifically set out any conditions to ESG labels but does prohibit the sale, import or advertisement of any prepackaged product that has a label containing and false or misleading representation.

5.4 Supervision

As there are a variety of laws that require ESG disclosure in Canada, there are a variety of regulators in this regard. These regulators include, but are not limited to:

- each provincial and territorial securities regulator, which are responsible for the administration and enforcement of securities laws in their respective jurisdiction and may bring enforcement proceedings against an issuer in breach of securities laws, including a breach resulting from failing to disclose material ESG-related information or making misleading ESG-related claims;
- the Minister of Public Safety and Emergency Preparedness, who is responsible for the administration and enforcement of the Modern Slavery Act;
- OSFI, which regulates FRFIs and monitors climate-related disclosures that are required by such institutions; and
- the Competition Bureau, which is responsible for the administration and enforcement of both the Competition Act (in addition to private rights of actions in respect of greenwashing claims (although the Canadian government has announced the private right of action may be eliminated or tempered in the near future)) and the Consumer Packaging and Labelling Act.

5.5 Enforcement

Penalties for non-compliance with disclosure obligations are as broad and varied as the obligations themselves.

Enforcement action for a failure to make disclosure of material information in the manner and time required under relevant securities laws, or providing disclosure that contains a misrepresentation, can potentially be brought against the responsible issuer or any director or officer who authorised, permitted or acquiesced in the breach. Again, penalties are broad, but a monetary penalty is the most typical remedy.

An entity or individual that fails to submit and publish a satisfactory report as required under the Modern Slavery Act is guilty of a summary offence and liable to a fine of up to CAD250,000. Any director or officer who directed, authorised, assented to, acquiesced or participated in any of these offences may also be held personally liable.

Distributing corporations which fail to comply with diversity disclosure obligations under the CBCA, or which make false or misleading statements in these reports may be liable to pay a fine not exceeding CAD5,000. Any person who participates in making such a report may be held personally liable and ordered to pay a fine not exceeding CAD5,000, to imprisonment for a term not exceeding six months or both.

The Competition Act sets out the remedies for a breach of deceptive marketing practices, which include greenwashing claims. These remedies include a court order to require a business to pay an administrative monetary penalty (AMP) in an amount up to:

- CAD10 million, and for each subsequent order, CAD15 million; and
- three times the value of the benefit derived by the deceptive conduct, or, if that amount cannot be reasonably determined, 3% of the corporation's annual worldwide gross revenues.

5.6 Expected Progress

Canada can expect the trend in increasing voluntary ESG reporting to continue. Similarly, increased mandatory reporting requirements mean that more and more companies will be reporting on ESG matters. Nonetheless, challenges remain for both voluntary and mandatory reporting.

The CSDS, if made mandatory in the future, has the potential to pose significant challenges to Canadian companies. The standards are somewhat burdensome, especially in comparison to the SEC's climate disclosure rules.

The cost of implementing these more stringent standards may be a barrier to Canadian entities in comparison to those operating in the US market. Given the interconnected markets in these regions, differences in reporting standards could lead to difficulties for businesses with operations in both countries.

6. Climate and ESG Litigation

6.1 Instruments for ESG Litigation

There are several tools in Canada that can be used to start ESG-related cases against companies, with a range of ease of access to parties who wish to rely on them.

The recent amendments to the Competition Act also introduced a new enforcement right, effective 20 June 2025, allowing private parties to directly file applications with the Competition Tribunal (the "Tribunal") seeking leave to apply for an order against a business allegedly making misleading representations. The test for leave is a finding by the Tribunal that the application is in the "public interest". However, there is no guidance on how this "public interest" test will be applied, and no private parties have filed an application under the new greenwashing provisions at this time. Recognising the uncertainty of the greenwashing provisions and the increased risks associated with the inclusion of a private right of action, the Canadian government announced on 5 November 2025 the intention to remove the private right of action as it applies to greenwashing. Until such amending legislation is proposed and receives Royal Assent, this private right of action continues to be effective, unamended.

Beyond use of the Competition Act, parties may commence civil suits, including class actions and derivative actions by shareholders to bring ESG-related claims. The scope of these potential claims is vast and could include claims concerning the environment, human rights, supply chains or workplace safety. A claim may also arise from a company's perceived failure to meet its ESG-related commitments.

Canadian companies may also face civil actions for their ESG-related actions in a foreign jurisdiction, including for breach of customary international law. What exactly constitutes a breach of customary international law is not always clear, and bringing a claim rooted in this cause of action is not an easy process.

Derivative actions brought by shareholders are also a concern in this context. In Canada, a derivative action is a legal mechanism that allows shareholders to bring an action on behalf of a corporation against its officers or directors for an alleged wrongdoing. This sort of action addresses a harm done to the company rather than one particular shareholder.

6.2 Climate Activism

NGOs and activists are important parties to consider in Canada. For example, environmental organisations in Canada have relied on the "six resident" application mechanism in the Competition Act that compels the Competition Bureau to commence an investigation into claims of deceptive marketing, specifically greenwashing. The initial complaint in 2019 focused on recyclability claims of a coffee business, which resulted in a consent agreement providing for monetary penalties and corrective orders. Since that initial application, NGOs and activists have filed many other applications, most of which focus on the oil and gas sector.

In addition to regulatory action and litigation commenced by NGOs and activists, ESG-related shareholder activism appears to be on the rise in Canada. In 2023, a 145% rise in board activism and a 71% rise in transactional activism was reported in comparison to 2022.

Of note, no new "six resident" applications or any private party actions claiming greenwashing have been initiated in 2025.

6.3 Greenwashing

Greenwashing is understood in Canada to be the process of making false or misleading positive claims or downplaying negative qualities about the sustainability attributes of a product, service or business. In contrast, greenbleaching or greenhushing is used to describe an entity choosing not to make claims respecting the ESG features of its products or business to avoid regulatory scrutiny or other legal risks.

Greenwashing has been the subject of many investigations by the Competition Bureau, but with limited enforcement action under the Competition Act currently. The 2024 amendments to the Competition Act and statements by the Competition Bureau that greenwashing is a priority have been expected to result in increased enforcement of claims of deceptive marketing as it relates to environmental claims. However, on 5 November 2025 the Canadian government announced plans to further amend the Competition Act to remove the standard to substantiate claims that many businesses believed was difficult if not impossible to comply with, and to remove the private right of action, thus tempering the expected challenges alleging greenwashing.

In contrast, greenbleaching has not yet been addressed by Canadian regulatory authorities, and companies may move towards greenbleaching to avoid regulatory action and penalties related to greenwashing, which have become stricter. Canadian regulatory bodies may have to create a framework to respond to this potential rise in greenbleaching.

6.4 A Turbulent Future Ahead

The June 2024 amendments to the Competition Act to permit private parties (with leave, if found to be of public interest) to apply for an order from the Tribunal in respect of deceptive marketing (including greenwashing), have been expected to have a significant impact on the number of proceedings in Canada regarding deceptive marketing related to ESG claims, particularly greenwashing. This expectation is based in part on the fact that environmental activists in Canada have already used the Competition Act as a tool to compel the Competition Bureau to investigate claims against businesses alleged to be engaged in greenwashing, and the expanded access created by new amendments further reduces barriers to challenge greenwashing claims by businesses. In addition to activists, the June 2024 amendments to the Competition Act granted third parties – including consumers and competitors – the right to apply to the Tribunal for orders in respect of claims of greenwashing. This is a major change: previously, the government was the main actor in enforcement. Now, the new route gives third parties a more direct role. However, in response to the uncertainty raised by such private right of action, on 5 November 2025, the Canadian government announced its plans to further amend the Competition Act to remove the private right of action, thus re-inserting the Commissioner of Competition as the "gatekeeper" of enforcement of greenwashing claims.

As noted above, ESG-related civil claims may arise from a company's perceived failure to meet its ESG-related commitments. To the extent that climate-related disclosure becomes mandatory in Canada, companies may run the risk of facing civil actions based on perceived failure to live up to commitments that have been set out in disclosure documents.

Thus far in 2025, companies are responding in mixed ways: some are enhancing internal compliance programmes and ensuring greater rigour in substantiating ESG disclosures, while others are scaling back or softening claims to reduce litigation exposures. Financial institutions have begun revisiting and revising/withdrawing their sustainable finance disclosures after the Competition Act amendments to explicitly address greenwashing raised questions about legal defensibility of forward-looking targets.

Shareholder activism is also evolving in response to global geopolitical tensions. Conflicts in Ukraine, Palestine and the Middle East have fuelled investor interest in energy security, defence-sector exposure, and human rights, resulting in shareholder proposals with a more geopolitical edge. Canadian issuers are increasingly expected to anticipate and respond to how such political shifts will shape investor demands.

The legal and regulatory trend line is clear: with new private enforcement tools, tougher substantiation standards, and shifting shareholder expectations, ESG-related proceedings in Canada are expected to increase in both number and scope through 2025 and beyond.

Trends and Developments

Contributed by:
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McMillan LLP is a leading business law firm serving public, private and not-for-profit clients across key industries in Canada, the United States and internationally. With recognised expertise and acknowledged leadership in major business sectors, the firm provides solutions-oriented legal advice through its offices in Vancouver, Calgary, Toronto, Ottawa and Montréal. The team advises clients on key environmental, social and governance aspects of their business, from M&A in the clean energy space (and M&A opportunities driven by environmental considerations) to EDI and sustainable investment strategies. The firm believes in the importance of doing business differently and help its clients to understand not only the risks of environmental, social and governance inaction but the opportunities available for growth and differentiation.

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William Pellerin has extensive experience advising on international trade law matters and disputes, including modern slavery, supply chain and operational risk. He is one of the very few private practice lawyers in Canada to have argued before the WTO Appellate Body and dispute settlement panels. William advises clients with respect to customs compliance, export controls and economic sanctions using his thorough understanding of international trade policy and government processes. Co-lead of McMillan's sanctions practice, he advises numerous Fortune 500 companies on complex sanctions and export control matters. He is a sought-after commentator and speaker on trade and sanctions matters.

Beth Riley is a renowned lawyer at McMillan, with a broad range of experience in competition/antitrust and foreign investment. With extensive capital markets expertise, she advises clients on corporate governance, shareholder activism and general regulatory compliance, addressing complex business issues, especially in Alberta's energy sector. Beth advises Canadian and international clients on anti-competitive business practices and the development of corporate compliance policies, including as related to "greenwashing" and deceptive marketing practices provisions in the Competition Act with respect to representations of benefits to the environment, including the potential impact on businesses and their statements to the public.

Sharon Singh is co-head of McMillan's Indigenous and environment practice and is renowned for providing advice on sustainability, environmental, governance and Aboriginal law matters. Her perspective and approach are informed by over a decade of experience working with a multi-national mining company, allowing her to provide pragmatic, strategic and innovative solutions to proponents and operators. She has a proven ability to create and leverage collaborative relationships with Indigenous nations, local communities and regulators, including to implement ESG and corporate social responsibility (CSR) performance, diligence and reporting within organisations.

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Introduction

In 2025, Canada's ESG legal landscape reflects a shift from accelerated regulatory expansion to a cautious pause, as policymakers reassess and align domestic disclosure requirements with evolving international standards and market conditions. A balancing act between progress and growing uncertainty is occurring, as global economic and geopolitical turbulence has tempered earlier momentum toward ambitious sustainability commitments.

Legislative changes have been especially significant: amendments to the Competition Act, effective June 2024 and expanded in June 2025, explicitly target greenwashing by requiring businesses to substantiate environmental claims, introducing steep new penalties (up to 3% of worldwide revenues) and creating a private right of action, including for activists, consumers and competitors. While designed to promote transparency, the new greenwashing provisions created a degree of uncertainty, especially related to the standard for compliance, prompting many businesses, particularly in the oil and gas sector and financial services, to scale back or even withdraw sustainability disclosures out of legal risk concerns, a phenomenon now dubbed "greenhushing".

In June 2025, the Commissioner of Competition released long-awaited guidelines, which sought to provide certainty and limit the scope of enforcement to marketing and promotional claims directed at consumers rather than investor-facing securities and other regulatory filings. Notwithstanding this practical approach, market uncertainty continued, especially given the right of private of action to challenge businesses. As of late 2025, no formal investigations or private claims have yet been launched under the new regime. As a most recent development, to respond to this market uncertainty and drive investment, on 5 November 2025, as part of the federal budget, the Canadian government announced its plans to further amend the Competition Act to remove the standard to substantiate claims that many businesses believed was difficult if not impossible to comply with, and to remove the private right of action, thus re-inserting the Commissioner of Competition as the "gatekeeper" of enforcement of greenwashing claims.

Parallel developments in securities regulation further highlight the uncertainty: on 12 September 2025, the Ontario Securities Commission (OSC) initiated a Tribunal application against a fund manager for alleged false ESG marketing, marking a new front in enforcement under the Securities Act. At the same time, the Canadian Securities Administrators (CSA) paused work on its mandatory climate disclosure rule in April 2025, following the US SEC's retreat from its own climate disclosure regime, citing competitiveness concerns. The federal government has likewise held back on implementing previously announced CBCA amendments that would have mandated climate disclosures for large private corporations.

In the financial sector, confidence has been shaken by the January 2024 decision of major Canadian banks to withdraw from the UN-backed Net-Zero Banking Alliance, while political uncertainty peaked in September 2025 when Prime Minister Carney declined to reaffirm Canada's 2030 Paris Agreement targets. Taken together, these developments underscore that while ESG remains a critical force in Canadian law and business, the path forward is less linear and more contested than in previous years.

ESG and Indigenous Communities

The federal Indigenous Loan Guarantee Program (the "ILG Program") was officially launched on 21 February 2025. First announced in the government's 2023 Fall Economic Statement and again in Budget 2024, the ILG Program initially offered CAD5 billion in loan guarantees to Indigenous communities. In March 2025, the federal government significantly expanded the ILG Program, doubling the funding to CAD10 billion and broadening the sector eligibility beyond just natural resources and energy into "major projects across all sectors of the economy", excluding gaming.

Under the ILG Program, loans provided to Indigenous communities by financial institutions and other lenders will be guaranteed by the Canadian government, allowing these communities to benefit from the government's AAA credit ratings and consequently receive lower interest rates than they may otherwise have received. The ILG Program is intended to create economic opportunities and to support Indigenous communities in developing their own economic priorities. Expanding the scope of the ILG Program to include sectors outside of energy and natural resources also ensures right-holders are a part of Canada's accelerated push to build.

Eligible applicants include Indigenous groups recognised as Section 35 rights-holders under the Constitution Act, 1982, or a wholly owned subsidiary of such a group. Indigenous groups may apply for loan guarantees on a rolling basis, with applications reviewed as they are submitted with no fixed deadlines. When an application is received, it is evaluated for eligibility and screened, where needed, for financial and commercial viability, including its operational and Indigenous components. A proposed project must directly affect the Section 35 rights of the applicant (or least 25% of the investment value must come from Indigenous groups with impacted Section 35 rights).

In May 2025, the Canada Indigenous Loan Guarantee Corporation (CLIGC), created to facilitate the ILG Program, issued its first loan guarantee, covering CAD400 million of a CAD736 million investment to a partnership of 36 First Nations in British Columbia to support the investment of a 12.5% ownership interest in Enbridge's Westcoast natural gas pipeline system.

The ILG Program and its recent expansion comes on the heels of various existing and proposed provincial Indigenous loan guarantee programmes, such as Ontario's Aboriginal Loan Guarantee Program, the Alberta Indigenous Opportunities Corporation, British Columbia's First Nations Equity Financing Framework, and the Saskatchewan Indigenous Investment Finance Corporation. Although there are important differences between these provincial programmes and the ILG Program, they show how Canada, both federally and provincially, is using equity loan guarantees as a tool for economic reconciliation with Indigenous communities.

Further emphasising the continued growth in Indigenous equity ownership, particularly in the energy and infrastructure sectors, provincial procurement programmes, like the BC Hydro Call for Power initially launched in 2024 and again in 2025, have mandated requirements and incentives for Indigenous equity participation. The 2025 Call for Power, announced in July 2025, builds on the 2024 Call, which was the first in over 15 years and resulted in ten selected projects totally nearly 5,000 GWh, and featuring Indigenous equity ownership between 49% and 51%.

AI Code

In 2023, Canada launched the Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems (the "AI Code") to achieve accountability, safety, fairness and equality, transparency, human oversight and monitoring, and validity and robustness in the development of AI. This is intended to help address risks associated with AI such as spreading bias, compromising health and safety, and crafting large-scale fraud. To mitigate these risks, companies (particularly developers and managers of AI systems) that sign the AI Code commit to working towards achieving the goals noted above by following measures to be undertaken pursuant to the AI Code, such as implementing a comprehensive risk management framework proportionate to the nature and risk profile of activities being undertaken, and implementing proportionate measures to mitigate risks of harm, such as by creating safeguards against malicious use. The AI Code is voluntary. As of 21 March 2025, 46 companies, including Lenovo, Mastercard, CIBC and Telus, have signed the AI Code.

Additional federal initiatives include Canada's Artificial Intelligence Safety Institute (AISI) announced in November 2024, intended to bolster Canada's capacity to address AI safety risks. The AISIA is just one component of the broader CAD2.4 billion investment announced in Budget 2024 that seeks to help researchers and businesses develop and adopt AI responsibly.

Despite the growing concerns related to AI and its management, Bill C-27, the Artificial Intelligence and Data Act (AIDA), intended to update Canada's digital privacy and data protection laws, died upon the prorogation of Parliament in early 2025. Therefore, Canada's current data privacy legislation, the Personal Information and Electronic Documents Act (PIPEDA) remains in effect, and the government will need to re-introduce Bill C-27 (or a similar bill) in the future for it to have another chance to become law.

At the individual level, organisations are increasingly expected to have AI governance structures, risk assessments, oversight, transparency and monitoring in place, directly tying into the "governance" piece in ESG. Also emerging as a key area of concern is the exponential energy demand of AI data centres. With analysts forecasting that data centres could consume up to 8% to 10% of global electricity by 2030, and regulatory authorities increasingly focused on how best to manage such demand, there exists an opportunity for Canada to lead the way as a hub for AI data centres due to its abundance of renewable-energy sources.

Plastic and "Forever Chemicals" Regulations

Plastic regulations

Canada's progress towards its objective of zero plastic waste by 2030 has continued in 2025, with the government's publication of its Proposed Roadmap to Extend the Life of Plastics in End-of-Use Electronics (the "Proposed Roadmap") and the introduction of a new National Standard of Canada, CSA R117:24: Plastics Recycling: Definitions, measuring and reporting (the "CSA Plastics Standard") by the CSA Group, a not-for-profit standards organisation that leads the advancement of standards in the public and private sectors. The Proposed Roadmap focuses on three priority action areas: data collection, collaboration and innovation, and aims to promote the repair and reuse of electronic products to reduce plastic waste. Consultation closed in February 2025, with the final roadmap expected to be published sometime in 2025. The CSA Group's new CSA Plastics Standard aims to establish a consistent definition for plastics recycling. This voluntary standard developed with support from the Standards Council of Canada (SCC) is designed to help policymakers and business leaders understand when and how much plastic has been fully recycled. This new framework has the potential to enhance the efficiency of recycling reporting, helping organisations to better assess their recycling performance and identify areas for improvement.

In June 2025, Canada also saw the launch of the official reporting platform for its Federal Plastic Registry. The Registry, which requires companies to register and report on plastics supplied in Canada for the 2024, 2025 and 2026 years, is intended to inform Canada's extended producer responsibility and is part of Canada's broader strategy to reduce plastic pollution and promote a circular economy. The first report for the 2024 calendar year was due 29 September 2025 and is referred to as "Phase 1" in Environment Canada's Guide for Reporting to the Federal Plastic Registry – phase 1. Phase 1 requires reporting from defined producers for plastic packaging, electronic and electrical equipment and single-use and disposable products that are destined for residential waste stream, which are products that typically accumulate in households.

Forever chemicals regulations

On 5 March 2025, the federal government published its Final State of PFAS Report (the "Final Report") and proposed Risk Management Approach for Per- and Polyfluoroalkyl Substances (PFAS), Excluding Fluoropolymers (the "Risk Management Approach"). In the Final Report, the government concluded that the entire class of PFAS, excluding fluoropolymers, meet one or more criteria for designation as toxic substances under the Canadian Environmental Protection Act, 1999, indicating imminent stricter regulations for the "forever chemicals". Adding PFAS (excluding fluoropolymers) to the List of Toxic Substances in Schedule 1 of CEPA will empower the federal government to create regulations that restrict the use, manufacture, import and release of the listed substances.

Together, the Final Report and Risk Management Approach propose a precautionary, class-based approach to PFAS regulation, in which regulatory measures would apply to all substances under the PFAS class rather than specific varieties of PFAS. These PFAS regulations will reshape many sectors by restricting the manufacture, import, use and sale of PFAS-containing products and directly targeting businesses reliant on these substances in their operation.

The phased approach begins with restricting PFAS not currently regulated in firefighting foams. Phase II will involve prohibiting the use of PFAS (excluding fluoropolymers) in consumer products where alternatives exist. In Phase III, the government will prohibit the use of PFAS (excluding fluoropolymers) requiring further consideration through stakeholder engagement and assessments, including fluorinated gas applications, prescription drugs, medical devices, and transport and military applications.

Another area of increasing PFAS regulation in Canada is the addition of PFAS to contaminated sites and drinking water standards. These standards are limited to specific PFAS compounds and set the permitted concentrations of PFAS to meet regulated contaminated sites standards when remediating a property and in drinking water. As the trend towards increasingly adding PFAS substances to federal and provincial contaminated sites and drinking water standards continues, municipalities will similarly need to update their by-laws and systems to address these new standards.

PFAS is regulated both federally and provincially. Businesses are advised to be aware of both federal and provincial regulations impacting their operations related to PFAS, as these changes may heighten litigation risks and public scrutiny.

Clean Energy Regulations

The Clean Energy Regulations are a key component of Canada's 2030 Emissions Reduction Plan, aimed at achieving net-zero emissions by 2050.

On 17 December 2024, the government released the finalised Clean Electricity Regulations (the "Regulations") based on stakeholder feedback, revising the Draft Clean Energy Regulations initially published in August 2023. The changes aim to address concerns of operational feasibility, cost implications, and the lack of alignment with existing emission frameworks. Key modifications include the introduction of alternative mechanisms for achieving compliance, which includes revising emission limits to an absolute emissions approach expressed as an annual emission limit, the introduction of a compliance credit system to enable long-term compliance strategies, staggered timelines for compliance, and streamlined procedures for operating high-emission units during emergencies. Beginning in 2035, the Regulations will set limits on carbon dioxide pollution from almost all electricity generation units that use fossil fuels, with the goal of ensuring a net-zero electricity system by 2050, a key tenant of Canada's Clean Energy Strategy.

Right to Repair

In Budget 2024, the government of Canada committed to launch consultations on a right to repair (RTR) policy for home appliances and consumer electronics. The goal of this policy is to improve product durability and repairability so that devices work longer and harmful electronic waste is reduced. There is no specific RTR policy proposal yet because of the complex and interconnected nature of repairability and the vast array of consumer products and stakeholder considerations related to it. Instead, this consultation period is one part of a process to develop a fulsome federal approach to the RTR.

The federal government intends the RTR policy be based on the principles of repairability, interoperability and durability. While a specific RTR regulatory framework has yet to be developed, some legislative steps have already been taken to ensure Canadians have a RTR. The Copyright Act was amended to remove a barrier to repair by allowing the circumvention of technological protection measures to diagnose, maintain or repair a product. The Competition Act was also amended to expand the refusal to deal provisions to include a "right to repair", prohibiting a supplier from refusing to deal with another business if that refusal harms competition, generally, which gives businesses a tool to access the information and parts they need to repair products. However, this provision does not put suppliers under a positive obligation to proactively make repair information and spare parts available to independent repairers or consumers for their products.

The public consultation period on the RTR policy ended on 26 September 2024, with additional consultation with stakeholders. It is unclear when a complete RTR policy framework proposal will be presented, but it will likely take some time given the complex nature of RTR.

CHILE

Law and Practice

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Contents

Bertrand-Galindo Barrueto Barroilhet & Cía is a premier law firm based in Santiago, Chile, recognised for delivering value-driven legal solutions across diverse practice areas including corporate law, mining, energy, environmental law, international trade, tax and dispute resolution. The firm is widely recognised as a pioneer and a leading counsellor in ESG and compliance matters for both national and international clients. The lawyers are highly experienced professionals who provide strategic and comprehensive legal support to both domestic and foreign clients, aiming to add value to their businesses through tailored, client-centric advisory. With a strong focus on understanding the specific needs and objectives of each client, the firm excels in navigating complex regulatory landscapes and developing innovative strategies that align with business goals. Bertrand-Galindo Barrueto Barroilhet & Cia is committed to providing exceptional legal counsel with integrity, efficiency, and a focus on enhancing the success and sustainability of its clients' ventures.

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1. Introduction

1.1 General ESG Trends

In a pattern similar to that seen in many jurisdictions this year, Chile experienced less regulatory activity related to ESG in the final months of 2024 and throughout 2025 than in the previous year. The developments that did occur were concentrated in the following areas:

- capital markets disclosure obligations moving towards alignment with International Sustainability Standards Board (ISSB) standards;
- the promulgation of a comprehensive data protection statute, scheduled to enter into force in 2026;
- the roll-out of the cybersecurity law and the establishment of a national agency; and
- environmental reforms advancing through the implementation of a green taxonomy, stricter extended producer responsibility (REP) enforcement and a still-pending overhaul of the Environmental Impact Assessment System (*Sistema de Evaluación de Impacto Ambiental* SEIA).

In parallel, the "Economic Crimes Law" (Law No 21,595) continued to serve as a major driver for the adoption of crime prevention models and due diligence systems that incorporate environmental and corporate governance elements. Finally, in August 2025, legislation was enacted to gradually ensure gender balance on the boards of publicly traded and special corporations.

Environmental

The bill to modernise the SEIA slowed its progress in 2025 after moving to the Senate Finance Committee. The reform remains key to modernising environmental assessment procedures, aiming to increase investor certainty, shorten evaluation times and ensure comprehensive sustainability review – including climate considerations – under technical rather than political leadership.

The Biodiversity and Protected Areas Service (*Servicio de Biodiversidad y Áreas Protegidas* SBAP), created by Law No 21,600 (2023), began operating in 2025 following approval of its internal regulations. This new agency initiated a review of protected terrestrial and marine areas, currently under public consultation, to strengthen management and conservation.

The Emissions Compensation System for the Green Tax (*Sistema de Compensación de Emisiones del Impuesto Verde* SCE) became fully operational, compensating for 4.4 Mt of CO_2 in 2024 and launching its second cycle in 2025. A new regulation now governs the use of emission reduction and absorption certificates, enabling the activation of this carbon offset market.

Regarding circular economy, 2025 marked stricter enforcement of the "Extended Producer Responsibility Law" (Law No 20,920), with the Superintendency of the Environment (*Superintendencia del Medio Ambiente* SMA) implementing a digital reporting platform and initiating sanctions for non-compliance. Producers must now ensure traceability, verified management systems and effective internal controls.

Finally, the Ministry of Finance's Sustainable Finance Office launched Chile's Taxonomy of Environmentally Sustainable Economic Activities (T-MAS) in May 2025. Although non-binding, it serves as a key policy tool, defining sustainable economic activities and guiding investment, financing and environmental decision-making.

Social

In 2025, progress focused on implementing laws enacted in 2024 rather than passing new legislation. The "40-Hour Workweek Law" (Law No 21,561) advanced towards its goal of reducing the standard workweek from 45 to 40 hours by 2028 to improve work-life balance.

Law No 21,643 (best known as the "Karin Law") had an even stronger impact, reinforcing protections against workplace harassment and requiring companies to adopt protocols for psychosocial and mental health risks. Its full enforcement led to a surge in worker claims and court delays, later eased through administrative measures to maintain efficiency.

In April 2025, the Senate began reviewing the Bill on Corporate Due Diligence in Human Rights, the Environment, and Climate Change, currently under consideration by the Committee on Human Rights, Nationality, and Citizenship.

Governance

In December 2024, the Commission for the Financial Market (*Comisión para el Mercado Financiero* CMF) revised General Standard No 461 ("NCG 461") by means of General Standard No 519 ("NCG 519"), mandating that reporting entities adopt the ISSB S1 and S2 sustainability disclosure International Financial Reporting Standards (IFRS) for their 2026 annual report (to be released in 2027). Complementing this, NCG 519 gradually introduces obligations for special issuers and allows simplified reporting for smaller listed companies.

That same month, Chile enacted Law No 21,719, which creates an independent Data Protection Agency and sets out rigorous requirements for managing third-party information. Although the law takes effect in late 2026, many companies began adapting in 2025 to align their data-handling practices with the forthcoming framework.

Following the Cybersecurity Framework Law of 2024 (Law No 21,663), the National Cybersecurity Agency (*Agencia Nacional de Ciberseguridad* ANCI) became operational in early 2025. It issued an implementation plan consistent with the 2023–28 National Cybersecurity Policy, anticipating that providers of critical services will face new sector-specific regulations, compliance audits and enforcement actions in the years ahead.

The Artificial Intelligence Regulation Bill also advanced during 2025, as the Chamber of Deputies approved a second report and sent it to the Senate. While still under debate, its evolution signals imminent requirements concerning transparency, human oversight and the governance of high-risk AI systems.

Lastly, the "More Women on Boards Law" (Law No 21,757), enacted in August 2025, introduces progressive gender-balance rules for listed and special corporations. It sets a gradual path towards a 60% ceiling for the majority gender, overseen by the CMF, compelling companies to adjust board succession plans, nomination procedures and disclosure practices.

1.2 Environmental Trends

Over the past 12 months, the modernisation of the SEIA has progressed through administrative regulations, while the statutory reform has stalled in Congress. The bill to modernise the SEIA and its procedures advanced during 2024 – receiving approval from the Senate Environment Committee and general approval from the Senate – but in 2025, the debate shifted to the Senate Finance Committee, slowing its progress. This reform is regarded as particularly significant because, although a permitting law was enacted in 2025 to streamline procedures for sectoral permits that are complementary or additional to environmental authorisation, that legislation does not address – as the SEIA reform must – the broader need to modernise the environmental assessment process as a whole. The reform seeks to provide greater legal certainty to investors and shorten evaluation timelines, while maintaining and strengthening a comprehensive assessment that encompasses all aspects of sustainability, including climate change. In addition, the bill proposes to centralise decision-making in specialised technical bodies, ensuring that evaluations are led by experts rather than politically appointed entities such as the current Environmental Evaluation Commission and the Committee of Ministers.

Meanwhile, Chile's Council of Ministers for Sustainability, chaired by the Minister of the Environment, conducted a public consultation and, in 2025, approved the implementation of Phase II of the proposed reform to the SEIA Regulations. This reform aims to modernise, through regulatory changes, the thresholds for projects required to enter the system, as well as the typologies of projects and the criteria determining whether they must undergo environmental evaluation – redirecting lower-impact projects to the corresponding sectoral permits.

Additionally, in pursuit of reactivating investment while advancing sustainability commitments, the Framework Law on Sectoral Authorizations (Law No 21,770;*Ley Marco de Autorizaciones Sectoriales*, or LMAS) – also referred to as the Sectoral Permitting Law – was approved. Promoted by the Ministry of Economy, this law seeks to co-ordinate and modernise over 300 administrative and technical permits issued by various public agencies, which must be processed independently from the environmental impact assessment conducted by the Environmental Assessment Service (*Servicio de Evaluación Ambiental* SEA).

The SBAP, created by Law No 21,600 (2023), began full operations in 2025 following the issuance of Supreme Decree No 27, which approved its internal regulations in December 2024. Over the past year, and with the goal of consolidating the management of protected terrestrial and marine areas, a review of the existing list of such areas was initiated. This proposal is currently under public consultation.

The SCE has reached operational maturity: the Ministry of the Environment reported that 4.4 Mt of CO_2 was compensated in 2024 and launched a second cycle in 2025. That same year, the Regulation of the Greenhouse Gas and Short-Lived Climate Pollutants Emissions Compensation System was approved. This regulation governs the use of emission-reduction or absorption certificates issued by projects that allow compensation for emissions from sources subject to the green tax, thereby activating this emerging market.

Regarding the circular economy, 2025 marked a turning point in the enforcement of the Extended Producer Responsibility Law for packaging and other products. In January 2025, the SMA launched the extended producer responsibility reporting platform and initiated sanctioning proceedings for non-compliance. Monthly digital reporting and traceability have become operational realities, requiring producers to verify their management systems, guarantees and internal controls.

Complementing these developments, the Ministry of Finance's Sustainable Finance Office officially launched Chile's T-MAS in May 2025. Although not a binding regulation, the taxonomy functions as a public policy instrument that provides a clear, technical and coherent definition of which economic activities qualify as sustainable, thereby guiding investment, financing and environmental management decisions.

Finally, regarding the Framework Law on Climate Change, in 2025 the National Adaptation Plan for Climate Change and the Nationally Determined Contribution (NDC) were approved, establishing principles of public-private collaboration and a series of sectoral plans in areas such as energy, infrastructure, water resources and coastal zones. These initiatives aim to decarbonise the economy and enhance the country's climate resilience.

Courts and regulators demonstrated firmer, evidence-based scrutiny. In the *Dominga* case, a new ministerial rejection issued in January 2025 was annulled by the First Environmental Court in February; on 16 September 2025, the Supreme Court declared cassation appeals inadmissible, upheld the 2021 Environmental Qualification Resolution (*Resolución de Calificación Ambiental* RCA) and ordered a new ministerial decision. The Supreme Court also confirmed a fine for noise-emission violations and reinstated urban wetland protections, showing deference to technical evidence and the precautionary principle. The SMA intensified mining enforcement actions, including a definitive closure order for the Alcaparrosa mine (related to the sinkhole case) and new charges against El Soldado.

Regarding criminal sanctions (final judgments) under the Economic Crimes Law in its "Environmental Offences" category, no convictions had yet been issued by 2025, as most cases remain under investigation.

1.3 Social Trends

In social matters, rather than major new legislation, what stands out in 2025 is the progress in implementing laws enacted in 2024, notably the 40-Hour Workweek Law, which aims to gradually reduce the standard workweek from 45 to 40 hours by 2028, promoting a better work-life balance.

The implementation of the Karin Law, named after a victim of workplace harassment, had an even greater impact in 2025. This legislation strengthens protections against workplace harassment and violence, requiring companies to implement protocols to address psychosocial risks and mental health issues. The law came fully into force and was widely invoked by workers, even causing delays in court proceedings due to case overload – an issue that has been mitigated through administrative measures designed to ensure the law's effectiveness.

In April 2025, a bill was introduced in the Senate entitled "Bill Establishing and Regulating Corporate Due Diligence in Respect of Human Rights, the Environment, and Climate Change". It is currently under its first review by the Senate Committee on Human Rights, Nationality, and Citizenship.

1.4 Governance Trends

The most significant governance-related development has been the full adoption of the "Economic Crimes Law" (Law No 21,595) by Chilean companies. This law obliges companies to update their crime prevention models and compliance matrices to include ESG-related risks, and establishes severe penalties for non-compliance applicable to both legal entities and individuals.

In December 2024, the CMF amended NCG 461, requiring reporting entities to adopt the ISSB S1/S2 climate and sustainability IFRS for their 2026 annual report (to be published in 2027). NCG 519 also phases in obligations for special issuers and provides relief thresholds and simplified reporting requirements for special and relatively smaller listed corporations.

In December 2024, Chile enacted Law No 21,719, establishing an autonomous Data Protection Agency and imposing strict obligations regarding the handling of third-party information. Although the law will enter into force at the end of 2026, its requirements have already prompted companies to begin adaptation processes during 2025 to ensure compliance with the forthcoming framework.

Pursuant to the 2024 Cybersecurity Framework Law, the ANCI began operations in early 2025, issuing an action plan aligned with the 2023–2028 National Cybersecurity Policy. Providers of critical services should expect sector-specific rules, audits and sanctions to expand in the coming years.

The Artificial Intelligence Regulation Bill, introduced by the Executive, advanced in Congress during 2025 when the Chamber of Deputies approved a second report and sent it to the Senate. Although not yet law, its trajectory suggests forthcoming obligations related to transparency, human oversight, and the governance of high-risk systems.

Finally, in August 2025, Chile enacted the More Women on Boards Law, introducing progressive gender-balance quotas for listed and "special" corporations. The law establishes a gradual path towards a 60% cap for the majority gender, under the supervision of the CMF. Issuers are expected to adjust board renewal schedules, nomination policies and disclosure practices accordingly.

These reforms reflect Chile's commitment to fostering transparency and promoting responsible governance practices aligned with international standards.

1.5 Government and Supervision

Chile's regulatory and supervisory authorities play a crucial role in the ESG transition by ensuring the effective implementation and enforcement of sustainability regulations. The CMF, the SEA and the SMA are known for their rigorous oversight, requiring companies to fully comply with governance and environmental standards.

Similarly, the Labor Directorate (*Dirección del Trabajo* DT) and the Superintendence of Social Security (*Superintendencia de Seguridad Social* SUSESO) oversee compliance with social regulations, ensuring that labour laws like the Karin Law and the 40-Hour Workweek Law are strictly enforced. Their role in safeguarding employee rights and workplace conditions is central to upholding Chile's social standards, making these authorities essential to the country's broader ESG strategy.

Each of these bodies is characterised by its rigorous oversight and staffed by highly specialised professionals, making them difficult to bypass and ensuring that compliance is enforced with integrity and seriousness. Companies must approach these regulators with due diligence, as their strong reputation for upholding legal and ethical standards means that attempts to circumvent regulations are unlikely to succeed. Their role is pivotal in driving Chile's ESG agenda forward, promoting transparency, protecting labour rights, and ensuring environmental sustainability. As such, these entities are critical to the effective functioning and credibility of Chile's ESG regulatory framework.

1.6 Market Participants

In Chile, the sectors most impacted by ESG regulations in the coming years will be mining, particularly lithium extraction, and the expanding green hydrogen industry, due to their environmental footprint and strategic role in the economy. These industries face increased scrutiny on issues such as water usage, emissions and community impacts, especially under the Climate Change Framework Law. Additionally, these industries operate in global markets and are increasingly pressured by stakeholders to adhere to international ESG standards and assessments, such as the Global Reporting Initiative (GRI), IFRS, Initiative for Responsible Mining Assurance (IRMA), Dow Jones Sustainability Index (DJSI) and International Council on Mining and Metals (ICMM), to maintain market access and obtain financing.

Given their significant contributions to Chile's GDP, mining and energy companies must meet stricter ESG criteria enforced by international financiers who require compliance with green finance standards. This creates a performative effect, where the need to meet these standards materially influences how these industries operate. At the same time, financial institutions in Chile will also be subject to growing ESG obligations as the government tightens regulations to combat greenwashing and establish more robust sustainability criteria, ensuring transparency and accountability in investments.

1.7 Geopolitical Developments

Chile's deep integration into the global economy makes it particularly vulnerable to geopolitical shifts and international policy changes, which is impacting the implementation of ESG regulations. While Chile's government actively supports ESG standards, progress has been slow, likely due to global economic challenges and changes in the United States' stance towards sustainable development and climate goals. Despite the slow legislative progress, ESG considerations are well-integrated into key sectors, particularly mining and energy, which must adopt international standards imposed by clients and global banks.

However, as ESG practices become more embedded, the increasing complexity of obtaining the necessary permits has been a growing concern, particularly among foreign investors. Chile, once seen as having a comparative advantage due to its efficient regulatory processes, is now facing criticism for bureaucratic hurdles that are slowing down project approvals. This raises concerns that the added requirements might lead to a more burdensome regulatory framework, potentially leading to an adverse reaction from investors and threatening the viability of future projects, thus impacting the country's economic competitiveness.

2. Corporate Governance

2.1 Developments in Corporate Governance

In 2024, Chilean corporate governance shifted to execution. The CMF's NCG 519 reshaped the integrated annual report by adding a sustainability section with Sustainability Accounting Standards Board (SASB) metrics and disclosure of any independent assurance, and it adopts the ISSB S1/S2 IFRS for reports on FY 2026. Boards must also prepare for Law No 21,757, which caps the majority gender on boards through a staged schedule. Governance standards for exchanges under NCG 508 continued to take hold, strengthening risk oversight and internal controls.

Enforcement tightened as the CMF sanctioned dozens of issuers for late continuous reporting in January 2025 and, in September, fined a broker-dealer executive approximately USD210,000 for providing false information to the market; the Supreme Court likewise upheld heavy sanctions for fictitious trades and misleading disclosures. The message to boards is evidence-ready oversight of reporting, controls and market communications.

Digital governance remains a board priority. Chile's new "Data Protection Law" (Law No 21,719) created an autonomous agency, with most duties starting in December 2026, and the Cybersecurity Framework Law launched the ANCI in 2025 with a sectoral rulemaking agenda. Meanwhile, the risk-based AI bill advanced to the Senate, pointing to future duties around transparency and human oversight.

2.2 Differences Between Listed and Unlisted Entities

In Chile, listed companies are currently the main entities required to report on ESG matters, reflecting the government's strategy to implement sustainability disclosures gradually. At present, the obligation to report ESG data applies to large companies regulated by the CMF under NCG 461 and NCG 519. These companies must implement the ISSB S1 and S2 IFRS in their annual report corresponding to FY 2026, which will be filed in 2027.

NCG 519 introduces an exemption or simplified regime for companies whose total consolidated assets, averaged over the past two years, do not exceed approximately USD40 million. These entities may opt to submit a simplified annual report instead of the full report required under NCG 461.

While listed companies are subject to strict ESG reporting standards, unlisted entities currently enjoy greater flexibility. However, market pressure and growing regulatory expectations are likely to push unlisted companies towards adopting ESG practices, either voluntarily through best practices or through future regulatory requirements adapted to their size and capabilities.

2.3 Role of Directors and Officers

The roles and responsibilities of directors and officers in Chile have significantly evolved with the implementation of the Economic Crimes Law, which now holds them criminally liable for failing to establish effective crime prevention models. For the first time, directors and senior management are legally required to actively consider non-financial risks, such as environmental, labour, social security and corporate governance risks, as part of their fiduciary duties. This has led to a shift from focusing solely on financial oversight to engaging in the development and integration of ESG strategies.

Directors and senior management must implement strong internal controls, ensuring that ESG matters – such as environmental impact, social concerns and governance – are incorporated into the company's decision-making processes. Failure to do so can result in severe legal liabilities. Additionally, regulations issued by the CMF, such as NGC Nos 461 and 519, further mandate that boards oversee the transparency and accuracy of ESG disclosures. Given the interaction between the ESG reporting obligations and the Economic Crimes Law, there is also the potential for criminal liability if false or misleading ESG information is approved or reported by directors.

This growing responsibility emphasises the need for directors to be well-versed in sustainability issues and to ensure that ESG risks are integrated into the company's reporting and governance practices.

2.4 Social Enterprises

Chile does not have a specific legal framework exclusively designed for social enterprises, but businesses can incorporate social objectives within traditional structures like stock corporations (*sociedades anónimas* SA) and limited liability companies (*sociedades de responsabilidad limitada* SRL). Co-operatives are also an interesting option, as they prioritise social welfare and equitable participation over profit maximisation. Co-operatives are structured to ensure that members have a say in decision-making and benefit directly from the organisation's activities, making them ideal for businesses focused on shared value and community impact.

Additionally, many socially oriented businesses in Chile opt for B corporation (*Empresas B*) certification, which formally recognises companies that meet high social and environmental standards. This certification provides a way for companies to distinguish themselves as socially responsible enterprises and align with global best practices in sustainability.

Moreover, a growing trend among high net worth companies is the creation of foundations aimed at benefitting local stakeholders, particularly communities where the company or its projects operate. These foundations focus on improving local livelihoods, enhancing social development and fostering positive relationships between companies and the communities impacted by their operations.

2.5 Shareholders

In Chile, current ESG obligations are not yet strong enough to drastically influence shareholder behaviour or decision-making. However, the implementation of NCG Nos 461 and 519 has started improving transparency by requiring publicly listed companies to disclose their ESG practices. While these disclosures are still evolving, they offer shareholders more insight into a company's sustainability and risk management efforts.

Additionally, under the Law on Economic Crimes, the fiduciary duties of directors and managers have been elevated, placing greater pressure on companies to comply with ESG standards to avoid risks that may threaten long-term business sustainability. Shareholders are becoming more informed through increased access to ESG data and are showing a growing interest in encouraging better practices within the companies they invest in. Thus, shareholder expectations and pressure are increasingly shaping corporate governance for the adoption of ESG strategies. This dynamic positions shareholders as key influencers, pushing companies to voluntarily adopt higher standards, aligning with global trends and safeguarding business sustainability.

3. Sustainable Finance

3.1 Progress in Green Financing

Although 2025 witnessed a global recalibration of expectations regarding green finance – mainly due to shifts in United States policy in this area – the fact remains that sustainability and climate trends continue to be structurally embedded in markets, including the Chilean one.

A major development in this context during 2025 was the launch by the Ministry of Finance of T-MAS, aimed at steering capital towards sustainable activities and curbing greenwashing.

This classification system seeks to determine which economic activities may be considered "environmentally sustainable" in terms of making a substantial contribution to the country's environmental objectives, within a technical framework of verification and governance that provides confidence to both the financial and productive sectors to invest in projects and ventures in these areas.

The Ministry of Finance also updated Chile's sustainability-linked bond (SLB) framework to include a biodiversity key performance indicator (KPI), expanding its original climate and gender targets to incorporate measurable conservation goals such as the percentage of national territory under effective protection. The country also maintained its robust ESG bond programme, which has positioned Chile as a regional leader in sovereign sustainable finance.

Finally, CMF NCG 519, by mandating the adoption of IFRS standards for annual reports starting in 2026–27, will also greatly encourage investment. This is because, particularly for foreign investors, it will provide objective parameters for comparison, and for conducting due diligence on Chilean publicly traded companies in matters related to ESG risk assessment.

3.2 Sustainable Finance Framework

In Chile, the General Banking Law does not yet explicitly codify ESG requirements, but financial institutions are increasingly incorporating ESG principles into their operations. Commercial banks are demanding non-financial disclosures from companies and promoting investments aligned with sustainable governance standards, guided by frameworks such as the International Finance Corporation (IFC) Performance Standards and the Equator Principles.

The CMF and the Central Bank of Chile are actively promoting ESG integration through complementary guidelines. In 2021, the CMF introduced a circular recommending the adoption of the Task Force on Climate-related Financial Disclosures (TCFD) framework, urging banks to disclose climate-related financial risks and integrate environmental and social factors into their risk management processes. This aligns Chile with international standards for ESG reporting and transparency.

Moreover, the Central Bank of Chile has incorporated climate-related risks into its financial stability assessments under the Green Finance Agenda (*Agenda de Finanzas Verdes*) initiative. This encourages the banking sector to consider environmental risks when evaluating long-term investments and asset portfolios. These developments, while not formal amendments to the General Banking Law, mark a broader shift towards embedding ESG criteria in Chile's financial system.

Additionally, Chile newly introduced T-MAS, which provides a standardised classification for sustainable activities, offers clearer definitions for sustainable investments and helps align financial products with ESG goals, enhancing transparency and accountability across industries.

3.3 Access to Green Financing

Access to green financing in Chile has expanded significantly through various mechanisms introduced by the government and financial institutions. The Chilean government has actively promoted green bonds, and in October 2025, Banco Estado, a state-owned company, carried out the first issuance of blue bonds in international markets, allocating the proceeds to energy-related projects. Another state-owned company, Metro de Santiago, issued green bonds in September 2025 for USD183 million in Switzerland, with the aim of financing or refinancing sustainable projects in accordance with its Green Financing Framework.

Meanwhile, the private company Forestal Arauco successfully completed the largest bond issuance in Chile's history, valued at the equivalent of USD800 million. These bonds have a hybrid nature, incorporating sustainability-linked components.

With regard to the domestic framework for bond issuance, the Ministry of Finance updated the SLB framework, incorporating a new KPI related to biodiversity protection.

Additionally, the Chilean Economic Development Agency (*Corporación de Fomento de la Producción* CORFO) has developed a refinancing programme aimed at supporting projects focused on renewable energy, energy efficiency and circular economy initiatives. Through financial intermediaries, CORFO offers loans of up to 15 years and finances up to 70% of the total investment, with a ceiling of USD20 million per project.

Local banks have joined these efforts by promoting green and sustainable loans for projects that prioritise environmental benefits. The Ministry of Energy has also launched a centralised website that consolidates information on public funding sources, making it easier for companies to explore available financing options.

While these initiatives have improved accessibility, smaller companies and projects still face challenges in meeting strict eligibility requirements and understanding ESG frameworks. The recently published T-MAS and the progressive adoption of international standards for ESG reporting – guided by the CMF's initiatives – are expected to further promote the growth and availability of sustainable financing in Chile.

3.4 Stranded Assets and Non-Bankables

In Chile, the mining sector is the primary industry facing potential risks of becoming a stranded asset. However, the mining sector has been proactive in integrating ESG practices to align with global sustainability trends. Key mining companies are investing in renewable energy, water efficiency and community engagement initiatives, demonstrating a strong commitment to adapt to evolving ESG requirements and comply with Chile's goal of achieving of carbon neutrality by 2050 and shifting its energy matrix towards renewable sources.

Chile's 2030 National Decarbonization Plan has already led to the closure of several coal-fired power plants, but these closures have been managed through transition plans that aim to minimise economic and social impacts. The mining industry, a major consumer of energy, is actively transitioning to renewable energy sources, thereby reducing its carbon footprint and aligning with national decarbonisation goals.

Rather than excluding traditional borrowers, financial institutions are increasingly supporting mining companies that adopt sustainable practices. This shift is reflected in the availability of green loans and SLBs tailored specifically for mining operations that meet environmental and social standards.

While the risk of stranded assets remains, particularly for non-compliant operations, the extractive resources and non-renewable energy industries are not being left behind. Instead, the focus is on transforming traditional sectors to meet ESG criteria and maintain their competitiveness in a low-carbon economy. This approach ensures that traditional industries can adapt to new requirements without losing access to critical financing.

3.5 Challenges Ahead

Chile's sustainable finance landscape faces several challenges as it adapts to growing ESG expectations. A primary concern is greenwashing, whereby companies exaggerate their environmental credentials to attract investment. To address this, a proposed bill against greenwashing seeks to regulate sustainability claims, penalise misleading statements and establish clear guidelines for companies to follow. Once enacted, this bill will help ensure transparency and credibility in ESG representations, thereby fostering greater trust in sustainable finance.

An emerging concern is the rise of "anti-ESG" sentiment among sectors that regard stricter regulations as barriers to competitiveness. In this respect, however, there is both political and social consensus that, in Chile, it is indeed necessary to reduce timeframes and clarify the criteria for environmental assessments and other sectoral permits. The recent LMAS represents an initial step in this direction, without implying any reduction in the quality of the assessments. Nonetheless, there remains a genuine concern regarding the excessively strict interpretation of environmental regulations by the administrative authorities or the courts, which could hinder an effective energy transition by preventing the adoption of new clean energy sources due to minor localised impacts. This, in turn, could lead to the continued operation of more polluting industries with substantially greater contributions to the greenhouse effect and global warming. Decisions of this nature may also seriously discourage the financing of new clean energy projects that require lengthy environmental authorisations.

Additionally, financial institutions are facing greater compliance burdens as ESG standards become increasingly complex, requiring enhanced monitoring and reporting systems. This could place particular strain on smaller institutions with limited resources. The establishment of a domestic taxonomy, however, constitutes an important step towards providing greater certainty for investment.

4. ESG Due Diligence

4.1 Soft Law Becoming Hard Law

In Chile, ESG-related soft law is increasingly being integrated into binding regulations, reflecting a shift towards stricter compliance. A key development is the proposed Human Rights Due Diligence law, which aims to enforce corporate responsibility regarding human rights and environmental protection. The initiative is aligned with international standards, such as the EU's Corporate Sustainability Due Diligence Directive (CSDDD), and would require companies to identify, prevent and mitigate any negative impacts across their value chains. If passed, this law would mark a significant transition from voluntary ESG guidelines to mandatory due diligence obligations.

Moreover, NCG Nos 461 and 519, issued by the CMF, introduced mandatory ESG disclosures for publicly listed companies. The regulation requires these companies to include information on their ESG policies in their annual reports, establishing a clear reporting standard. While these standards do not yet impose penalties for non-compliance, they have laid the groundwork for more robust reporting obligations.

Additionally, the Economic Crimes Law, enacted in 2023, expanded corporate liability to include offences related to environmental damage and governance misconduct. This law increases accountability for companies, making it part of a broader regulatory framework that supports ESG enforcement.

Overall, while many ESG regulations in Chile are still based on best practices, the country is moving towards hard law frameworks that aim to provide clearer guidelines and stricter compliance measures for companies.

4.2 Towards Vertical Responsibilities

In Chile, there is an increasing focus on human rights due diligence in corporate supply chains, driven by the global trend of strengthening corporate responsibility. While there is no comprehensive due diligence law covering all ESG areas, the Chilean government is considering a regulation focused specifically on human rights due diligence. This would require companies to assess, prevent and mitigate human rights risks throughout their supply chains, aligning with international standards like the United Nations Guiding Principles on Business and Human Rights.

The proposed regulation would place responsibilities on companies to actively identify potential human rights violations within their operations and business relationships, setting a precedent for broader vertical responsibilities. Although it has not yet been formally introduced as a bill, discussions around this regulation have raised awareness among companies regarding the need to implement robust risk management systems that extend to third-party contractors and suppliers. This growing attention to supply chain due diligence is also closely tied to international commercial pressure, especially concerning Chilean exports.

Other regulations, such as the Economic Crimes Law, have expanded corporate liability in areas like governance and environmental offences, and made companies responsible for the commission of economic crimes in those areas even if committed by commercial partners such as suppliers and service providers. Thus, the implementation of the company's crime prevention model requires that its application extend to its supply chain.

4.3 Partner Selection

The implementation of the Economic Crimes Law has significantly impacted how companies in Chile manage their supplier relationships and contract partners. The law, which expanded the scope of criminal liability for companies, requires businesses to integrate a comprehensive risk management approach that includes third-party suppliers into their compliance structures. This has forced companies to be more diligent when selecting partners, and to incorporate them into their crime prevention models as relevant stakeholders.

Under Law No 21,595, companies must consider suppliers and contractors in their risk matrix and include them in due diligence processes to identify any potential risks related to, for example, environmental, governance or corruption offences. This approach aims to ensure that companies are not only compliant with internal policies but are also protected from being held liable for illegal activities carried out by their business partners.

As a result, companies are now more cautious when contracting suppliers, often requiring them to meet specific compliance standards and sign agreements that align with the company's crime prevention policies. This includes implementing enhanced know your supplier (KYS) procedures, ongoing monitoring and, in some cases, terminating relationships if a supplier fails to meet the required standards.

This regulatory shift is not only improving compliance among primary companies but is also enhancing practices down the supply chain. Smaller suppliers are being pushed to elevate their standards, adopt formal risk management procedures and invest in training programmes to understand and meet these new requirements. By doing so, suppliers strengthen their own compliance frameworks, making them more attractive business partners and minimising the risk of being excluded from supply chains.

Ultimately, this approach is fostering a more responsible and transparent business environment throughout Chile's supply chains, ensuring that suppliers play a proactive role in mitigating legal and reputational risks. Increasingly, the reputational risk of incorporating suppliers with a negative ESG track record has led large companies to adopt stricter selection criteria when choosing their business partners, encouraging better practices and alignment with sustainability goals.

4.4 ESG in M&A Due Diligence

In Chile, the integration of non-financial risks – such as ESG factors – has become a critical component of due diligence processes in mergers and acquisitions (M&A). Traditionally, due diligence focused primarily on financial, operational, and legal risks; however, recent trends reveal a growing emphasis on assessing a target company's ESG performance in order to identify potential risks and liabilities that could affect the long-term value of an acquisition.

This shift has been driven by several factors, including regulatory developments, investor expectations and the increasing importance of sustainability within corporate strategies. For instance, evaluating a target company's environmental impact, labour practices, human rights policies and governance structures has now become standard practice. Failure to address these non-financial risks may result in significant reputational damage, restricted access to project financing or even legal liabilities following the acquisition.

Consequently, M&A transactions now often incorporate specific ESG due diligence modules alongside traditional parameters. This entails assessing the target's adherence to ESG standards, identifying areas of non-compliance and estimating potential future costs associated with aligning the company to best practices. Integrating ESG considerations into due diligence not only enables purchasers to understand the full scope of risks but also ensures that the acquisition aligns with their broader sustainability objectives. In the case of publicly listed companies, the requirement under CNG 519 to adopt the S1 and S2 sustainability disclosure IFRS from 2027 onwards will significantly facilitate a more objective and comparable analysis of ESG-related risks.

This comprehensive approach strengthens decision-making, reduces the likelihood of inheriting hidden liabilities and supports sustainable growth strategies – making ESG an indispensable element of the M&A due diligence process.

5. Transparency and Reporting

5.1 Key Requirements

In Chile, ESG disclosure requirements for publicly listed joint-stock companies are governed by NCG Nos 461 and 519, issued by the CMF. This regulation mandates that listed companies report on ESG practices – including climate-related risks, human rights and governance structures – in their annual reports.

NCG 519 requires securities issuers to disclose more structured information aligned with international standards set by the ISSB, such as IFRS S1 and S2. The goal is to increase transparency and ensure that non-financial risks are integrated into overall corporate strategies.

Companies with average consolidated assets below USD40 million may choose to be exempted from the full integrated reporting requirement and instead submit a simplified version.

5.2 Transition Plans and ESG Targets

In Chile, there are currently no mandatory requirements for companies to publish specific transition plans or commit to ESG targets, except for those established under NCG Nos 461 and 519, which apply to large publicly listed companies. These regulations require issuers of publicly traded securities to include in their annual reports information on sustainability strategies, ESG policies and specific objectives, together with details of their progress and governance mechanisms. However, they do not mandate formal transition plans or binding ESG targets. Furthermore, there is no specific legal standard or statute addressing greenwashing, which leaves a regulatory gap concerning the accuracy and verification of companies' sustainability claims.

With regard to climate change, the Climate Change Framework Law, enacted in 2022, does not impose direct, company-specific obligations to adopt or publish climate or transition commitments. Nevertheless, the regulatory framework derived from this law is evolving: the sectoral regulations currently being developed under its authority are expected to introduce concrete obligations for specific industries. These are likely to include binding requirements for emission reductions and adaptation plans and measures, as well as the issuance of new emission standards – such as those for greenhouse gases and short-lived climate pollutants – with which private entities will be required to comply.

Additionally, companies are increasingly adopting voluntary commitments in line with international standards such as the TCFD and SASB frameworks. Many firms, particularly those operating in sectors with a high environmental impact, such as mining and energy, are implementing emission reduction targets, climate risk assessments and sustainability goals to align with global best practices and maintain their competitiveness in the international market.

Overall, while transition plans and binding ESG targets are not yet universal, Chile is progressing towards a more structured framework. The absence of clear regulations on greenwashing remains a notable gap, although future regulatory developments are expected to address this issue and strengthen accountability.

5.3 Regulation of ESG Labels

In Chile, there are currently no specific regulations governing the use of ESG labels or sustainability claims. However, companies must comply with the general Consumer Protection Law (Law No 19,496) and advertising standards to avoid making false or misleading statements about the sustainability of their products or services. This implies that any sustainability-related claims must be accurate, verifiable and not misleading, ensuring that consumers are not deceived by vague or exaggerated ESG statements.

Chile is working on a proposed bill against greenwashing, which aims to regulate and standardise how companies and financial institutions present their environmental and social credentials. This legislation, once enacted, will establish clear criteria for making sustainability claims and introduce penalties for companies that engage in greenwashing. The bill seeks to ensure that companies back up their claims with reliable data and certifications, ultimately enhancing the credibility of ESG labels and fostering transparency in the market.

In the absence of specific ESG label regulations, many Chilean companies voluntarily adopt international standards and certifications, such as the GRI, B corporation certification and International Organization for Standardization (ISO) 14001 for environmental management. These standards serve as benchmarks for validating sustainability claims and ensuring consistency in reporting.

5.4 Supervision

In Chile, environmental compliance is overseen by the SMA, which ensures that companies adhere to environmental regulations. The SMA monitors compliance with environmental standards and has the authority to enforce penalties for non-compliance.

ESG disclosures and sustainability marketing claims are primarily monitored by the CMF, which oversees compliance for large publicly listed companies. NCG Nos 461 and 519, issued by the CMF, mandate that listed entities include ESG information in their annual reports, such as environmental policies, gender equality and corporate governance structures, among other things, in alignment with the ISSB guidelines. In any case, an offence classified as an economic crime under the Law on Economic Crimes – namely, the provision of false ESG information to the market in official documents – could ultimately give rise to criminal prosecution by the Chilean Public Prosecutor's Office. This may extend to the boards of directors of companies subject to the supervision of the Financial Market Commission, in connection with false information contained in the companies' approved integrated annual report.

For sustainability claims made to consumers, the National Consumer Service (*Servicio Nacional del Consumidor* SERNAC) is the primary regulatory body. SERNAC enforces the Consumer Protection Law, which prohibits misleading or deceptive advertising. Companies making false or exaggerated ESG claims can face fines and reputational damage if their marketing practices are found to mislead consumers.

It is also worth noting that Chile has been debating a greenwashing bill in Congress since 2022, which could, in its final wording, either delegate supervisory and sanctioning powers to an existing body or establish a new institution to exercise such powers.

5.5 Enforcement

In Chile, enforcement of ESG-related non-compliance was strengthened with the enactment of the Law on Economic Crimes, which came into full effect in September 2024. This law significantly expands corporate liability by including offences related to environmental crimes and misleading disclosures in corporate reports. Under the law, companies and their executives can be held criminally responsible for providing false or incomplete ESG information that is legally mandated (eg, NCG 461 or NCG 519), potentially facing severe penalties – including fines and imprisonment for those involved.

The uncertainty that originally existed regarding how prosecutors would apply this law, particularly concerning the scope of its text, has persisted in 2025, since the first cases that the Public Prosecutor's Office has undertaken and decided to investigate have not yet resulted in trials with final judgments that could establish criteria – for instance, regarding the use of false or misleading information in terms of ESG disclosure. For consumer-facing claims, SERNAC enforces the Consumer Protection Law, which penalises misleading advertising. The greenwashing bill, which is expected to further strengthen penalties, providing a clearer framework to address ESG-related misstatements and ensuring greater accountability in the Chilean market, has stagnated in Congress.

5.6 Expected Progress

As of October 2025, ESG reporting in Chile is undergoing a decisive transformation driven by NCG 519, issued by the CMF in late 2024. This regulation modernises and replaces part of the previous framework under NCG 461, aligning Chile's reporting standards with the ISSB guidelines – specifically IFRS S1 (general sustainability disclosures) and IFRS S2 (climate-related disclosures). These standards will become mandatory from FY 2026, marking a major step towards harmonisation with global ESG reporting practices.

While there has been consistent progress in ESG transparency, gaps persist in areas such as biodiversity, climate targets and governance quality. The implementation of NCG 519 seeks to close these gaps by requiring sector-specific SASB metrics, enhanced third-party verification and clearer disclosure of governance structures, diversity policies, and labour practices. These new obligations are expected to significantly improve the consistency, comparability and credibility of ESG information. This is also crucial from an international investor's perspective as it will facilitate the increasingly common ESG due diligence processes and provide credibility to all stakeholders regarding the data presented by companies.

At the same time, Law No 21,595 on Economic Crimes continues to raise the standard by which companies comply with and record their ESG progress, also as a means of protecting themselves against potential criminal prosecution processes in the future.

Despite these advances, companies face substantial challenges. Many must still upgrade their data systems, internal controls, and governance frameworks to produce reliable, audit-ready sustainability reports. Integrating financial and non-financial information, ensuring materiality assessments and achieving assurance under international standards will remain demanding tasks in the short term. Beginning with its implementation at the end of 2026, the incorporation of the new Data Privacy Law's requirements will pose particular challenges, especially in relation to how companies manage third-party information, as they will often need to collect and disclose such data to demonstrate both their own compliance and that of their supply chains under ESG criteria.

6. Climate and ESG Litigation

6.1 Instruments for ESG Litigation

Chile does not have a specialised court exclusively dedicated to addressing ESG matters, and many ESG criteria remain voluntary goals without specific legal or administrative sanctions. ESG-related disputes are generally heard by different forums depending on the nature of the issue and the sector involved. Environmental matters, for instance, are addressed by the environmental courts (*tribunales ambientales*), which have exclusive jurisdiction over conflicts related to environmental regulations, damage assessments and remediation actions. These courts provide a specialised mechanism for environmental litigation, offering technical expertise in resolving complex environmental issues. Although decisions can be appealed before higher courts in Chile, these typically apply the principle of deference to the technical aspects of rulings issued by specialised tribunals.

For social or community-related matters, parties may resort to the emergency injunction action (*recurso de protección*) before the local court of appeal. This legal remedy is designed to protect constitutional rights when there is an imminent threat to fundamental freedoms. It is widely used in Chile to seek swift judicial intervention in response to urgent social issues. In labour rights matters, there is a specialised jurisdiction that also handles complaints under the Karin Law, and cases involving violations of fundamental rights in the workplace.

In contrast, disputes involving corporate governance – such as breaches of fiduciary duties, shareholder conflicts or mismanagement of corporate assets – are typically handled by civil courts. These cases are usually framed as claims for damages or compensation and require proof of financial harm or misconduct by corporate officers. Because there is no specialised tribunal for governance issues, such matters follow standard civil procedures, which can lead to longer resolution times. However, the Economic Crimes Law has empowered the National Criminal Prosecutor's Office (*Fiscalía Nacional Criminal*) to investigate corporate economic crimes, which, if formally charged, will be heard by criminal courts. Since the law came into force in September 2024, several cases are currently under investigation, though no criminal court rulings have yet been issued.

Thus, the legal landscape for ESG litigation in Chile is fragmented and sector-specific, with no single specialised forum to address all ESG-related issues. Companies and stakeholders must carefully identify the appropriate legal mechanism based on the nature of the dispute – whether environmental, social or governance-related.

6.2 Climate Activism

Non-governmental organisations (NGOs) and activists in Chile are becoming increasingly sophisticated and play a crucial role in advancing ESG-related issues. Their knowledge of the legal framework has empowered them to strategically leverage existing regulations to influence corporate and governmental decisions, particularly regarding environmental and social matters.

In recent years, Chile has witnessed a surge in climate activism, with activists actively engaging in legal processes to challenge environmentally harmful projects and promote stricter compliance with environmental laws. They frequently bring lawsuits before the environmental courts, challenging permits and environmental impact assessments, and demanding greater protection for ecosystems and local communities. This legal expertise allows them to effectively participate in complex cases, utilising scientific data and robust legal arguments to strengthen their positions.

Additionally, activists are adept at using legal instruments like the emergency injunction action to protect social and community rights when they believe constitutional guarantees are at risk. This legal sophistication has made them formidable stakeholders in large-scale projects, especially those impacting indigenous communities and vulnerable populations.

Their strategies are not limited to litigation. Activists and NGOs also use public campaigns, media and international platforms to raise awareness, influence public opinion and pressure companies and the government to adopt higher ESG standards. As a result, they have become key drivers of more responsible business practices in Chile, compelling companies to address environmental and social issues more proactively.

The growing influence of these well-informed and organised activists is reshaping the ESG landscape in Chile, making it essential for companies to consider their perspectives when developing projects and compliance strategies.

6.3 Greenwashing

In Chile, there have been no significant claims or legal actions brought by investors or regulatory authorities specifically related to greenwashing. This is partly because many ESG regulations remain voluntary and focus on best practices rather than strict compliance. While the CMF has implemented NCG Nos 461 and 519 to enhance transparency in ESG reporting for companies, these regulations do not include direct penalties for exaggerated or misleading ESG statements.

That said, concerns about greenwashing are growing, especially regarding the advertising of the supposedly sustainable nature of companies' operations. However, the bill aimed at combating greenwashing has made no progress in Congress. This proposed legislation seeks to establish clear criteria for sustainability claims and introduce penalties for companies that provide false or misleading information about their environmental credentials. It would apply to both financial and non-financial sectors, ensuring that companies substantiate their sustainability claims with verifiable data.

On the other hand, greenbleaching has not been a topic of significant public discussion in Chile over the past 12 months. Many companies continue to voluntarily disclose their sustainability efforts, largely driven by market expectations and investor interest in ESG practices. Nevertheless, as new regulations emerge, maintaining a balance between preventing greenwashing and fostering genuine ESG commitments will be a critical challenge for both regulators and companies in the years ahead.

6.4 A Turbulent Future Ahead

In Chile, ESG-related litigation is expected to become increasingly frequent over the coming years, as is expected to occur internationally as well. This trend will likely be driven by the strengthening of local regulations, greater stakeholder awareness and the increasing influence of sophisticated NGOs and activists. As companies are held to higher standards of environmental and social responsibility, disputes related to non-compliance, inadequate ESG disclosures and social impacts on local communities are likely to increase.

The enactment of laws such as the Economic Crimes Law, the which expands corporate liability for environmental and governance offences, combined with the potential introduction of a greenwashing bill and the enforcement of the Data Protection Law, will provide more legal tools for plaintiffs to pursue ESG-related claims. These regulations will create clearer grounds for litigation, especially for misrepresentations in corporate sustainability reporting or breaches of new human rights due diligence obligations.

Additionally, as Chile advances in its implementation of the Climate Change Framework Law and progresses with its 2030 Decarbonization Plan, companies will face greater scrutiny over their environmental impacts and compliance with new climate regulations. This will likely lead to an increase in disputes, particularly in sectors with large environmental footprints such as mining and energy.

Overall, as Chile's ESG landscape matures and regulatory enforcement strengthens, the number of ESG-related cases is expected to rise gradually. Companies will need to proactively manage these risks by improving their ESG strategies, enhancing transparency and adopting more robust compliance frameworks to avoid potential litigation in the near future.

Trends and Developments

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Bertrand-Galindo Barrueto Barroilhet & Cía is a premier law firm based in Santiago, Chile, recognised for delivering value-driven legal solutions across diverse practice areas including corporate law, mining, energy, environmental law, international trade, tax and dispute resolution. The firm is widely recognised as a pioneer and a leading counsellor in ESG and compliance matters for both national and international clients. The lawyers are highly experienced professionals who provide strategic and comprehensive legal support to both domestic and foreign clients, aiming to add value to their businesses through tailored, client-centric advisory. With a strong focus on understanding the specific needs and objectives of each client, the firm excels in navigating complex regulatory landscapes and developing innovative strategies that align with business goals. Bertrand-Galindo Barrueto Barroilhet & Cia is committed to providing exceptional legal counsel with integrity, efficiency, and a focus on enhancing the success and sustainability of its clients' ventures.

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Chile's ESG landscape in 2025 represents a dynamic and evolving regulatory environment, driven by the need to align with international standards and address the country's domestic sustainability challenges in harmony with the urgent need to revitalise the economy. Over the past couple of years, the country has implemented key reforms in environmental protection, social rights and corporate governance, signalling its commitment to transitioning towards a more sustainable future. However, the path forward is not without its challenges, including bureaucratic hurdles, the increasing complexity of ESG regulations, and the need for enhanced transparency and accountability.

Environmental Trends: Strengthening Chile's Climate Resilience

Environmental concerns have long been central to Chile's sustainability agenda, given the country's vulnerability to climate change and its significant reliance on resource-intensive industries like mining and energy. Thus, Chile made further strides in reinforcing its environmental regulations, particularly through the proposed reforms to the Environmental Impact Assessment System (*Sistema de Evaluación de Impacto Ambiental* SEIA), although sadly with very little progress during 2025. The SEIA reform is expected to improve the efficiency of environmental reviews by integrating climate change considerations into project assessments and strengthening the role of regional directorates of the Environmental Assessment Service (*Servicio de Evaluación Ambiental* SEA). By shifting decision-making to technical experts, the government seeks to enhance the technical rigour of evaluations while reducing delays caused by political interventions.

A key element of the SEIA reform is the emphasis on early public participation. Encouraging stakeholders, particularly local communities, to engage in the project evaluation process early on is a significant step towards ensuring transparency and fostering trust. By providing opportunities for communities to voice concerns at the start of the review process, companies can address potential social and environmental conflicts, thereby reducing the risk of future disputes and delays. This development highlights the importance of stakeholder engagement as a cornerstone of Chile's environmental policy.

Additionally, the Council of Ministers for Sustainability, chaired by the Minister of the Environment, conducted a public consultation and, in 2025, approved in the implementation of Phase II of the proposed reform to the Environmental Impact Assessment System Regulations. This reform aims to modernise, through regulatory changes, the thresholds for projects required to enter the system, as well as the typologies of projects and the criteria for determining whether they must undergo environmental evaluation – redirecting lower-impact projects to the corresponding sectoral permits.

In addition to these regulatory changes, Chile has continued to focus on biodiversity protection with the establishment of the Biodiversity and Protected Areas Service (*Servicio de Biodiversidad y Áreas Protegidas* SBAP) through Law No 21,600. With the issuance of Supreme Decree No 27, the newly created agency initiated a review of the existing list of protected areas, helping Chile to better protect its ecosystems from the impacts of industrial activity and climate change.

Furthermore, the Emissions Compensation System for the Green Tax (*Sistema de Compensación de Emisiones del Impuesto Verde* SCE), created in 2023, reached operational maturity, with the Ministry of the Environment reporting 4.4 Mt of CO_2 compensation in 2024 and launching a second cycle in 2025. This year, the Regulation of the Greenhouse Gas and Short-Lived Climate Pollutants Emissions Compensation System was approved, which incentivises businesses to reduce their greenhouse gas emissions through a compensation market based on emission reduction certificates. This market-based approach is part of Chile's broader strategy to meet its climate goals, including an ambition to achieve carbon neutrality by 2050.

In terms of the circular economy, 2025 marked a turning point in the enforcement of the Extended Producer Responsibility Law (Law No 20,920, 2016) for packaging and other products. In January 2025, the Superintendency of the Environment (*Superintendencia del Medio Ambiente* SMA) launched the extended producer responsibility reporting platform and initiated sanctioning proceedings for non-compliance. Monthly digital reporting and traceability have become operational realities, requiring producers to verify their management systems, guarantees and internal controls.

Complementing these developments, the Ministry of Finance's Sustainable Finance Office officially launched Chile's Taxonomy of Environmentally Sustainable Economic Activities (T-MAS) in May 2025. Although not a binding regulation, the taxonomy functions as a public policy instrument that provides a clear, technical and coherent definition of which economic activities qualify as sustainable, thereby guiding investment, financing and environmental management decisions.

However, despite the progress made in strengthening environmental oversight, bureaucratic delays continue to pose a challenge for businesses seeking environmental permits. This situation underscores the growing frustration among businesses about the complex regulatory framework and the difficulty of navigating evolving environmental standards. The need to streamline the permitting process while maintaining rigorous environmental protections is an ongoing challenge for the Chilean government. As a means to alleviate such issues, the Framework Law on Sectoral Authorizations (LMAS) – also referred to as the Sectoral Permitting Law – was approved. Promoted by the Ministry of Economy, this law seeks to co-ordinate and modernise over 300 administrative and technical permits issued by various public agencies, which must be processed independently from the environmental impact assessment conducted by the SEA.

Chile's energy transition, which aims to achieve carbon neutrality by 2050, is being driven by a significant shift towards renewable energy sources, particularly solar, wind and green hydrogen. This transition is not only reshaping the energy sector but also transforming how companies approach non-financial risks, specifically those related to environmental, social and governance (ESG) factors.

The requirement to disclose and manage these non-financial risks, as mandated by regulations such as General Standard No 461 and General Standard No 519, is compelling companies to adopt more sustainable practices and incorporate international ESG criteria into their core operations. This growing emphasis on transparency and accountability in ESG matters is influencing market behaviour, as companies that effectively manage ESG risks are better positioned to access financing, particularly from international banks and investors who prioritise sustainability. As a result, businesses in Chile's energy sector are increasingly focusing on water usage, emissions reduction and community impact as part of their strategic risk management, aligning with global best practices and responding to the financial market's demand for greener, more responsible investments.

In this way, the intersection of Chile's energy transition and ESG obligations is playing a crucial role in shaping the country's economic and environmental landscape, making sustainability an essential aspect of long-term business viability in Chile.

Social Trends: Enhancing Labour Protections and Pending Advancements in Human Rights Due Diligence

In social matters, rather than major new legislation, what stands out in 2025 is the progress in implementing laws enacted in 2024, notably the 40-Hour Workweek Law (Law No 21,561), which seeks to gradually reduce the maximum weekly working hours from 45 to 40 by 2028. This law aims to improve work-life balance and reflects a broader global trend towards enhancing employee well-being. Importantly, the law introduces greater flexibility in work arrangements, such as the option for a four-day workweek, provided there is mutual agreement between employers and employees. These labour reforms are expected to improve workplace conditions across industries, fostering a more productive and sustainable work environment.

The implementation of Law No 21,643 (known as the "Karin Law," after a victim of workplace harassment) had an even greater impact in 2025. This legislation strengthens protections against workplace harassment and violence, mandating companies to implement protocols to address psychosocial risks and mental health issues. The law came fully into force and was widely invoked by workers, even causing delays in court proceedings due to case overload – an issue that has been mitigated through administrative measures designed to ensure the law's effectiveness. It also strengthens the role of labour authorities, such as the

Labor Directorate and the Superintendence of Social Security, by granting them expanded oversight and enforcement powers.

While these advancements in labour rights are notable, the anticipated human rights due diligence bill for corporations has yet to be enacted. In April 2025, a bill was introduced in the Senate entitled "Bill Establishing and Regulating Corporate Due Diligence in Respect of Human Rights, the Environment, and Climate Change". It is currently under its first review by the Senate Committee on Human Rights, Nationality, and Citizenship. This proposed legislation, aligned with the UN Guiding Principles on Business and Human Rights, would require companies to identify, assess and mitigate human rights risks throughout their supply chains. Although the bill has not progressed as quickly as expected, discussions surrounding its implementation have heightened awareness among companies about the importance of human rights due diligence. Many Chilean companies, particularly those operating in the international markets, are already voluntarily adopting best practices in this area, but the absence of binding regulations creates a gap in the country's corporate responsibility framework. In lieu of the lack of more developed local standards, Chilean companies operating abroad or as part of international corporate conglomerates face increasing pressure to meet international ESG standards from their stakeholders and clients. Thus, industries such as mining, energy and infrastructure, which are critical to Chile's economy, opt to willingly adhere to the highest international standards and assessments, including those set by the Global Reporting Initiative (GRI), International Financial Reporting Standards (IFRS), Initiative for Responsible Mining Assurance (IRMA) and Dow Jones Sustainability Index (DJSI), etc. These international standards drive greater transparency and accountability within Chilean companies, further aligning the country's social policies with global best practices.

Governance Trends: Expanding Corporate Accountability and Liability and Gender Equality

Chile's governance landscape has undergone significant transformations since 2024, largely driven by regulatory reforms aimed at enhancing corporate accountability and transparency. The full entry into force of the Law on Economic Crimes has been one of the most influential governance-related changes, imposing stricter compliance requirements on businesses and significantly expanding corporate criminal liability. Under this law, companies are now required to update their crime prevention models to incorporate ESG risks, ensuring that governance practices reflect not only financial oversight but also social and environmental considerations.

One of the key features of this law is its broad scope, covering a wide range of crimes related to environmental damage, corruption, social security crimes and other forms of corporate misconduct. The severity of penalties under Law No 21,595 has brought about a cultural shift in Chilean corporate governance. For the first time, companies are integrating non-financial risks, such as ESG factors, into their core business strategies. This move has pushed boards of directors and senior management to re-evaluate their fiduciary duties, focusing on long-term sustainability and stakeholder engagement beyond the traditional financial metrics.

Directors and officers could now potentially face criminal liability for failing to prevent corporate crimes, making corporate governance a more holistic concept that includes compliance with ESG duties. The crime prevention model, initially introduced to prevent corruption and financial crimes, has been expanded to include ESG risks, thereby aligning with international best practices in corporate governance. Companies must now implement due diligence mechanisms to identify potential risks across their supply chain, ensuring compliance with both local laws and global ESG standards.

A long-awaited change was the enactment in August of 2025 of the "More Women on Boards" Law (Law No 21,757), introducing progressive gender-balance quotas for listed and "special" corporations. The law establishes a gradual path towards a 60% cap for the majority gender, under the supervision of the Commission for the Financial Market (CMF). Issuers are expected to adjust board-renewal schedules, nomination policies and disclosure practices accordingly.

Corporate Disclosures and Governance Reporting

Chile's focus on corporate governance reforms also includes increased transparency in reporting practices. General Standard No 508 ("NCG 508"), issued by the CMF, establishes governance and risk management guidelines for stock exchanges and product exchanges focusing on oversight, internal controls and alignment with international best practices. This regulation aims to improve corporate governance practices and align Chile with global governance standards.

The aforementioned CMF General Standards No 461 and No 519 also played a significant role in advancing corporate governance, as they require publicly listed companies to disclose ESG policies, strategies and risk management practices in their annual reports, thereby integrating non-financial risks into mainstream reporting. By making these disclosures mandatory, the CMF is pushing companies to consider ESG factors as part of their overall governance strategy, enhancing transparency for investors and stakeholders. Especially significant is the obligation introduced by General Standard No 519, as it requires companies' annual reports to follow the International Sustainability Standards Board (ISSB) S1/S2 climate and sustainability IFRS for their 2026 annual report (to be published in 2027). This will allow for much greater harmonisation of these reports, make them more useful for foreign stakeholders and, in turn, create stronger oversight aimed at preventing greenwashing.

The Rise of Digital Governance and Cybersecurity Standards

Another emerging trend in Chile's governance landscape is the increased use of artificial intelligence (AI) in corporate governance and ESG reporting. An AI bill, currently being discussed in Congress, aims to create a risk-based framework for regulating the ethical use of AI in corporate decision-making. This bill establishes principles such as transparency and human oversight, ensuring that companies use AI technologies in a responsible manner.

In addition to AI regulation, cybersecurity has become a critical component of corporate governance, particularly as companies face growing risks related to data breaches and cyber-attacks. Following the enactment of the Framework Law on Cybersecurity and Critical Information Infrastructure in 2024, this year, the National Cybersecurity Agency (*Agencia Nacional de Ciberseguridad* ANCI) began operations, issuing an action plan aligned with the 2023–28 National Cybersecurity Policy. Providers of critical services should expect sector-specific rules, audits and sanctions to expand in the coming years. These developments are helping to position Chile as a leader in digital governance in Latin America, with companies now required to adopt more robust cybersecurity measures as part of their overall governance frameworks.

As the use of AI in ESG reporting has increased, it is important to recognise that while AI-driven tools offer enhance efficiency and precision in ESG reporting, they also present certain risks. For instance, the reliance on algorithms could shift the focus away from meaningful stakeholder engagement and human-driven insights. This could inadvertently lead to a "tick-box" approach to compliance, where companies prioritise using AI to meet technical requirements, such as employing the right terminology to satisfy algorithmic patterns, rather than ensuring genuine, impactful actions that align with ethical business practices. In this way, ESG compliance risks becoming more about meeting technological criteria than addressing the actual material concerns and impacts on stakeholders.

The Law on Economic Crimes Law: A New Era of Corporate Responsibility

The Economic Crimes Law, which came into force at the end of 2024, has been a game-changer for governance in Chile. It introduces criminal liability for directors and officers who fail to implement effective crime prevention models within their companies, particularly in relation to ESG risks. This law has expanded the range of offences that companies can be held accountable for, including environmental crimes, governance failures and other forms of corporate misconduct.

Under this law, companies are required to demonstrate that they have taken all necessary steps to prevent criminal activities, including those related to ESG violations. This has led to a greater emphasis on risk management and internal controls, particularly in industries with a high environmental impact such as mining and energy. Directors and officers must now be more proactive in monitoring compliance and mitigating risks, ensuring that their companies are aligned with both local regulations and international ESG standards.

The penalties for non-compliance are severe, including sanctions on the corporation as well as fines, criminal charges and even imprisonment – for both the authors and those found guilty of governance due diligence failures. This has made ESG compliance a top priority for companies in Chile, with many investing in training programmes, compliance officers and third-party audits to ensure that their governance frameworks are up to date. The law's emphasis on accountability has also led to a shift in corporate culture, with companies placing a greater focus on ethical behaviour, transparency and responsibility.

Prospects for Corporate Governance in Chile

As Chile continues to develop its ESG framework, the focus on corporate governance will remain critical. The Law on Economic Crimes, along with the CMF's General Standards on reporting as well as the upcoming enforcement of Law No 21,719, on Data Protection, are expected to drive significant changes in how companies approach governance. These reforms reflect Chile's commitment to aligning its governance practices with international best practices, ensuring that companies are held to the highest standards of accountability, transparency and responsibility.

Looking Forward: The Future of ESG in Chile

As Chile moves towards a more sustainable and inclusive economic model, ESG considerations will continue to play a central role in shaping corporate strategies, regulatory frameworks and financial systems. The country's commitment to carbon neutrality by 2050, coupled with its focus on promoting sustainable finance, positions Chile as a regional leader in the global transition towards sustainability. However, the path forward will require balancing economic growth with environmental protection, social responsibility and corporate governance reforms.

In the coming years, Chile is expected to expand its ESG regulations, with a particular focus on strengthening corporate accountability, improving transparency in sustainability claims and promoting green financing. The greenwashing bill, once enacted, will play a critical role in ensuring that companies adhere to rigorous ESG standards and provide accurate and verifiable information about their sustainability practices. Similarly, the introduction of the sustainable finance taxonomy will help standardise definitions for green investments, making it easier for companies to access green financing and align their projects with global sustainability goals.

At the same time, the challenges facing the sustainable finance sector – particularly around greenwashing, regulatory complexity and the risk of non-compliance – will need to be addressed through co-ordinated efforts between regulators, financial institutions and the private sector. As ESG becomes a more central pillar of Chile's economic policy, companies will need to adopt more robust compliance frameworks, improve their data management capabilities and enhance their transparency in order to meet the evolving regulatory demands. In the coming years, compliance with ESG standards will become increasingly important for access to credit and financing. Therefore, financial institutions, particularly banks, will need to develop and standardise their ESG criteria to ensure that they are consistent and transparent across the industry. At the same time, private companies will have to adopt comprehensive strategies to meet these evolving standards. They must not only ensure compliance with ESG principles but also be able to provide verifiable, reliable evidence of their efforts and achievements.

Overall, Chile's progress in ESG considerations reflects the country's commitment to sustainable development, but further efforts are needed to ensure that the regulatory framework is inclusive, efficient and transparent. As Chile continues to align its policies with global sustainability standards, the ESG landscape will evolve, presenting both challenges and opportunities for companies seeking to operate in a sustainable and socially responsible manner.

CHINA

Law and Practice

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Contents

Lantai Law Firm was established in 2002, with headquarters in Beijing. It is a full-service Chinese law firm with 27 branches and over 1,300 professionals. Its Labour and Employment team is widely recognised as a market leader, providing strategic advice to state-owned enterprises, multinationals and regulators on employment compliance, workforce restructuring, collective bargaining and dispute resolution. It actively supports clients' ESG strategies, particularly in the Social (S) pillar, through advice on fair labour practices, supply chain human rights due diligence, grievance mechanisms and employee engagement. The team frequently delivers training to employers and regulators, and maintains a leading role in ESG-focused policy discussions. Each year, it handles thousands of labour cases and offers forward-looking, practical solutions rooted in both Chinese law and international ESG standards. Its bilingual resources, including daily updates via the "Lantai Labour" WeChat platform, help clients mitigate social risk and ensure sustainable workforce governance.

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1. Introduction

1.1 General ESG Trends

In 2025, China's ESG regulatory regime is accelerating its transition from voluntary guidance to mandatory compliance, with the contours of a binding framework emerging – anchored in stronger legal foundations, increasingly rigid disclosure obligations and steadily enhanced judicial enforcement.

The newly amended Company Law, effective from July 2024, establishes a crucial top-level legal basis for ESG governance. At the same time, capital market rules have made decisive progress: the Shanghai, Shenzhen and Beijing Stock Exchanges have jointly issued the Guidelines for Sustainability Reporting, which provide a systematic disclosure framework and introduce a phased path towards mandatory implementation. To ensure the effectiveness of this reporting regime, regulators are advancing two complementary initiatives. First, the Ministry of Finance is leading the development of unified national sustainability disclosure standards, aimed at improving the comparability and reliability of ESG information and supplying the necessary technical foundation for disclosure. Second, supervisory authorities are strengthening green finance standards and explicitly setting "anti-greenwashing" regulatory priorities, in order to enhance the quality of disclosures, prevent formalistic compliance and ensure the efficient allocation of capital.

Meanwhile, environmental law and judicial practice are reinforcing ESG accountability through rigorous enforcement and representative cases, particularly by establishing binding constraints and deterrence in the environmental dimension.

Taken together, these developments demonstrate that China's ESG regulation is moving systematically into a new phase of legalisation and marketisation – driven by legislative refinement, mandatory disclosure, standard unification, anti-greenwashing oversight and judicial safeguards.

1.2 Environmental Trends

In 2024, the development of China's environmental rule of law was characterised by intensified enforcement, refined judicial practice and deepened accountability. Overall, the governance logic is shifting from end-stage punishment to whole-process risk prevention and control, guided by the principles of "protection first, prevention as priority" (as provided in Article 5 of the Environmental Protection Law of the People's Republic of China). This assessment is firmly grounded in both statutory norms and judicial practice.

Enforcement System: Sustained Deterrence and Procedural Linkage

Regulatory authorities have continued to apply strong deterrent measures against unlicensed pollutant discharge, excessive emissions and regulatory evasion, including orders for rectification, production restrictions or suspension, and shutdowns. "Daily continuous penalties" have been widely applied to maintain pressure. For falsification of monitoring data or abnormal operation of treatment facilities, administrative sanctions may be supplemented by referral to public security authorities for administrative detention (a punitive measure imposed to restrict personal liberty for violations of administrative order, recognised as an administrative penalty under the Administrative Penalty Law, with a duration ranging from one to 20 days) if criminal thresholds are not met, thereby strengthening the linkage between administrative and criminal procedures.

Judicial Practice: Precision and Preventive Remedies

The environmental adjudication system has been further refined. In civil liability cases, courts are clarifying the standards for reversing the burden of proof on causation, with heightened scrutiny of the nexus between pollution and harm. Preventive remedies, such as injunctions and orders to eliminate hazards, are widely applied in public interest litigation. Punitive damages are strictly confined to cases involving illegality, intent and/or serious consequences, thereby preventing over-expansion of judicial application.

Accountability System: Expansion to Full-Chain and Diversified Mechanisms

Corporate responsibility now extends beyond compliance in emissions to encompass ecological restoration, with remedies including fund management, substitute performance and carbon sink purchases, thereby forming a closed loop of "investigation–assessment–restoration–acceptance". Case types are expanding to cover emerging areas such as hazardous waste, carbon emission settlement and data authenticity, reflecting deeper integration of judicial and administrative governance.

1.3 Social Trends

In 2024, China's regulatory landscape for the social dimension of ESG showed a clear trend of systemic strengthening and greater accountability. The defining shift is from principle-based guidance to binding, enforceable compliance obligations.

This transformation is reflected in three major aspects:

Regulatory Convergence and Institutionalisation

Requirements are becoming increasingly harmonised, particularly in the ESG practices of state-owned enterprises, where social responsibility, corporate governance and high-level disclosure are being advanced in an integrated manner. At the same time, mandatory disclosure of environmental information and the standardisation of charitable activities (ie, aligning philanthropy with pollution prevention and ecological protection priorities, and requiring transparent governance, traceable fund allocation and compliance review of donations) mark the embedding of ESG management into the institutional framework of corporate operations.

Rigidification of Entity Responsibility

Corporate duties towards key stakeholders are being more clearly defined and substantially reinforced. This is most evident in the following:

- Workplace safety: The principle of "people first, life first" has been transformed into a compulsory and accountable duty for enterprises to ensure production safety.
- Platform responsibility: Functional obligations of online platforms in protecting minors (eg, anti-addiction measures) have been expressly imposed, with penalties clarified and escalated.
- Products and consumers: Stricter accountability for regulatory negligence is indirectly compelling enterprises to enhance product quality and disclosure standards.

Judicial and Enforcement Practices Grounded in Evidence

Courts and regulators are increasingly focused on labour disputes, workplace accidents and product liability. Judgments show an emphasis on whether enterprises have established effective internal systems and retained complete execution records. This has translated ESG requirements from obligations on paper into "evidentiary" practices.

1.4 Governance Trends

Strong Rules, Disclosure, Accountability and Investor Protection

The new Company Law tightens the governance baseline: a board of directors is required for joint-stock companies (Art. 120); acts of the legal representative bind the company, with internal recourse against the at-fault representative (Art. 11), reinforcing "aligned authority and liability"; listed companies must have independent directors and set out board committees' composition and powers, and pay/performance mechanisms for directors, supervisors and executives in the articles (Art. 136), professionalising structure and incentives.

On capital markets, the Code of Corporate Governance for Listed Companies (2025 revision) mandates that governance actors exercise rights and duties under laws and self-regulatory rules, and perform with loyalty, diligence and prudence with ongoing competence building (Art. 4), while placing minority shareholder protection at the core (Art. 8). Board committees may engage external advisers at the company's expense (Art. 44), enabling independent judgement across audit, compensation/nomination, strategy and risk. Exchange rules plus sustainability disclosure tighten the board–committee–management chain and curb greenwashing or misleading reports.

In practice, governance disputes cluster around issues relating to dissolution and liquidation, share transfers, capital contribution liability, and validity of shareholder/board resolutions and control; courts are converging on issues such as veil piercing, earn-out/repurchase, nominee shareholding and accelerated capital calls. Meanwhile, D&O liability insurance, coupled with the governance–disclosure–accountability loop, pushes companies to front-load internal control, compliance and disclosure into directors' performance of their duties, raising transparency and enforceability.

1.5 Government and Supervision

In China, regulatory and supervisory authorities advance ESG implementation through unified supervision, mandatory disclosure and financial co-ordination. The Ministry of Ecology and Environment is responsible for the nationwide organisation, guidance, supervision and administration of environmental information disclosure. Local ecological departments have the authority to conduct on-site inspections of enterprises that discharge pollutants, and those inspected must truthfully report their situation and provide necessary materials. Environmental protection follows the principles of "protection first, prevention as priority, comprehensive governance, public participation and liability for damage". The state delineates ecological protection red lines under strict safeguards and requires enterprises to develop and utilise natural resources reasonably, protect biodiversity and ensure ecological security.

In the capital market, the Shanghai Stock Exchange has committed to improving both the quantity and quality of ESG disclosures within three years, ensuring that relevant guidelines are effectively implemented. The China Securities Regulatory Commission (CSRC) requires that when securities trading is deemed abnormal, listed companies must promptly identify the causes of unusual fluctuations and make timely disclosures. In the financial sector, the newly established National Administration of Financial Regulation has taken unified responsibility for supervising all financial industries other than securities, safeguarding financial consumers, strengthening risk management and prevention, and investigating illegal practices, while incorporating green credit, green bonds, green funds and green insurance into its evaluation framework. Labour authorities supervise compliance with labour laws and have the power to stop violations and order corrections. The Company Law stipulates that companies must adopt articles of association which are binding on the company, shareholders, directors, supervisors and senior executives. The Law also requires companies to provide necessary conditions for Party organisations and mandates that matters affecting class shareholder rights be subject to special resolutions by class meetings.

Through this system of laws, disclosure, inspections, finance and governance, regulators both set ecological red lines and establish social and governance baselines, embedding ESG into corporate practice through supervision and market discipline.

1.6 Market Participants

China's ESG regulatory regime has established a binding framework centred on "strict disclosure, strict compliance and strict accountability". The following industries will face the most profound compliance pressures.

Industries Under Core Impact

- Environment and resources: Energy (thermal power), mining (coal and metals) and heavy industries (steel, cement, basic chemicals).

- Finance and capital markets: Banks, insurers, and listed and pre-IPO companies.
- Complex supply chain sectors: Automotive, consumer electronics and high-end equipment manufacturers, and their extensive supply chains.
- Sensitive sectors: Pharmaceuticals and medical devices, hazardous chemicals, large-scale construction projects and new energy operations.

Regulatory Paradigm Shift

- Strict disclosure: Requirements are expanding from environmental data to comprehensive ESG elements, with a clear trend towards third-party assurance.
- Strict compliance: Liability is transmitted on a "look-through" basis – financial institutions must manage client risks, while core enterprises must control risks across their supply chains.
- Strict accountability: Severe liability and heavy penalties are imposed for data falsification, regulatory evasion and workplace safety accidents.

Against this backdrop, embedding ESG deeply into corporate governance and risk-control systems has evolved from best practice into a prerequisite for maintaining both operating licences and market credibility.

1.7 Geopolitical Developments

Geopolitics Reshapes China's ESG "External Pressure – Internalisation – Execution – Feedback" Chain

Geopolitics and other political developments shape China's ESG progress through an "external pressure – internalisation – execution – feedback" chain. External market and rule reshaping raises compliance thresholds and triggers shifts in capital preferences; some investors, citing human rights and the environment, adjust exposure, affecting valuations, capital flows and supply-chain choices. Domestically, policy convergence and a disclosure-first approach accelerate alignment with international rules: enterprises are the disclosure subjects and must disclose environmental information "lawfully, timely, truthfully, accurately, completely", with standardised monitoring of data and records, and special procedures for state or trade secrets and "major environmental information". ESG rests on principles of "protection first, prevention as priority, public participation and liability for damage", turning compliance into an operational necessity. Supervisors and market mechanisms work in tandem – exchanges and green finance extend environmental disclosure into financing and pricing, promoting "double materiality" and curbing greenwashing. At the firm level, M&A, due diligence and financing embed ESG checks on environmental compliance, labour and human rights, anti-corruption, supply-chain contracts, board oversight and reporting quality, shifting from "disclosure" to "management". For going-global strategies, companies front-load ESG to preserve market access and funding, while leveraging reciprocity/response tools under foreign trade law. Amid cooperation and competition, China's ESG advances "in controversy and uncertainty", moving into a phase of quality improvement and broader coverage.

2. Corporate Governance

2.1 Developments in Corporate Governance

ESG Governance Will Become a Mandatory Board Responsibility in China

In the coming year, ESG governance in China is expected to accelerate under a "strong rules, strong disclosure, strong governance" framework as reflected in the Environmental Protection Law of the PRC, the Reform Plan for the Environmental Information Disclosure System in Accordance with the Law, and the Company Law (2023). Regulators such as the CSRC and stock exchanges will tighten oversight of board duties and governance effectiveness, making ongoing governance evaluations and corrective actions a norm. Information disclosure will move from baseline compliance to high-quality comparability: companies must establish standardised data systems, ensure financing-use transparency, and strengthen board-level accountability for environmental and social disclosures. The amended Company Law adds legal weight to charter governance, category share voting and board authorisation for equity issuance, while imposing hard obligations to protect employee rights and ensure workplace safety. Boards are increasingly expected to create specialised committees – covering audit, risk and sustainability – to integrate ESG into decision-making and risk management. Environmental compliance will be reinforced through continuous monitoring, stricter liability for pollution, and integration of safety in production into governance metrics. Market-driven initiatives, including the Shanghai Stock Exchange's three-year ESG disclosure action plan, will push issuers towards better alignment with global reporting standards and mainstream ratings. Overall, ESG will become an operational and governance necessity: companies that fail to embed ESG into their governance structures will face not only regulatory penalties but also heightened investor scrutiny and litigation exposure.

2.2 Differences Between Listed and Unlisted Entities

Listed vs Non-Listed Company Governance in China: Stricter Rules, Higher Disclosure, Stronger Protection

In China, governance requirements differ significantly between listed and non-listed companies. Listed companies are subject to stricter, more detailed and more transparent rules regarding governance objectives, institutional constraints, disclosure, independence and internal control, protection of investors and stakeholders, integration of Party building, and regulatory evaluation. Non-listed companies, including non-listed public companies and ordinary limited liability or joint-stock companies, follow the general framework and apply the general provisions of the Company Law, allowing greater autonomy and flexibility, despite certain customised requirements such as mandatory voting-right recusal in non-listed public companies.

Specifically, listed companies must align their charters with governance codes, emphasising soundness, effectiveness, transparency, checks and balances, fair treatment of shareholders, respect for stakeholders, and value enhancement. The State Council's Opinions on Improving the Quality of Listed Companies highlight the strengthening of internal controls, disclosure, and clarification of responsibilities. Listed companies are also required to establish Party organisations and, if state-controlled, embed Party building into their charters. Annual reports of listed firms must disclose governance conditions and explain differences from regulatory standards. Exchanges require independence in assets, finance, personnel, business and institutions, while CSRC rules strictly limit external guarantees. Listed governance stresses minority shareholder and stakeholder protection, whereas non-listed companies rely on autonomy, with judicial remedies such as dissolution available when governance fails. Overall, listed companies operate under "strong rules, strong disclosure, strong governance", while non-listed companies retain greater self-governance.

2.3 Role of Directors and Officers

ESG Turns Directors/Officers Into "End-to-End" Stewards

In China, ESG requirements expand directors' and senior officers' duties from a traditional "finance compliance" focus to an "end-to-end" mandate covering strategy, risk, disclosure and execution. The board must centrally plan and supervise environmental and social compliance, workplace safety, information disclosure and stakeholder communication, as well as internal governance and accountability. Executives are required to embed ESG into day-to-day operations, risk control and delivery of targets. Failure to perform these responsibilities can trigger liability under company law – covering duties of loyalty and due care, non-compete and corporate-opportunity constraints, and remedies for harming corporate interests. In addition, in key pollutant discharge and production-safety areas, non-compliance can lead to administrative/legal consequences and external compensation exposure. Overall, ESG shifts directors and officers from narrow compliance gatekeepers into accountable stewards who align strategy, controls, disclosures and stakeholder engagement, while ensuring that environmental and social obligations are integrated into corporate decision-making and operational discipline. This governance posture requires documented systems, verifiable data and board-level oversight to withstand regulatory scrutiny and investor expectations, with clear lines of responsibility and consequences for breach.

2.4 Social Enterprises

No Dedicated Legal Form for Social Enterprises in China

China currently has no standalone legal form specifically for "social enterprises" or "non-profit corporations". Under the Civil Code's typology, entities register either as for-profit legal persons (eg, limited liability or joint-stock companies) or as non-profit legal persons (eg, social organisations, foundations or social service institutions/private non-enterprise units). The Company Law provides only for profit-distributing company forms and does not create a "non-profit company" form. Non-profit routes require public-interest or other non-profit purposes, prohibit profit distribution to founders, investors or members, and bar for-profit operations by social organisations, with residual assets dedicated to public benefit upon dissolution. In practice, mission-driven actors follow three paths: (i) incorporate a company and embed mission locks in the articles and shareholder agreements (while remaining legally for-profit); (ii) register as a non-profit organisation such as a foundation or social service institution and operate under non-distribution constraints; or (iii) build hybrid structures (eg, "company + foundation/social service institution") to separate commercial and charitable functions and ensure compliant fund flows. Sector policies also allow non-profit licensing in healthcare and elderly care. Empirical studies and judicial practice confirm the absence of a special "social enterprise" form, so organisers must choose, design and document governance, finance and disclosure accordingly.

2.5 Shareholders

ESG Duties Recast the Company–Shareholder Relationship in China

In China, ESG duties reshape the company–shareholder relationship by moving corporate purpose beyond pure profit to a legally anchored balance of long-term value and public interest. The Company Law now requires firms to "fully consider" the interests of employees and consumers, as well as ecological protection, positioning boards and management as stewards who embed ESG into strategy, risk and operations. Articles of association can hard-wire ESG oversight, disclosure and accountability, converting policy aspirations into enforceable internal contracts among the company, directors and shareholders. Shareholders' statutory rights remain intact, so ESG cannot be used to curtail voting rights, information rights or returns outside lawful and chartered processes. Once ESG targets or pathways are publicly promised, securities rules treat them as binding disclosures; misalignment risks compensation liabilities that ultimately harm shareholder value. Environmental laws impose direct operational duties – monitoring, records, and bans on evasion – so violations trigger administrative, criminal or civil exposure that transmits to investors through pricing and financing. Listed-company governance further links managerial pay to safety, compliance and sustainability metrics, aligning managerial incentives with long-term shareholder interests. Where capital maintenance and creditor protection are implicated, courts may accelerate repayment of capital or pierce veils for abuse, cautioning shareholders against underfunding "green" transitions. In practical terms, companies should document ESG controls, materiality and incident protocols to meet "true, accurate, complete" disclosure standards. Overall, ESG recasts directors and officers from narrow compliance gatekeepers into accountable fiduciaries who integrate stakeholder interests with durable shareholder value.

3. Sustainable Finance

3.1 Progress in Green Financing

Sustainable Finance in China (2024–2025): What's Done and What's Next

China's 2024–2025 sustainable-finance push follows a blueprint of "unified standards, richer tools, incentive alignment, regional pilots and international co-ordination". It has issued strengthened guidance to expand green credit, use structural monetary tools (eg, carbon reduction and special relending), and weave green performance into institutions' key performance indicators (KPIs) and senior-management appraisals. The 2025 Green Finance Project Catalogue unifies eligibility rules and will be adjusted dynamically to track climate targets, technology and market needs. Product breadth is widening – transition instruments and green bonds are promoted, while pensions and insurers are encouraged to utilise labelled debt. Regional green-finance reform zones and climate-investment pilots are scaling, supported by project libraries and data sharing. Legal backstops embed finance into environmental and energy statutes, including "three-simultaneous" EIA compliance (ie, environmental protection facilities must be designed, constructed and put into operation at the same time as the main project) and support for solid-waste control and clean energy. Looking ahead, authorities are set to iteratively refine the catalogue, advance foundational financial legislation (Financial Law, Financial Stability Law), and update PBOC and banking statutes to mainstream sustainability. Expect a deeper carbon market, clearer transition-finance taxonomies, stronger ESG and environmental disclosure, and cross-border interoperability with global standards. Toolkits should expand to sustainability-linked and transition bonds, securitisation of green assets, and FTP/economic-capital incentives that tilt pricing. The practical priority is auditable data and "true, accurate, complete" reporting to align investors, supervisors and issuers.

3.2 Sustainable Finance Framework

When raising or providing funds in China, companies must align with five key pillars:

- **Governance and approvals:** Board or shareholder resolutions must be adopted in accordance with the articles of association and the Company Law, subject to supervisory board oversight. Registration amendments must be filed in a timely manner to avoid counterparties challenging transactions on grounds of defective authorisation.
- **Structure and use of proceeds:** Debt financing must follow the principle of "borrowing within repayment capacity", with repayment sources clarified in advance. Fixed-asset financing must comply with industrial policies and minimum capital ratio requirements. Corporate bonds must meet eligibility/net asset thresholds and are strictly prohibited from speculative use.
- **Control of public offerings:** Listed companies and interbank debt instruments must establish dedicated fundraising accounts to ensure consistent use of proceeds. Any change in use must be disclosed and procedurally approved. Idle funds may only be placed in permitted principal-protected products, subject to ongoing trustee or bank oversight.
- **Financial crime prevention:** Embed KYC, source-and-use verification and suspicious transaction reporting. Avoid promising guaranteed returns to the general public in order to prevent constituting illegal deposit-taking.
- **Group and affiliate boundaries:** Funds pooled through group finance companies require clear agreements, approvals and disclosures. No "blood transfusion" of funds to controlling shareholders or affiliates is permitted. Listed companies must maintain financial independence.

In practice, internal borrowing from employees for operational purposes may be recognised as valid, provided the interest rate does not exceed four times China's Loan Prime Rate and contractual terms are properly documented.

A full audit trail must be maintained of resolutions, contracts, use-of-proceeds undertakings, account flows, project environmental assessments/permits and consistent, truthful disclosures. This end-to-end evidence chain ensures enforceability of transactions, withstands regulatory inspection and mitigates civil, administrative and criminal risks.

3.3 Access to Green Financing

Accessibility has improved markedly as China has deepened policy support, unified green standards and built disclosure infrastructure. Banks increasingly earmark credit for green and transition activities under industrial policy guidance, applying stricter use-of-proceeds reviews and, for strong cash-flow borrowers, occasional collateral waivers.

Interbank and exchange bond markets now offer green, social, sustainability and transition labels, with use-control covenants and dedicated escrow accounts that streamline execution and investor protection. Sustainability-linked loans and derivatives extend access for general-purpose borrowers by tying pricing to measurable KPIs, though KPI design, verification and assurance add transaction costs.

Data utilities and exchange portals aggregate ESG reports, ratings and eligible-project catalogues, cutting search and origination costs for issuers and investors. For SMEs and early-stage or "brown to green" projects, access remains constrained by collateral gaps, cash-flow volatility and limited disclosure capacity. Movable-asset and receivables finance, equipment-upgrade leasing and regional pilot programmes partially mitigate these frictions.

Courts increasingly support asset preservation and enforce leasing rights, while regulators curb unlicensed lending, improving market confidence. Overall, borrowers with credible transition plans, verifiable data and stable cash flows obtain cheaper, faster funding; others face heavier diligence and tighter pricing.

Looking ahead, evolving tax and pricing incentives, updated green catalogues, deeper carbon markets and clearer transition taxonomies should widen access, provided that measurement, governance and anti-greenwashing controls keep pace.

3.4 Stranded Assets and Non-Bankables

As economies align with ESG, concerns under a "just transition" fall into four main categories:

- High-carbon assets face rapid devaluation and stranding, eroding collateral values, tightening covenants, and transmitting stress through defaults, restructurings and bankruptcies.
- Legacy borrowers and issuers in traditional industries experience declining credit demand, widening spreads and shortened maturities as capital tilts towards greener entities.
- Stricter screening creates "unfinanceable" groups – SMEs, coal-dependent regions and low-income households – amplifying regional and social inequality.
- Simultaneous asset reallocations reinforce market upswings and downturns, widening risk premia, depressing valuations and transmitting shocks across banks, insurers and capital markets.

Legal and policy uncertainty compounds these risks: evolving taxonomies, disclosure rules and carbon pricing can alter cash flows and litigation exposure mid-cycle. Data and assurance gaps weaken the credibility of KPIs in sustainability-linked financing, inviting accusations of greenwashing and mispricing. While use-of-proceeds covenants in bonds improve integrity, they may also disqualify transitional projects, creating financing "grey zones".

To mitigate risks, institutions should adopt transition finance taxonomies, phased targets and social safeguards, linking capital to re-employment, retraining and regional support. Stress tests should incorporate collateral depreciation, policy shocks and carbon price trajectories to prevent "cliff effects". Regulators can stabilise availability and expectations by updating taxonomies, clarifying disclosure and assurance, smoothing carbon market volatility and providing backstops for critical transition assets.

3.5 Challenges Ahead

In the coming years, sustainable finance will not move forward on a smooth track. The first obstacle is greenwashing and "green bleaching". When products are dressed up as sustainable without solid evidence – or stripped of ESG claims to avoid scrutiny – investors and regulators face distorted information. That not only misguides capital but also raises the risk of penalties. The second challenge is the backlash against ESG in some parts of the globe. In the USA, for example, some states now forbid public funds from considering ESG, whereas Europe is moving in the opposite direction with stricter disclosure rules. This divergence leaves cross-border players caught in the middle, unsure how to design or market products consistently. The third front is a sharp increase in the obligations of market participants. Boards and executives are expected to put ESG into strategy, risk control and disclosure, asset managers must prove their ESG labels, and issuers must produce reliable data. Together, these trends mean higher compliance costs and greater legal exposure. The sensible response is to unify internal standards, build strong evidence and data systems, and link marketing claims with verifiable outcomes. Firms that do so can stay ahead of regulators, earn investor trust and avoid being left behind when the rules tighten.

4. ESG Due Diligence

4.1 Soft Law Becoming Hard Law

In China, ESG is clearly shifting from soft-law guidance to hard-law obligations. The most visible change is in environmental information disclosure. What was once encouraged reporting is now mandatory: companies are legally designated as disclosure subjects, required to keep raw records, follow national monitoring standards and file annual and interim reports in prescribed formats. For listed firms and bond issuers, disclosure extends to financing details, project allocation, and climate or ecological impacts. Capital markets governance has also hardened. The 2025 Governance Code obliges listed companies to actively fulfil social responsibility requirements, respect stakeholders and protect minority shareholders. Boards must follow fixed meeting procedures and maintain transparent agendas – turning the principles contained in the "G" part of ESG into binding governance rules. Company law embeds ESG on the "social" and "governance" fronts: articles of association now carry binding force, obliging boards and executives to respect labour participation and collective contracts, while requiring worker consultation on major decisions. Meanwhile, at the constitutional level, the Environmental Protection Law codifies principles of "protection first, prevention as priority, public participation and liability for damage", setting strict ecological red lines and prohibitions. Taken together, these rules mark a decisive trend: ESG in China is no longer only about voluntary initiatives but is fast becoming an enforceable compliance framework anchored in statute, regulation and capital market oversight.

4.2 Towards Vertical Responsibilities

China's ESG due diligence is shifting from enterprise-only compliance to value-chain coverage with enforceable obligations. Mandatory environmental disclosure for listed and bond-issuing firms when serious violations arise now pushes screening, remediation and escalation upstream. City-level public rosters and annually published inclusion lists create continuous incentives to monitor suppliers and contractors.

On-site inspections, data retention and monitoring-equipment requirements convert prior soft guidance into auditable procedures. Safety law embeds all-employee responsibility and twin systems for risk control and hazard remediation, extending expectations to outsourced operations and logistics.

In capital markets, underwriters must investigate governance, business fundamentals, credit and material risks, while issuers must co-operate; courts increasingly require not only reports but implementation of pledged controls before drawdown.

International demands amplify this trend: EU disclosure and due-diligence regimes travel through customer contracts, pushing coverage of Scope 3 emissions, forced-labour risks and grievance processes.

As a result, leading firms build tiered supplier mapping, risk scoring and targeted on-site audits, backed by third-party assurance and data traceability to original records. Trigger-based disclosure playbooks, incident escalation and corrective-action verification close the loop.

In short, expected diligence now spans identification, prevention, mitigation, monitoring and transparent reporting across critical value-chain nodes, with measurable, verified results and audit trails.

4.3 Partner Selection

In China, ESG due diligence is rapidly shifting from voluntary disclosure to mandatory compliance, fundamentally altering how companies decide on supply chain partners. Firms must treat environmental compliance, workplace safety, labour protection and disclosure capability as hard entry conditions, or face regulatory penalties, joint liability, production suspension, and risks in capital market access and disclosure.

Under the Work Safety Law, outsourcing to unqualified contractors triggers fines and joint liability, forcing buyers to impose "one-vote vetoes" at the selection stage; under the Environmental Protection Law, enterprises must establish responsibility systems, retain monitoring data and accept on-site inspections, making supplier violations a direct buyer risk; under the Labour Law, occupational health and safety duties are mandatory, with penalties and even criminal exposure for violations, compelling buyers to include these as baseline requirements; and under the Company Law and Listed Company Governance Code, internal governance and disclosure duties are binding, leading buyers to prefer partners capable of standardised ESG reporting.

Judicial practice further clarifies that due diligence reports alone do not exempt liability unless control measures are implemented, driving buyers to embed ESG clauses, third-party audits and ongoing monitoring into contracts.

Internationally, EU rules such as the Corporate Sustainability Reporting Directive and the proposed Corporate Sustainability Due Diligence Directive cascade obligations to Chinese firms through contracts, requiring coverage of Scope 3 emissions, forced labour and traceability, thereby raising compliance thresholds.

Overall, to mitigate regulatory and reputational risks, companies must prioritise partners with environmental and safety qualifications, occupational health safeguards, disclosure capacity and verifiable data, embedding ESG hard-law obligations upfront in procurement and contractual frameworks.

4.4 ESG in M&A Due Diligence

In China, ESG in mergers and acquisitions has shifted from being a "bonus factor" to a "hard risk and valuation factor", playing a role across due diligence, disclosure, pricing and deal structure, closing conditions and compensation, financing access, and post-merger integration and governance improvement.

Laws such as the Environmental Protection Law and the Labour Contract Law make pollutant discharge responsibility, occupational health and safety, and labour compliance mandatory review items; failure to meet these obligations can trigger administrative penalties, production suspensions or even civil and criminal liability, directly affecting feasibility and valuation.

Listed companies must ensure ESG disclosures are truthful, accurate and complete, or face regulatory and market constraints on deal timing and terms. Strong ESG performance enhances investor preference and transaction value, while weak performance translates into price discounts, deferred payments, escrows or compensation clauses.

In financing, investors and institutions increasingly demand verifiable ESG data and remediation plans, with non-compliance raising costs or restricting access.

Post-closing, ESG serves as a lever for governance and cultural integration, using board oversight, performance metrics and compliance reforms to strengthen long-term value.

However, because China's unified ESG standards and mandatory scope are still evolving, non-listed, small-scale or financially driven deals often apply ESG only weakly or not at all.

Overall, ESG has become a substantive driver of risk assessment, transaction design and value realisation in Chinese M&A, though gaps in consistency and depth of application remain.

5. Transparency and Reporting

5.1 Key Requirements

In China, ESG disclosure obligations follow a "dual-track system".

Under the securities regulation track, capital market entities – including domestic listed companies, foreign companies issuing depositary receipts in China, bond issuers, NEEQ-listed companies, and firms on the Beijing Stock Exchange – must disclose ESG or sustainability information in their annual and semi-annual reports in line with CSRC and exchange rules, and make additional disclosures in cases of abnormal trading volatility or refinancing.

Under the environmental regulation track, key pollutant dischargers, companies subject to mandatory clean production audits and listed or bond-issuing companies (and their consolidated subsidiaries) that meet major environmental violation thresholds are required by law to disclose environmental information, including pollutant emissions, operation of pollution control facilities, penalties and corrective measures.

These two regimes emphasise different aspects: securities regulation focuses on governance and transparency to stakeholders, while environmental regulation stresses the accuracy, completeness and traceability of environmental data.

Overall, ESG disclosure in China is shifting from voluntary to mandatory, but the scope and intensity vary across entity types, requiring companies to comply simultaneously with both the securities and environmental regulation tracks to ensure completeness and truthfulness of information and to avoid regulatory or legal liabilities arising from false, omitted or improper disclosure.

5.2 Transition Plans and ESG Targets

In China, there is currently no universal legal requirement obligating all companies to disclose overall ESG transition plans or targets. However, specific entities and circumstances are already subject to disclosure duties that involve goal-setting and progress reporting.

First, in the environmental dimension, a mandatory disclosure regime is in place: key pollutant dischargers, companies subject to compulsory clean production audits and listed or bond-issuing companies with serious environmental violations must report pollutant emissions, operation of treatment facilities, penalties and corrective measures, while clean production audits require disclosure of reasons, implementation and acceptance results – effectively embedding targets and progress.

Second, under capital market regulation, stock exchanges have required certain listed companies to prepare sustainability or ESG reports in line with regulatory guidelines, with Shanghai-listed samples and centrally controlled SOEs explicitly expected to "prepare and disclose ESG reports at a high level", typically covering governance, strategy, annual objectives and performance tracking.

Third, within the state-owned system, central enterprises are directed to improve ESG management systems and regularly disclose reports, reinforcing transparency and accountability.

Overall, ESG disclosure in China is evolving from environmental information mandates towards a broader ESG framework: large listed companies and SOEs face mandatory obligations, while other firms remain driven by voluntary practices and market expectations, with regulatory trends pointing towards greater compulsion and wider coverage in the future.

5.3 Regulation of ESG Labels

In China, corporate sustainability claims are subject to strict legal restrictions and must be true, accurate, clear and not misleading, with companies held accountable for their authenticity.

The Advertising Law and Anti-Unfair Competition Law explicitly prohibit false or exaggerated publicity, meaning that claims about performance, composition, honours or promises that deviate from reality constitute false advertising and trigger heavy penalties.

The Consumer Protection Law further stipulates that if sustainability claims are used to induce transactions and amount to fraud, consumers are entitled to triple compensation.

For capital market entities such as listed companies, ESG or sustainability-related disclosures must comply with the Securities Law and the Measures on Information Disclosure, ensuring that information is true, accurate, complete, concise and not in conflict with mandatory disclosures.

Voluntary ESG information must also remain consistent with statutory filings; otherwise, companies risk liability for false statements.

The CSRC and stock exchanges may require explanations, supplementary materials or professional opinions, and companies that fail to file periodic reports on time may be subject to formal investigations.

Overall, China's regulatory framework emphasises "truthfulness and verifiability", creating a dual compliance system that governs both marketing claims and capital market disclosures, and imposes civil, administrative and market sanctions on companies making false or misleading sustainability statements.

5.4 Supervision

In China, supervision of ESG disclosures and sustainability claims follows a "three-line" structure led by capital market, environmental and market regulation authorities.

On the capital market side, the CSRC holds overall responsibility for disclosure by issuers and listed companies, while stock exchanges implement self-regulatory rules and conduct inquiries. Disclosures must be true, accurate, complete, concise and not misleading, with liability for violations.

On the environmental side, the Ministry of Ecology and Environment (MEE) and local environmental bureaus organise, guide and supervise corporate disclosure of environmental information. Obligated entities include key pollutant dischargers, enterprises subject to mandatory cleaner production audits, and listed or bond-issuing companies with major environmental violations. Disclosure must be complete and authentic, with special reporting procedures for major environmental information.

On the market regulation side, the State Administration for Market Regulation (SAMR) and local branches enforce the Advertising Law and Anti-Unfair Competition Law, requiring that "green, low-carbon and sustainable" marketing claims be accurate, clear and supported by verifiable evidence, and prohibiting false or misleading statements. Advertisers, operators and endorsers may bear civil and joint liability, while the Consumer Protection Law provides remedies where consumers suffer harm from misleading sustainability claims.

Overall, China's compliance framework distributes responsibilities among the CSRC, MEE and SAMR, covering the full chain from capital market disclosures to environmental reporting and sustainability-related marketing and consumer protection.

5.5 Enforcement

In China, failure to fulfil mandatory disclosure obligations (including late submission or omission of periodic reports) will result in an order to rectify, a warning, and fines ranging from CNY500,000 to CNY5 million for the company.

Directly responsible executives and other liable personnel face fines of CNY200,000 to CNY2 million, and controlling shareholders or de facto controllers who organise, order or conceal such violations are subject to equivalent penalties.

Where disclosures contain false records, misleading statements or material omissions (including false ESG reporting, ie, greenwashing), the penalties are more severe: companies face fines of CNY1 million to CNY10 million, responsible executives up to CNY5 million, and controlling shareholders or de facto controllers the same, with the CSRC also empowered to impose market bans. If such false disclosures involve major asset restructurings, regulators may suspend or terminate the transactions.

Beyond administrative sanctions, civil liability applies where investors suffer losses, with issuers, controlling shareholders, directors, officers and intermediaries jointly liable unless they can prove no fault. In serious cases, criminal liability may be triggered under the crime of "false disclosure or failure to disclose important information", punishable by up to three years' imprisonment or detention plus fines.

Additionally, violations of mandatory environmental disclosure requirements are recorded in corporate credit files and subject to credit-based disciplinary measures.

Overall, non-disclosure and false disclosure trigger distinct penalty ranges and liability chains, and ESG, as part of disclosure content, is fully subject to this enforcement framework.

5.6 Expected Progress

In the next three to five years, Chinese companies' ESG reporting is expected to advance significantly.

First, the scope of mandatory disclosure will expand, with listed companies, centrally controlled enterprises and key environmental entities serving as the primary focus, accelerating the shift from voluntary to categorised mandatory disclosure.

Second, unified reporting guidelines and new "rigid standardisation" rules will be established, ensuring domestic practices converge with international frameworks such as those of the International Sustainability Standards Board (ISSB).

Third, data quality and third-party assurance requirements will rise, particularly regarding critical indicators such as greenhouse gas emissions, environmental monitoring and occupational health, driving companies to build traceable data governance systems.

At the same time, digital reporting capabilities will strengthen, and capital markets along with green finance instruments will directly link high-quality disclosure to financing advantages, transforming ESG reports from compliance obligations into strategic value-creation tools.

However, several challenges will remain: alignment and adaptation of evolving standards will create uncertainty, access to and protection of sensitive data will intensify compliance burdens, greenwashing risks will expose firms to legal and reputational liabilities, assurance and compliance costs will rise sharply, and supply chains – especially SMEs involved in supply chains – may lack the capacity to produce reliable disclosures, leading to overall reporting distortions.

Overall, regulatory trends are clear, and companies must proactively build integrated governance structures and robust data systems to ensure accuracy, completeness, and resilience against compliance risks.

6. Climate and ESG Litigation

6.1 Instruments for ESG Litigation

In China, ESG-related litigation is generally possible but not easy.

In the environmental dimension, civil public interest litigation and ecological damage compensation mechanisms are relatively mature. Qualified environmental organisations may sue for pollution or ecological destruction that harms the public interest, and courts are required to accept such cases, with remedies including restoration, compensation, injunctions, and public apologies. The Civil Code also provides exclusive remedies for ecological restoration and compensation for service function losses, strengthening accountability.

In the social dimension, claims typically arise from occupational safety, workplace accidents, or labour disputes, with workers' rights to information, consultation, and union participation serving as key entry points.

In the governance dimension, company law offers tools such as shareholder derivative actions, director/supervisor/executive liability suits, and corporate resolution disputes, all of which courts are required to accept under specific jurisdictional rules, lowering procedural barriers.

Beyond these, traditional civil claims can run parallel or sequentially with public interest litigation, while cross-regional consolidation mechanisms enhance efficiency in major cases.

In insolvency contexts, bankruptcy proceedings may be used to carry forward environmental and social claims, ensuring continuity of restoration and compensation.

Overall, environmental claims provide the most accessible channel, while social and governance claims rely more on traditional civil and corporate law tools, leading to a multi-channel but complex ESG litigation landscape.

6.2 Climate Activism

In China, non-governmental organisations (NGOs) – including foreign NGOs operating through registered representative offices – and social activists are recognised as stakeholders in public affairs such as environmental protection, philanthropy and social services.

Their stakeholder role is grounded in the Law on the Administration of Activities of Overseas NGOs in the Mainland of China, which permits them to engage in fields such as education, environmental protection and disaster relief, while protecting their lawful activities.

However, participation is conditional on registration or filing, supervision by public security authorities and professional supervisory units, and strict prohibitions against profit-making, political or unlawful religious activities.

Complementary regulations, including the Public Welfare Donations Law, the Regulations on the Administration of Foundations and the Regulations on the Registration of Social Organisations, provide organisational and operational frameworks that enable NGOs to interact with government agencies, enterprises and beneficiaries.

Judicial practice confirms that lawful registration is a prerequisite for litigation standing, with unregistered groups denied party status, while compliant organisational applications are approved if they do not infringe legitimate rights. This demonstrates that NGOs' influence lies primarily in collaborative governance and public service delivery rather than direct involvement in political decision-making.

In practice, especially in environmental protection and ESG contexts, NGOs play a crucial stakeholder role by fostering public participation, providing professional input, and mobilising communities under a compliance-based framework.

6.3 Greenwashing

Between 2021 and 2025, China has seen regulatory inquiries, investigations and administrative penalties arising from incorrect, incomplete or misleading ESG claims – commonly referred to as greenwashing.

Enforcement has mainly occurred across three areas: advertising, competition and capital market disclosure.

In advertising and marketing, regulators apply the Advertising Law and the Anti-Unfair Competition Law to sanction false or misleading "green" or "eco-friendly" promotions, while consumers may seek triple damages under the Consumer Rights Protection Law.

In capital markets, the CSRC and stock exchanges increasingly scrutinise ESG disclosures through inquiries, investigations and even access to audit working papers, with directors and executives held directly liable for untrue or incomplete disclosures. The Shanghai Stock Exchange's 2024–2026 action plan explicitly raises penalties for "malicious greenwashing" and selective disclosure.

Despite these measures, publicly reported civil claims by investors against greenwashing remain rare.

As for "green hushing" (withholding ESG targets to avoid scrutiny) and "green bleaching" (understating sustainability attributes to reduce obligations), no Chinese court or regulator has yet issued direct rulings, though these practices are increasingly captured under the broader regulatory focus on selective disclosure and greenwashing.

Overall, China's compliance framework now spans advertising enforcement, consumer protection and securities disclosure, but investor-led civil remedies remain limited.

6.4 A Turbulent Future Ahead

In the next three to five years, ESG-related litigation in China is likely to rise moderately, with a differentiated structure.

The main driver will be stricter regulation and mandatory disclosure: listed companies must ensure disclosures are "truthful, accurate and complete", prohibiting false records, misleading statements or material omissions, while promptly explaining abnormal trading fluctuations. Rules such as the Measures for the Administration of Information Disclosure by Listed Companies (2025), combined with the international spillover of ISSB climate disclosure standards, are expected to expand the volume of ESG information subject to challenge.

Structurally, environmental torts and labour claims will see steady growth. Under the Environmental Protection Law, liability for pollution and ecological damage, including joint liability for falsified assessments or monitoring, enables large-scale litigation; under the Labour Contract Law, forced labour, unsafe commands and harmful working conditions trigger civil, administrative and criminal liability, driving continued growth in the "S" dimension.

New areas will include greenwashing disputes and governance commitments, where embedding ESG obligations in company charters may spark governance claims.

Cross-border dynamics will add further volume: Chinese energy and high-emission companies investing overseas face growing ESG, human rights and supply chain disputes in international arbitration, with pressures feeding back into domestic litigation.

Overall, China's ESG litigation is expected to develop along two primary tracks: first, disputes triggered by stricter disclosure and enforcement, and second, new cases arising from the global anti-ESG backlash and intersections with competition law and investor rights.

Trends and Developments

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Lantai Law Firm was established in 2002, with headquarters in Beijing. It is a full-service Chinese law firm with 27 branches and over 1,300 professionals. Its Labour and Employment team is widely recognised as a market leader, providing strategic advice to state-owned enterprises, multinationals and regulators on employment compliance, workforce restructuring, collective bargaining and dispute resolution. It actively supports clients' ESG strategies, particularly in the Social (S) pillar, through advice on fair labour practices, supply chain human rights due diligence, grievance mechanisms and employee engagement. The team frequently delivers training to employers and regulators, and maintains a leading role in ESG-focused policy discussions. Each year, it handles thousands of labour cases and offers forward-looking, practical solutions rooted in both Chinese law and international ESG standards. Its bilingual resources, including daily updates via the "Lantai Labour" WeChat platform, help clients mitigate social risk and ensure sustainable workforce governance.

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China ESG Trends & Developments in 2025: From Guidance to Enforcement

Executive summary

China's ESG regime is moving decisively from voluntary guidance to enforceable obligations. The amended Company Law has lifted the governance baseline, stock exchanges have launched structured sustainability-reporting regimes on a path to mandatory implementation, and environmental information disclosure has hardened into a legal duty for defined entities. In parallel, enforcement against greenwashing and weak workplace safety controls is intensifying, while courts refine remedies ranging from preventive injunctions to ecological restoration. For businesses operating in or with China, the message is clear: ESG is no longer a "nice to have" communications exercise but a board-level compliance, disclosure and risk-control mandate that touches financing, supply chains, M&A and litigation exposure.

1. The new legal baseline: governance, disclosure and accountability

Company Law and governance codes set hard guardrails. Effective from July 2024, the amended Company Law tightens core governance mechanics, clarifies that acts of a legal representative bind the company with internal recourse for fault, and professionalises listed-company structures through independent directors and board committees. A 2025 refresh of the corporate governance code for listed companies further centres minority-investor protection and empowers board committees to retain external advisers at the company's expense. Together, these rules convert "good governance" into specific obligations that are examinable and enforceable.

Sustainability disclosure is being systematised. The Shanghai, Shenzhen and Beijing Stock Exchanges have introduced Sustainability/ESG Reporting Guidelines and a phased three-year plan to improve both the quantity and quality of issuer disclosures. In parallel, the Ministry of Finance is developing unified national sustainability disclosure standards to improve comparability and data quality, signalling convergence with international frameworks while retaining Chinese characteristics.

Anti-greenwashing is a priority. Supervisors and exchanges are explicitly targeting false, selective or exaggerated sustainability claims. Environmental and marketing regulators stress the need for "truthful, accurate, complete" information, with escalating penalties and market discipline for misleading ESG statements in public reports or commercial promotions. For boards, this elevates disclosure control from a narrative function to a control-and-assurance function backed by evidence trails.

2. Environment ("E"): prevention-first enforcement with precise remedies

Whole-process risk control replaces end-stage punishment. Enforcement now emphasises permits, monitoring and operational controls – supported by continuous daily penalties, orders to restrict or suspend production, and shutdowns for evasion or falsification. When criminal thresholds are not met, referrals for administrative detention (a punitive measure imposed to restrict personal liberty for violations of administrative order, recognised as an administrative penalty under the Administrative Penalty Law, with a duration ranging from one to 20 days) can supplement other administrative penalties, tightening the administrative–criminal linkage.

Courts are calibrating causation and remedies. Environmental adjudication refines standards for burden-shifting on causation and actively deploys preventive remedies such as injunctions and "eliminate hazards" orders, especially in public-interest litigation. Punitive damages are strictly confined to egregious, intentional violations with serious consequences, preventing over-expansion while preserving deterrence.

Accountability now spans the full chain. Responsibilities extend beyond emission compliance to ecological restoration and substitute performance mechanisms, with tools such as restoration funds and carbon-sink purchases forming a closed loop from investigation to acceptance. Emerging case types – hazardous waste, carbon-settlement disputes, data authenticity – reflect the integration of environmental administration and judicial practice.

3. Social ("S"): from principles to enforceable duties

Workplace safety is a compulsory, accountable duty. The governing principle of "people first, life first" has become operationalised into specific enterprise obligations relating to production safety, record-keeping and hazard rectification, with meaningful penalties for failure. The evidentiary focus of courts and regulators means that the existence of systems is insufficient without verifiable execution records.

Platforms and consumer-facing sectors face sharper lines. Online platforms carry explicit duties (for example, protecting minors), and penalties for non-compliance are being clarified and escalated. Product-quality and disclosure standards are under pressure from regulators' insistence on evidence-based controls, pushing companies to tighten internal QA, complaints handling and corrective-action documentation.

"S" is where internal systems meet litigation reality. Labour disputes, accident claims and product liability matters increasingly turn on whether employers can show functioning internal controls and preserved evidence – not merely policy language. Practical compliance is therefore inseparable from litigation preparedness.

4. Governance ("G"): boards become end-to-end stewards

The board's remit now covers strategy, risk, disclosure and delivery. ESG expands directors' obligations from narrow finance/compliance to integrated stewardship across environmental and social compliance, workplace safety, information disclosure and stakeholder communication. Executives are accountable for day-to-day embedding of ESG in operations and controls. A breach can trigger liability under company law as well as administrative and civil exposure in the pollution and safety domains.

Listed and unlisted companies face different intensities. Listed companies operate under "strong rules, strong disclosure, strong governance", with independence requirements, enhanced internal controls and detailed annual governance disclosures. Non-listed companies enjoy greater autonomy but remain subject to Company Law remedies, including dissolution for governance deadlock and veil-piercing in abusive scenarios.

Articles and committees are the new ESG plumbing. The Company Law and governance codes encourage charter provisions that hard-wire ESG oversight, reporting lines and accountability. Boards are increasingly expected to create or expand audit, risk and sustainability committees, engage external advisers where needed, and link managerial pay to safety/compliance metrics.

5. Supervisory architecture: who does what

Capital markets. The China Securities Regulatory Commission (CSRC) exercises overall responsibility for issuer disclosure, with exchanges implementing self-regulation and inquiries. Listed companies must promptly investigate unusual trading fluctuations and disclose causes, while ESG content in periodic reports must remain true, accurate and complete.

Environment. The Ministry of Ecology and Environment and local ecological authorities organise, guide and supervise environmental information disclosure. Obligated entities include key pollutant dischargers and companies subject to clean-production audits or significant environmental violations, with strict rules for "major environmental information" and data traceability.

Market regulation and finance. The State Administration for Market Regulation polices advertising and unfair competition, including sustainability claims, and the National Administration of Financial Regulation advances green finance, risk management and consumer protection, integrating green credit, bonds, funds and insurance into evaluation systems.

6. Who is most affected: sectors under the microscope

Core environmental and resource sectors. Energy (especially thermal power), mining, steel, cement and basic chemicals face the most immediate compliance pressure given emissions, permits and monitoring intensity.

Finance and capital markets. Banks, insurers and issuers are exposed through disclosure, product-labelling scrutiny and "look-through" responsibility for client and portfolio risks.

Complex supply chains and sensitive industries. Automotive, electronics and high-end equipment manufacturers – and their upstream networks – must control supplier risks. Pharmaceuticals, medical devices, hazardous chemicals, large construction and new-energy operations are priorities for both safety and disclosure oversight.

7. Geopolitics: external pressure, internalisation, execution

Geopolitical dynamics and divergent foreign ESG regimes shape China's domestic trajectory via an "external pressure → internalisation → execution → feedback" loop. External market and rule shifts affect capital flows, valuations and supply-chain choices; domestically, convergence and a disclosure-first approach accelerate alignment with international norms while embedding Chinese legal principles such as "protection first, prevention as priority, public participation and liability for damage". Exchanges and green-finance policies extend environmental disclosure into financing and pricing, curbing greenwashing and reinforcing "double materiality". For going-global strategies, firms are front-loading ESG to preserve access and manage cross-border risks.

8. Sustainable finance: standards, tools and access

What's done. Policy pushes in 2024–2025 have emphasised unified standards, broader product toolkits and incentive alignment. Guidance has expanded green credit and structural monetary tools, catalogues have standardised eligibility, product breadth now includes transition instruments, and regional pilots are scaling up with project libraries and shared data. Legal backstops knit financial flows to environmental and energy statutes.

What's next. Expect refinements to the green taxonomy, deeper carbon markets, clearer transition-finance definitions and tighter disclosure plus assurance. Toolkits should expand, including sustainability-linked and transition bonds, securitisation of green assets and FTP/economic-capital incentives that embed ESG into pricing. In practice, this hinges on auditable data and "true, accurate, complete" reporting that satisfies supervisors and investors.

Access picture. Access has improved as banks have earmarked credit for green/transition activities, and bond markets offer labelled instruments with dedicated escrow and use-control covenants. Sustainability-linked loans extend access for general-purpose needs, albeit with key performance indicator (KPI) design and verification costs. SMEs and "brown to green" projects still face higher diligence and pricing, but leasing, receivables finance and regional pilots mitigate friction.

Challenges ahead. Greenwashing and "green bleaching" are twin risks; an anti-ESG backlash in parts of the globe is creating cross-border inconsistency; and rising obligations on boards, asset managers and issuers increase compliance cost and legal exposure. Unifying internal standards, building evidence-grade data systems and tying claims to verifiable outcomes are practical defences.

9. Due diligence: from the firm to the value chain

Soft law is becoming hard duty. Environmental information disclosure has shifted from encouragement to mandate for defined entities, with raw-data retention, standardised monitoring and prescribed formats. Capital market governance has hardened around board process and transparency, while company-law provisions embed social and governance expectations into binding charters and decision rules.

Value-chain diligence is the new normal. Obligations now travel upstream and downstream. Public rosters and trigger-based disclosures encourage supplier screening and corrective action, work safety law extends expectations to outsourced operations and logistics, underwriters must investigate governance and material risks, and courts increasingly look for implementation of pledged controls, not just paper reports. EU-style disclosure and diligence regimes further cascade via contract to Chinese suppliers, including Scope 3, forced-labour risk and grievance handling.

Practical partner selection shifts. Buyers are imposing "one-vote vetoes" for environmental permits, safety qualifications and disclosure capacity; embedding ESG clauses, third-party audits and ongoing monitoring into contracts; and insisting on traceability to original records. Due diligence without implementation no longer shields buyers from liability or reputational harm.

10. M&A, financing and the ESG "price"

ESG is now a hard risk and valuation factor. Mandatory review items include pollutant discharge responsibility, occupational health and safety, and labour compliance. Weaknesses manifest as price discounts, deferred consideration, escrows or compensation clauses; severe issues can stall feasibility or attract sanctions. Strong ESG enhances investor preference and financing access.

Financing requires verifiable data. Lenders and investors increasingly require evidence-grade ESG data and remediation plans, with cost and availability linked to disclosure quality and control design. Post-closing, boards can use ESG to drive integration, risk reduction and culture change via metrics, oversight and reforms.

11. Transparency and reporting: dual tracks to compliance

China's ESG disclosures operate along two parallel tracks. Under the securities regulation track, listed companies, depositary-receipt issuers, bond issuers and certain public-company categories must include ESG or sustainability information in their periodic reports and make timely disclosures for special events such as abnormal trading. The environmental regulation track separately requires key pollutant dischargers and defined violators to disclose emissions data, the operation of control facilities, penalties and corrective measures, with strict authenticity and traceability. While these two regimes emphasise different matters, they converge on the expectation that information will be accurate, complete and consistent.

There is not yet a universal, economy-wide requirement to publish enterprise-level transition plans and targets. Even so, environmental-disclosure obligations and stock-exchange expectations – particularly for centrally controlled SOEs – are pushing companies to set targets and report progress within their ESG reports. In practice, this "soft mandate" dynamic is narrowing the gap with formal transition-plan requirements.

Integrity in marketing and labelling is also under closer scrutiny. Sustainability claims in advertising and capital market disclosures must be true, accurate and not misleading. Exaggerated or false statements risk penalties under advertising and unfair-competition rules, potential triple damages in consumer cases, CSRC inquiries or market sanctions, and civil liability for investor losses.

Enforcement tools are becoming more consequential. Failure to disclose, or late disclosure of, mandatory reports can lead to company fines that reach into the millions of renminbi, alongside potential personal liability for responsible executives and controlling shareholders, and consequences for market access in major transactions. False statements or material omissions – including "greenwashing" – attract higher penalties, civil liability and, in severe cases, criminal exposure. Breaches of environmental disclosure rules can also affect a company's credit record.

In the near term, expect the scope of mandatory disclosure to widen, with more unified guidelines aligned to international standards and higher expectations for data quality and assurance. High-quality disclosure is increasingly linked to financing benefits, creating tangible incentives for stronger reporting. The main challenges will be evolving standards, the handling of sensitive data, the cost of assurance, and capacity gaps among SMEs within supply chains.

12. Litigation outlook: a moderate rise, with distinct peaks

Access and instruments. ESG-related proceedings are possible but not easy. The most mature channels are environmental public-interest litigation and ecological-damage compensation, which support preventive and restorative remedies. Social and governance claims typically proceed under traditional labour and company-law tools, including derivative actions and resolution disputes. Insolvency can carry forward environmental and social claims.

Greenwashing enforcement is real; investor suits remain rare. Between 2021 and 2025, regulators have pursued inquiries and penalties for misleading ESG claims in advertising and capital market disclosure. While investor-led civil suits are still uncommon, supervisory scrutiny and exchange action are rising, including access to audit working papers where necessary.

What grows next. Over the next three to five years, cases are likely to rise moderately, led by disclosure-triggered disputes, environmental torts and labour-safety claims. New fronts include governance disputes rooted in charter-embedded ESG commitments. Cross-border pressures – from overseas investment, human-rights and supply-chain rules – will feed back into domestic litigation and arbitration.

13. A practical playbook for clients

- *Put ESG under the board.* Assign clear committee ownership (audit, risk or sustainability), approve charters that specify oversight duties, and authorise management to build the control stack. Record decisions and rationales to create an examinable evidence trail.
- *Build an evidence-grade data system.* Map required indicators under both securities and environmental regimes, define data owners, standardise collection and retention to original records, and prepare for third-party assurance on material metrics (eg, emissions, safety). Align ESG data with finance and internal-control systems.
- *Calibrate disclosure controls.* Link sustainability claims to verifiable evidence, run pre-clearance checks for advertising and investor materials, and harmonise voluntary ESG text with statutory filings. Create trigger-event playbooks for abnormal trading or environmental incidents to ensure timely, factual disclosures.
- *Extend diligence into the value chain.* Tier suppliers, implement risk scoring, deploy targeted on-site audits, and contract for data access, corrective-action verification and termination rights. For high-risk work, impose "one-vote vetoes" (permits, safety qualifications) and ensure traceability to original records.
- *Finance with integrity.* When issuing labelled instruments or borrowing on sustainability-linked terms, define auditable KPIs, structure use-of-proceeds controls with dedicated accounts, and set up monitoring, reporting and assurance protocols that investors can test.

- *Prepare for disputes.* Preserve documents across operations, environment, safety and HR; stress-test disclosure controls; and align insurance (including D&O) with the governance–disclosure–accountability loop. For cross-border exposure, map external ESG regimes that may cascade through contracts or financing.

Conclusion

China's ESG architecture is consolidating around a triad of strong regulation, strong disclosure and strong governance. Environmental monitoring and public-interest remedies are sharpening, workplace safety and social obligations are enforceable and evidence-based, and boards are now expected to act as end-to-end stewards of ESG strategy, risk and disclosure. For clients, competitive advantage will accrue to those who treat ESG as an operating system – integrated into governance, data, financing, supply chains and incident management – rather than a marketing label. The next three to five years will reward evidence-grade controls and penalise narrative-only approaches. Planning, documentation and verifiable execution are the surest path through rising expectations, deeper capital-market scrutiny and a gradually more active litigation landscape.

EGYPT

Law and Practice

Contributed by:
Malak Khalil, Taya Pirinis, Dina Sharshar and Khaled Abdelrahman
ADSERO – Ragy Soliman & Partners

Contents

ADSERO – Ragy Soliman & Partners is a full-service independent law firm that is committed to providing its clients with unparalleled quality. The firm comprises 140 professionals, including approximately 120 fee earners. It has developed a wide range of expertise, including on structuring, M&A, capital markets, debt finance, corporate governance, project finance and complex high-stakes commercial litigation. ADSERO's strong regional and international network – across MENA, Europe, Asia and the Americas – positions it to comprehensively support clients. The firm regularly advises corporates and investors on ESG-related regulatory matters and compliance, as well as on environment risk management. It has advised multinational clients on the implementation of their ESG agendas in Egypt, with a particular focus on environmental matters such as resource efficiency, vehicle retrofitting, emissions reduction, waste management and water treatment. It has also provided regular counsel on community engagement in connection with natural resources projects, land use and biodiversity issues arising from mining and exploration activities, workplace rights, corporate governance frameworks and compliance, in alignment with both local regulations and international best practices.

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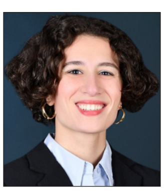

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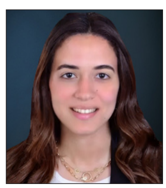

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1. Introduction

1.1 General ESG Trends

On the environmental front, Egypt rolled out the first regulated voluntary carbon market (VCM) in Africa, complete with trading rules, verification bodies, carbon registries and emission credit instruments. The launch came in early 2025 through a statement made by the Minister of Planning and Economic Development (MOPED).

A further step in implementing a circular sustainable economy took place in 2025, with the introduction of the Extended Producer Responsibility for plastic bags producers, among other amendments to the waste management regulations that took place this year, adding clarity and enforcement to the legal framework and its implementation.

On the social front, 2025 has seen significant developments to the legal framework of social matters, following the introduction of a new labour law strengthening worker protections and rights through clearer contracts and recognition of flexible work, alongside the enactment of a new social security law.

On the governance front, recent years have seen steady progress through strengthened corporate governance regulations, enhanced disclosure requirements, and increased oversight by regulatory authorities such as the Egyptian Stock Exchange and the Financial Regulatory Authority, which work alongside each other.

1.2 Environmental Trends

Egypt has recently advanced its environmental and sustainability framework through several legal reforms. A major step was the creation of a VCM under Prime Ministerial Decree No 4664 of 2022, later strengthened by FRA Decree No 279 of 2024 and FRA Decree No 70 of 2025, which revised the composition of the Carbon Credit Regulatory Committee. In January 2025, the Cabinet's State Information and Decision Support Centre also issued a general report on the role of carbon markets.

On waste and plastics, Prime Ministerial Decree No 662 of 2025 introduced an Extended Producer Responsibility system for plastic shopping bags, requiring registration, quarterly reporting and payment of EGP37.5 per kg sold to the Waste Management Regulatory Authority (WMRA). In addition, Decree No 150 of 2025 and Decrees No 1113 and 1114 of 2024 amended the Waste Management Law No 202 of 2020 and its Executive Regulations, clarifying landfill rules, hazardous waste fees, and integrated waste management services.

In the energy sector, Law No 2 of 2024 on green hydrogen introduced tax and VAT exemptions, complemented by Cabinet Decree No 54 of 2023 on land usufruct for renewable projects. EgyptERA Circular No 2 of 2024 enabled private-to-private electricity trading under Electricity Law No 87 of 2015. Finally, Presidential Decree No 67 of 2023 amended customs tariffs for electric vehicles (EVs), while Ministerial Decree No 101 of 2025 set new EV charging tariffs.

1.3 Social Trends

In the social sphere, the enactment of the new labour laws marks a significant milestone. However, the implementation of these laws is still in its early stages, and there has not yet been sufficient time for the courts to develop a body of case law.

New Labour Law No 14 of 2025

Law No 14 of 2025 (the "New Labour Law"), issued on 3 May 2025 and entering into force in September 2025, repealed the old labour law (No 12 of 2003) and introduced many new developments on the social front. For instance, the law:

- introduces strict provisions against sexual harassment, bullying and workplace violence, and mandates clear mechanisms and disciplinary actions;
- promotes gender-equality by ensuring equal pay to male and female workers;
- increases rights to sick leave, maternity leave and childcare leave;
- regulates paternity leave for the first time; and
- emphasises the obligations on the employer in relation to health and safety specifications of employees and inspections.

The new law also clarified previously regulated points to avoid ambiguities and introduced business flexibility on the procedures and grounds of termination, institutionalised permanent employment, inclusion of marginalised persons (persons with disabilities and informal workers) and recognises modern work models (such as remote work and platform-based work).

The new law expands and clarifies previously regulated obligations regarding workplace health and safety. Establishments must assess potential natural, industrial and operational risks, develop and regularly test emergency response plans, and train workers accordingly. Employers are responsible for maintaining a safe work environment in line with exposure standards and threshold limits, and must implement precautionary measures to protect employees from physical, engineering, biological, chemical and indirect hazards.

Takaful and Karama (Solidarity and Dignity)

Law No 12 of 2025, promulgating the Social Security Law issued on 3 April 2025, repeals the previous Law No 137 of 2010 on social security. The new Social Security Law is rooted in delivering inclusive social uplifting to Egyptians not covered by any social insurance system and who are unable to support themselves or their families, particularly in cases of disability or old age and residents of other countries residing in Egypt.

The law established the two main programmes "Takaful" and "Karama" (Solidarity and Dignity) and the Takaful and Karama Fund to replace the Central Social Security Fund established under the previous law. The Social Security Law establishes the criteria of eligibility for the Takaful (conditional financial support) and Karama (unconditional financial support) programmes, the procedures for application and the cases for suspension.

1.4 Governance Trends

Financial Regulatory Authority (FRA) Reporting and Disclosure Obligations

The FRA implements an ESG reporting framework, mandating ESG disclosures for non-bank financial institutions (NBFIs) and Egyptian Exchange (EGX) listed companies from 2023 onwards.

In 2021, the FRA's board of directors issued two decrees, No 107 and No 108 of 2021, introducing clear reporting guidelines that incorporate ESG considerations, along with the Task Force on Climate-Related Financial Disclosures (TCFD) framework. These guidelines serve as a foundational reference for companies in disclosing their sustainability practices and climate-related financial risks.

FRA Decree No 107 of 2021 requires non-banking financial institutions (NBFIs) with issued capital or net equity of at least EGP100 million to include ESG disclosures in their annual reports, which must be submitted alongside their annual financial statements. Institutions with issued capital or net equity of EGP500 million or more are further obligated to comply with both ESG and TCFD requirements in their annual reporting.

FRA Decree No 108 of 2021 extends these requirements to all companies listed on the EGX, mandating the disclosure of ESG information as well as the financial impacts of climate change within their annual reports and financial statements.

Furthermore, the FRA advanced alignment with the two sustainability disclosure standards IFRS S1 and IFRS S2 (as issued by the International Sustainability Standards Board) to further modernise sustainability reporting by 2025.

1.5 Government and Supervision

ESG standards are not governed by a single, unified law; they are distributed across different statutory, regulatory and voluntary frameworks depending on the jurisdiction and sector. Consequently, the relevant regulator in each sector is competent for overseeing and ensuring the application of these standards.

For example, the Egyptian Environmental Affairs Agency (EEAA) – the main authority in the environmental sector regulating the protection of the environment vis-à-vis corporations – together with the Ministry of Environment undertakes all environmental oversight. In the social sphere, the competent labour authority under the Ministry of Manpower would be the relevant authority. The FRA is a principal driver in implementing ESG and TCFD disclosure requirements, carbon credit registries and VCM frameworks. Finally, the Central Bank of Egypt (CBE) ensures sustainable finance discipline in banking via its Guiding Principles and mandatory sustainability compliance.

1.6 Market Participants

Moving forward, the sectors that would likely be most impacted include:

- infrastructure and energy – climate investments, green finance and low carbon project support continue to expand in Egypt;
- the financial sector – banks and NBFIs face ESG disclosure, sustainable lending, and climate risk integration regimes; and
- capital markets – ES and ESG bond issuance, carbon trading and investor scrutiny will impact issuers and fund structures.

1.7 Geopolitical Developments

While the progress of ESG implementation in Egypt is increasingly driven by legal and regulatory developments at both the domestic and international levels, it is also supported by the State's political commitment to advancing the ESG agenda.

Regional challenges – most notably, water security concerns related to the Nile and the Grand Ethiopian Renaissance Dam – coupled with wider instability and global energy shocks compel the State to prioritise energy security, with a continued emphasis on natural gas.

Through initiatives such as Egypt Vision 2030 and the National Climate Change Strategy 2050, the government has established a comprehensive framework for sustainable development and climate action, thereby reinforcing the political legitimacy of ESG-aligned reforms.

2. Corporate Governance

2.1 Developments in Corporate Governance

Alignment With International Sustainability Disclosure Standards

In the upcoming phase, the FRA intends to further align with the two sustainability disclosure standards IFRS S1 and IFRS S2 (as issued by the International Sustainability Standards Board) to further modernise sustainability reporting by 2025. In early 2025, the FRA's chairman stated that the FRA is currently developing a new framework in alignment with the latest international standards (particularly, IFRS S1 addressing the general requirements for disclosing sustainability-related financial information, and IFRS S2, which covers climate-related disclosures).

EGX S&P/EGX ESG Index

In July 2025, the EGX announced the decommissioning of the Standard & Poor (S&P)/EGX ESG Index effective 15 July 2025. It further announced that it is currently considering the creation of a new ESG index with a revised methodology more aligned with international best practices.

2.2 Differences Between Listed and Unlisted Entities

General Overview of the Legal Framework

In Egypt, corporate governance is consolidated under several key laws and regulations. The Companies Law No 159 of 1981 (as amended) and its Executive Regulations remain the foundation, applying to joint stock companies, limited liability companies, partnerships limited by shares, and one-person companies. This framework is supplemented by the Investment Law No 72 of 2017 and related circulars issued by the General Authority for Investments (GAFI), notably Circulars No 19/2019, 20/2019 and 21/2019.

Companies offering non-banking financial services (NBFS), whether listed or not, are subject to stricter obligations due to oversight by the FRA. For listed companies, the Capital Market Law No 95 of 1992 (as amended) and its Executive Regulations apply, alongside the EGX Listing Rules (FRA Decree No 1 of 2020) and FRA Decrees No 100 of 2020, 107 of 2021, 108 of 2021 and 110 of 2021.

Listed Companies

Board composition and committees

The EGX Listing Rules (Article 37) require listed companies to establish an audit committee, comprising at least three non-executive directors, with a majority being independent, including the chair. Its role includes overseeing internal controls, reviewing audit reports and ensuring corrective measures. Under FRA Decree No 110 of 2020 (the "Unified NBFS Decree"), companies must also form a risk committee, which may be merged with the audit committee. A governance committee may also be created, though its tasks can be delegated to the audit committee. Furthermore, Article 18 of the EGX Listing Rules requires at least two independent directors.

Gender Inclusion

The EGX Listing Rules mandate female representation on boards, requiring women to hold at least 25% of board seats, with a minimum of two female directors. FRA Decree No 110 of 2021 extends this requirement to NBFS companies, listed or not. Disclosure obligations also cover gender pay equality and workplace anti-discrimination measures.

Disclosure and Transparency

Listed companies must submit quarterly financial statements to the FRA and EGX. Under FRA Decrees No 107 and 108 of 2021, annual ESG reports are mandatory, with additional TCFD-aligned climate disclosures required for entities with capital or equity above EGP500 million. Companies must also publish annual financial statements, explanatory notes and auditor's reports in Arabic-language newspapers, on EGX trading screens and on their websites. They must disclose significant events such as related-party transactions or ownership changes.

Unlisted Companies

Unlisted companies are governed primarily by the Companies Law and GAFI circulars (notably Circular No 21/2019), which encourage – but do not mandate – best practices in governance. These include guidance on board structures, minority shareholder rights, digital filings, virtual meetings and secret voting.

Obligations for unlisted companies are less rigorous: they must prepare audited financial statements, comply with fiduciary duties of directors, follow rules on general assemblies and rights issues, and submit certain disclosures to GAFI. While the 2016 Corporate Governance Guidelines encourage greater alignment with international standards, binding rules largely remain confined to listed entities.

2.3 Role of Directors and Officers

For listed companies, the role of directors has evolved to include increased oversight of ESG risk, integration of sustainable finance policies, compliance reporting, board diversity and risk governance.

Expanded Disclosure and Reporting Duties

Directors must now oversee the preparation of ESG and climate-related disclosures and quarterly progress reports, to be integrated in annual reports, with shareholder accountability via the annual general assembly.

Governance Enhancements

The FRA's corporate governance rules for NBFS companies (under Decree No 100/2020) require detailed by-laws defining board competencies, ensuring board member time dedication and alignment with company and shareholder interests.

Board Composition

Directors must support implementation of the FRA's diversity requirement – women must occupy at least 25% of board seats or there must be at least two female directors.

Risk Oversight

Although the Companies Law does not explicitly extend fiduciary duty to environmental or broader stakeholder interests, boards are expected to manage climate and ESG risks to the extent permitted by shareholder mandates. A risk committee is required to be established to oversee all types of risks under the FRA's corporate governance rules for NBFS companies (under Decree No 100/2020).

2.4 Social Enterprises

As a general rule, non-profit entities usually register under Law No 149 of 2019, which regulates associations, civil institutions, unions, and regional or foreign non-governmental organisations (NGOs). It should be noted that any work that does not create or does not intend to create profit (such as social or civil work) cannot be organised under the form of a company.

2.5 Shareholders

Engagement and Transparency

All reports including ESG and climate disclosures must be presented to shareholders at the general assembly, fostering deeper engagement with corporate sustainability strategies and risk mitigation imperatives.

Minority Shareholders

Minority shareholders (of less than or equal to 5% capital) retain the right to suspend general assembly decisions that disadvantage them, signalling the importance of balance across shareholder groups.

3. Sustainable Finance

3.1 Progress in Green Financing

The CBE has started integrating ESG factors within Egypt's financial ecosystem. In 2022, the CBE joined the Network for Greening the Financial System (NGFS), which aims to enhance the banking sector's involvement in environmental risk management and support green projects; thus, the CBE issued binding sustainable finance regulations that required banks to integrate sustainable finance into their credit and investment decision-making.

Egypt also saw continued efforts in the issuance of green bonds and sukuk. In 2020, Egypt became the first country in the MENA region to issue sovereign green bonds, raising USD750 million to fund environmentally beneficial public sector projects in transport, energy and water. The issuance was underpinned by Egypt's Green Financing Framework, which set eligibility criteria and transparency standards for green bond proceeds and helped to establish a benchmark for subsequent ESG-labelled instruments in the market. Following this, in 2023 Egypt's Ministry of Finance announced plans to issue new sukuk with a value of USD1.5 billion. Finally, the Ministry of Finance announced its intention to issue new sukuk and green bonds valued between EGP5 billion and EGP10 billion throughout the course of FY2024 and FY2025.

3.2 Sustainable Finance Framework

The CBE oversees the banking sector under the Banking Law No 194 of 2020 and its circulars, which regulate lending practices, collateral requirements, credit exposure limits, interest rate frameworks and risk management. In 2022, the CBE issued binding sustainable finance regulations requiring banks to integrate sustainability into credit and investment decision-making. In addition, the Capital Markets Law No 95 of 1992 and its Executive Regulations No 135 of 1993 govern securities issuance, trading, listing on the EGX and disclosure obligations. Oversight is carried out by the FRA, whose decrees are legally binding. FRA Decrees No 107 and 108 of 2021 further require listed companies and NBFIs above a set threshold to disclose their ESG activities quarterly.

3.3 Access to Green Financing

Access to sustainable finance in Egypt is gradually improving. The government has taken important steps, including establishing a Sovereign Sustainable Financing Framework, updating the Green Financing Framework issued in 2020 and aligning national strategies such as Egypt Vision 2030 with climate and sustainability goals. The CBE has also issued binding sustainable finance regulations requiring banks to integrate environmental and social risk into lending and investment decisions, while the FRA has introduced guidelines for ESG disclosure and green bond issuance. These measures, together with private-sector initiatives such as sustainability bonds and programmes supporting micro, small and medium-sized enterprises (MSMEs), renewable energy and waste recycling, are expanding the availability of sustainable finance.

Despite this progress, smaller companies (particularly MSMEs) may face difficulty due to weaker collateral and technical capacity. Overall, sustainable finance in Egypt is accessible for large, well-structured projects with international backing, but remains more challenging and costly for smaller entities.

3.4 Stranded Assets and Non-Bankables

Egypt's shift towards ESG standards is likely going to be gradual as such a shift raises several challenges around inclusivity and fairness.

First, the country continues to rely heavily on natural gas for both power generation and export revenues, leaving it vulnerable to stranded asset risks. If the global energy transition accelerates, investments in gas infrastructure could become under-utilised, with knock-on effects for fiscal stability and employment in gas-dependent regions.

Additionally, heavy industries such as cement, steel and fertilisers remain vital to the economy and to job creation, yet they are also among the most carbon-intensive sectors. As international capital increasingly favours low-carbon investments, these industries may face higher financing costs and limited access to global funding unless cleaner technologies are adopted. This dynamic places a disproportionate burden on companies with fewer resources to decarbonise, while also threatening employment in established sectors.

Finally, smaller enterprises, which form the backbone of Egypt's private sector, also struggle with significant financing gaps. Even with new government initiatives to improve access to financial and non-financial support, many lack the capacity to meet detailed ESG disclosure or compliance requirements.

In short, Egypt's transition will only be just and inclusive if ESG policies are designed to balance sustainability goals with economic realities, supporting key sectors, safeguarding jobs, and building capacity to ensure that no group is excluded.

3.5 Challenges Ahead

Similar to numerous jurisdictions where ESG standards are developing, Egypt's sustainable finance agenda faces limited data; the absence of a clear national taxonomy makes it difficult to define what counts as sustainable, creating risks of exaggerated claims or overly cautious labelling.

Another challenge is potential pushback from carbon-intensive sectors such as oil and gas, cement and steel, which remain vital for jobs and GDP. These industries may view ESG requirements as costly or threatening to competitiveness, leading to resistance or calls for exemptions. Although Egypt has not adopted explicit "anti-ESG" measures, political and economic pressures could slow regulatory progress.

Finally, compliance and liability risks are increasing. New disclosure requirements for listed and financial institutions demand greater transparency; however, without strict verification, both regulators and companies risk credibility gaps, penalties and higher costs of capital.

4. ESG Due Diligence

4.1 Soft Law Becoming Hard Law

Egypt is witnessing a shift from soft law to binding regulation in the field of ESG and sustainability.

For many years, ESG considerations were addressed mainly through voluntary measures, such as the S&P/EGX ESG Index launched in 2010, and corporate governance codes issued by the Egyptian Institute of Directors and the EGX. These instruments encouraged transparency in ESG practices, aiming to enhance market value, though they lacked enforceable obligations.

In recent years, however, these soft law principles have been codified into binding requirements. The FRA issued Resolutions No 107 and 108 of 2021, making ESG and climate disclosures mandatory for listed companies and NBFIs above specific thresholds. The CBE also moved from its 2021 Guiding Principles for Sustainable Finance to binding regulations in 2022, obliging banks to establish sustainability units, integrate ESG risks into lending policies, and submit periodic reports. Similarly, Environmental Law No 4 of 1994 (as amended) reinforced environmental impact assessment (EIA) obligations, turning environmental due diligence into a legal prerequisite for licensing major projects.

This regulatory evolution, driven by Egypt Vision 2030 and international commitments, reflects the growing importance of ESG compliance for securing approvals, investor trust, and access to sustainable finance.

4.2 Towards Vertical Responsibilities

Due diligence in value chains is likely to increase in Egypt, particularly among larger and export-oriented companies and financial sector participants. Companies with more resources or exposure to international standards are ahead, while MSMEs and "upstream" suppliers are slower to follow. Egyptian exporters must meet stricter EU and US sustainability rules, while international investors and development banks increasingly require supply-chain transparency as a condition for financing.

4.3 Partner Selection

While Egyptian law does not yet explicitly mandate supply chain due diligence, the FRA's ESG disclosure requirements and the TCFD-based climate disclosures for larger listed companies effectively require companies to identify material ESG risks, which include risks stemming from suppliers and contractors. Similarly, the CBE's Sustainable Finance Regulations (2022) oblige banks to assess environmental and social risks for projects they finance, and companies seeking credit must demonstrate compliance across all phases of the project, frequently including the performance of key subcontractors.

Suppliers are increasingly driven to align with ESG standards to remain eligible for contracts or financing opportunities. This is gradually driving a shift towards sustainable procurement and responsible investment practices in Egypt, mirroring international trends – even if not yet codified in a dedicated supply chain due diligence law such as the EU's Corporate Sustainability Due Diligence Directive.

4.4 ESG in M&A Due Diligence

Statutory requirements relating to ESG matters have always been accounted for in M&A transactions in Egypt.

Regarding ESG-specific matters, larger or export-oriented firms as well as those dependent on international financing are more likely to be pushed into considering ESG in M&A due diligence. International investor expectations and access to sustainable finance make ESG a commercial necessity in many cases. Given the interest of private equity funds where Development Finance Institutions participate, most M&A transaction documentation and ESG sections detail the policies and procedures that such institutions would expect to see in portfolio investments where their funds are being utilised. For smaller, non-listed targets – especially MSMEs or local companies – ESG is less formalised in M&A deals. The cost and the lack of internal capacity or data mean that ESG due diligence may be limited or omitted.

5. Transparency and Reporting

5.1 Key Requirements

In Egypt, ESG disclosure obligations vary according to company type, size and regulatory supervision.

Listed companies on the EGX are subject to FRA Resolution No 108/2021, which requires mandatory ESG and climate-related disclosures, supported by EGX guidance and reporting templates. Companies with larger issued capital or equity must also include climate-related financial disclosures in line with the TCFD framework in their annual reports.

NBFIs are governed by FRA Resolution No 107/2021. Entities with capital above a certain threshold must include ESG disclosures, while those above a higher threshold must additionally report climate-related financial risks following the TCFD framework.

Banks face obligations under Law No 194/2020 and subsequent CBE regulations. These include mandatory integration of sustainable finance policies, establishment of dedicated sustainability units, and periodic ESG reporting (semi-annual, quarterly and annual). Large projects financed by banks require environmental risk assessments by accredited consultants.

Joint stock companies and limited liability companies under the Companies Law and the Investment Law must submit financial statements and annual disclosures to GAFI, including investment data, employment, shareholder details and community contributions. Finally, under Environmental Law No 4/1994, projects must conduct EIAs, maintain environmental registers and comply with EEAA monitoring requirements.

It is worth noting that other regulations that are sector-dependent may add specific disclosure requirements, including ESG-related matters.

5.2 Transition Plans and ESG Targets

In Egypt, there is currently no explicit legal requirement mandating companies to publish transition plans or to commit to targets.

5.3 Regulation of ESG Labels

As a general principle, Consumer Protection Law No 181 of 2018 and its Executive Regulations, as well as Prime Ministerial Decree No 822 of 2019, forbid the supplier and advertiser from undertaking misleading advertising or making false claims. The law also requires suppliers to clearly inform consumers about product features, sources, trade marks and specifications.

The Executive Regulations of the Consumer Protection Law highlight that the supplier or advertiser is obliged to avoid any misleading conduct whenever such conduct relates to the awards, certificates or quality marks obtained by the product, good or service.

In addition to the above, the Waste Management Law No 202 of 2020 establishes a Green Label, administered by the Waste Management Regulatory Agency (WMRA) in co-operation with the Ministry of Trade and Industry. This Green Label is designed to incentivise manufacturers and product-producers to increase the proportion of recyclable inputs used in production and to reduce the generation of industrial waste.

The WMRA issues a “Green Label Certificate” to the owners of products, projects or manufacturers whose products meet the requirements and specifications set out in the Executive Regulations, in the form of the “Green Label Certificate” template provided by the WMRA.

At present, there is no published legal text or regulation that clearly establishes penalties or sanctions specifically for failing to obtain the Green Label or for using it incorrectly.

5.4 Supervision

The main competent regulatory authorities in Egypt responsible for verifying ESG disclosure compliance and/or the use of sustainability marketing claims are:

- the FRA, which supervises capital markets, listed companies and NBFIs;
- the EGX, which oversees the disclosure compliance of listed companies;
- the CBE, which supervises banks and credit institutions under CBE Law No 194/2020;
- the Consumer Protection Agency, which enforces Consumer Protection Law No 181/2018; and
- the EEAA, which oversees EIA disclosure compliance.

5.5 Enforcement

Mandatory ESG Disclosures

While ESG disclosure is mandatory under FRA Decrees No 107 and 108 of 2021, the decrees themselves do not publicly specify penalties or sanctions for failure to make the required disclosures.

Nevertheless, issuers remain subject to the general enforcement powers of the FRA under the Capital Market Law No 95 of 1992 and its Executive Regulations. Article 65 bis of the Capital Market Law provides that failure to submit the financial statements, in accordance with the disclosure rules related thereto and the rules for listing and delisting securities as provided, may result in a fine of EGP1,000 for each day of delay in submitting the financial statements.

False or Misleading ESG Disclosures

The Capital Market Law further prohibits the publication of false or misleading information in prospectuses, reports, incorporation documents or other disclosures submitted to the FRA. Although FRA Decrees 107 and 108 do not provide specific penalties for ESG-related misstatements, false, misleading or incomplete ESG disclosures can expose a company and its officers to liability under Article 63 of the Capital Market Law No 95 of 1992. This provision penalises (among other acts):

- intentionally including false information in prospectuses, incorporation documents, reports or company-related announcements;
- issuing false statements regarding securities; and
- falsifying company records or presenting misleading reports to shareholders.

Penalties include imprisonment for up to five years and a fine of no less than EGP50,000 or the unlawful gain/avoided loss (whichever is higher) and up to EGP20 million or twice the unlawful gain/avoided loss (whichever is higher), or both. In parallel, Article 66 of the Consumer Protection Law No 181 of 2018 imposes fines of EGP50,000 to EGP1 million for misleading consumers.

5.6 Expected Progress

In the coming years, Egyptian companies are expected to make steady progress in meeting ESG reporting obligations, particularly under the FRA's mandatory disclosure rules for listed entities and large NBFIs. Reporting will likely evolve from simple compliance towards more detailed, metric-driven disclosures aligned with international frameworks such as the TCFD. Larger firms are also expected to integrate ESG more deeply into governance and corporate strategy, viewing it as essential for investor confidence and access to finance.

However, it is expected that companies will struggle with data collection and quality, especially in measuring emissions, resource use or social impact. The absence of a clear national taxonomy and limited third-party verification increases the risk of inconsistent reporting and greenwashing. Compliance also involves significant costs in systems, training and staff capacity, which may burden smaller companies.

6. Climate and ESG Litigation

6.1 Instruments for ESG Litigation

In Egypt, there is no specialised procedural track or framework for ESG-related litigation. Cases are generally pursued under existing environmental, labour and corporate laws rather than through ESG-specific provisions.

Environmental claims may be pursued under the Environmental Law, which provides for both civil and criminal liability in instances of pollution or environmental damage. The EEAA plays a central role in reviewing EIAs. Civil courts rely on expert testimony and reports prepared by agencies such as the EEAA to determine damages and liability. Private parties have also successfully challenged companies for harmful emissions in isolated cases.

On the social side, the new labour law expands workers' protections, aligning the framework more closely with modern ESG-oriented social standards. The new labour law establishes a specialised labour court system, with a labour court within the jurisdiction of each primary court, alongside appellate circuits specialising in labour disputes within the courts of appeal.

As for governance matters, disputes such as breaches of fiduciary duties, shareholder conflicts or mismanagement of assets are pursued under the Companies Law before the civil and commercial courts. These cases typically take the form of liability claims, challenges to shareholder or board resolutions, or compensation actions, and require proof of violation or damage. There are no specialised courts for governance cases.

In addition to the judicial system, the Egyptian Arbitration Law No 27 of 1994 (which is based on the UNCITRAL Model Law) provides a modern framework for both domestic and international arbitration, with the Cairo Regional Centre for International Commercial Arbitration serving as the leading institution. Arbitration provides another forum for ESG-related claims.

6.2 Climate Activism

NGOs in Egypt play an important role in development, social advocacy and climate activism, though their activities are shaped by a heavily regulated environment.

6.3 Greenwashing

In Egypt, there have been no publicly reported claims or regulatory actions specific to greenwashing. While investors and regulators have not yet pursued cases on misleading ESG disclosures, the risk exists under general rules against deceptive advertising and misrepresentation – which, theoretically, could apply to exaggerated sustainability claims. The Consumer Protection Authority is empowered to act against misleading marketing and advertising practices, though no precedent has been established in the ESG context.

6.4 A Turbulent Future Ahead

Egypt has extensive jurisprudence concerning breach of statutory requirements related to ESG matters; however, specific ESG-related proceedings are yet to develop. While international agreements and investor expectations are likely to accelerate ESG compliance, the development of local legal precedents specific to the ESG agenda is expected to be gradual.

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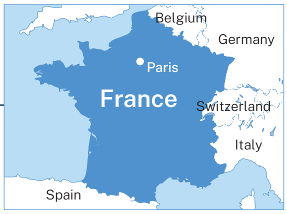

Law and Practice

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Contents

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1. Introduction

1.1 General ESG Trends

In recent years, France has progressively embedded ESG considerations into its corporate governance and reporting framework. Yet, in the current global political and economic context, the European Union has appeared to slow down and even scale back some of its sustainability initiatives.

The Corporate Sustainability Reporting Directive (CSRD)

The first sustainability reports prepared under the EU Corporate Sustainability Reporting Directive (CSRD) were published by the largest-in-scope companies. Adopted and transposed into French law in 2023 (Ordinance No 2023-1142 of 6 December 2023), the CSRD harmonises sustainability disclosure across the EU through detailed European Sustainability Reporting Standards (ESRS). However, the EU Stop-the-Clock Directive and the February 2025 Omnibus proposal package (yet to be adopted) have since respectively postponed the application date for smaller companies and proposed to substantially ease reporting duties.

Since 2017, French law has required certain large companies (at least 5,000 employees in France or 10,000 worldwide) to adopt and publish a vigilance plan and a report on its implementation (ie, duty of vigilance), setting out reasonable measures to prevent serious human rights, health, safety and environmental risks, not only from the company's own activities and those of its controlled entities, but also from the activities of subcontractors and suppliers. Recent case law has further shaped this framework, with an appellate decision involving La Poste (French postal service) – delivered for the first time by the specialised chamber of the Paris Court of Appeal on 17 June 2025 – and a first-instance judgment concerning the SNCF (French railway service) on 13 February 2025. These rulings confirmed that the courts only review the compliance and transparency of vigilance plans, while companies retain strategic autonomy and must demonstrate methodological rigour, traceability, and effective stakeholder dialogue.

The Corporate Sustainability Due Diligence Directive (CS3D)

In parallel, the Corporate Sustainability Due Diligence Directive (CS3D) was adopted by the EU in 2024 and must still be transposed into French law. It will extend vigilance obligations to more French companies (initially set to apply to companies with at least 1,000 employees and EUR450 million in turnover), and will create a dedicated supervisory authority. Its application has however been postponed to 2028 by the Stop-the-Clock Directive. The Omnibus proposal of February 2025, still under discussion, would substantially soften the regime by reducing the number of companies in scope, limiting due diligence mainly to direct partners, and easing assessment and stakeholder consultation requirements.

The Sustainable Finance Disclosure Regulation

In May 2025, the European Commission launched a call for evidence to review the Sustainable Finance Disclosure Regulation (the EU framework requiring financial institutions to disclose sustainability information) with a view to simplifying and strengthening the effectiveness of sustainable finance disclosures.

The review aims in particular to clarify the product categories of financial products, reduce complexity and compliance costs, and ensure that sustainability information provided to investors is both comparable and reliable.

New French Legislation

At the national level, France has continued to adopt targeted ESG measures, including new legislation in 2025 to curb the environmental impact of fast fashion, building on earlier initiatives on waste reduction and the circular economy.

1.2 Environmental Trends

The year 2025 marked the first year of publication of sustainability reports under the CSRD by French companies. On average, CSRD sustainability reports from the CAC 40 (index of the 40 most significant stocks on the Euronext Paris exchange) dedicate 38% of their page count to environmental issues. Climate (ESRS E1) stands out as the most material topic, with all CAC 40 companies identifying at least one climate matter as material, and many disclosing transition plans (E1-1) and setting targets which aim to comply with the Paris Agreement, often validated by the Science Based Targets initiative (SBTi). This reflects both regulatory expectations and the largest companies' relative maturity built through previous reporting frameworks. By contrast, other environmental issues such as pollution, water, the circular economy and especially biodiversity, were less frequently deemed material, with limited disclosures and very few transition plans or quantitative indicators. See Chambers Global Practice Guides Environmental Law 2025, France Trends and Developments for more on this topic.

In addition to the general ESG developments, combating misleading sustainability claims and greenwashing has become a clear supervisory priority in France and at EU level. Thus, in July 2025, the European Securities and Markets Authority (ESMA) sent out a reminder that all sustainability claims must be accurate, accessible, substantiated and up to date, warning against greenwashing. In France, the French Financial Market Authority (*Autorité des marches financiers* or AMF) echoed this approach. In December 2024, it updated its ESG doctrine (*Position-Recommandation* AMF 2020-03) to align with ESMA's fund-naming Guidelines, requiring funds using ESG or sustainability terms to meet stricter asset and exclusion thresholds (ESMA, Guidelines on funds' names using ESG or sustainability-related terms, 21 August 2024). In June 2024, it publicly disclosed a settlement with Primonial Reim, a French real estate investment management company, for misleading sustainability communications, underscoring its willingness to sanction inadequate or exaggerated ESG claims. The fight against greenwashing was also highlighted in the AMF action and supervisory priorities for 2025.

Furthermore, on 4 July 2025, the European Commission adopted a package of measures to simplify the EU Taxonomy, the EU's classification system that defines which economic activities can be considered environmentally sustainable. Under this framework, companies must disclose the proportion of their turnover, capital expenditure (CapEx) and operating expenses (OpEx) linked to Taxonomy-eligible activities (ie, covered by the Taxonomy) and, among those, Taxonomy-aligned activities (ie, meeting technical screening criteria and not significantly harming other objectives). The reform aims to reduce administrative burdens while preserving core climate and environmental goals – companies are now exempt from reporting on activities representing less than 10% of turnover, CapEx or OpEx. Non-financial undertakings are also exempt from assessing the alignment of OpEx considered immaterial.

The Law on Climate

Environmental considerations have been progressively incorporated into the French Labour Code. Since the enactment of the Law on Climate (Law No 2021-1104, 22 August 2021), the powers of the works council (*Comité social et économique* or CSE) have been extended to include environmental matters, notably in the following circumstances:

- as part of the three recurrent consultations (strategic orientations, economic and financial situation, social policy and working conditions), the works council must now be informed on the environmental consequences of the company's activity (Article L. 2312-17 of the Labour Code);
- when the works council is consulted on an ad hoc basis on a contemplated project impacting the

general running of the company, the works council must now be informed and consulted on the environmental consequences of this project (Article L. 2312-8 II of the Labour Code); and
- in the absence of a precise definition of what is meant by "environmental consequences", employers tend to consult the works council on the environmental aspects of the decisions affecting the general running of the company (eg, implementation of remote working, relocating, replacement of company vehicles, etc).

1.3 Social Trends

Sustainability and the Works Council

Following the adoption and transposition into French Law of the CSRD, since 1 January 2025, certain large companies have been required to inform and consult the works council on their sustainability. As part of the three recurring consultations, the works council must be consulted on sustainability information as well as the means of obtaining and verifying such information. The necessary information regarding sustainability, communicated by the employer through its economic, social and environmental database, provides the works council with an insight into the impact of the company's activities on sustainability issues and how these issues affect the development of its business, results and situation.

The CS3D places a duty on companies operating in the EU to identify and address adverse human rights and environmental impacts within their operations, those of their subsidiaries, and their "chains of activities".

Case Law Developments

French legislation on the Duty of Vigilance (Law No 2017-399, 27 March 2017) has a number of factors in common with the CS3D. The French duty of vigilance, introduced into the French Commercial Code in 2017, requires certain companies to draw up and implement a due diligence plan which aims to "identify risks and prevent serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment, resulting from the activities of the company… as well as from the activities of subcontractors or suppliers..." The new chamber of Paris Court of Appeal dedicated to "emerging litigation" has handed down three long-awaited decisions involving TotalEnergies, EDF, and Vigie Groupe (formerly Suez). These rulings provide important clarifications on the conditions for admissibility of these actions, in particular, on the interest in bringing the action, prior formal notice, pre-litigation dialogue, and the possibility of combining the claims with action to stop ecological damage. These rulings may provide an insight into how the EU and national courts will interpret similar requirements under the CS3D in the future.

Gender Balance in Governing Bodies

Regarding gender balance and equality, the framework was reinforced at both the national and EU levels.

Since the introduction of the Copé-Zimmerman Law (2011), French law already provides that the boards of listed companies or certain large companies (≥250 employees and ≥EUR 50 million turnover or balance sheet) must be composed of at least 40% women. With the transposition of the EU Women on Boards Directive through Ordinance No 2024-934 of 15 October 2024, this quota must include employee and employee-shareholder representatives, with the AMF designated as the competent authority to monitor compliance and publish annual disclosures for listed companies (see **2.1 Developments in Corporate Governance**).

The French Loi Rixain (December 2021) requires companies with more than 1,000 employees to ensure that women account for at least 30% of senior executives and members of governing bodies from 2026, rising to 40% by 2029, with penalties for non-compliance. In addition, these companies must publish annual gender representation gaps among senior executives and governing bodies, and since March 2023, these figures must also be disclosed on the Ministry of Labour's website.

1.4 Governance Trends

Publication of First Sustainability Reports

In application of the CSRD in France, the first sustainability reports were published by large listed companies in 2025. They highlighted the strong involvement of boards of directors and a review of the missions of the audit committees, in co-ordination with sustainability committees where applicable. The AMF closely supported companies, announcing it would take a "constructive" approach in its supervisory review to foster gradual progress. As required by the CSRD, the reports were subject to statutory auditors' limited assurance, and no major shortcomings were identified in the initial publications (see PwC, *Assurance sur le reporting de durabilité*, 2025).

"Say on Climate" Resolutions

In 2024, some issuers submitted "Say on Climate" resolutions – giving shareholders a vote on their climate strategy – although the number of companies decreased from previous years to six within the SBF 120 (the index of the 120 largest French listed companies whose stocks are most actively traded). More broadly, the AMF has encouraged companies to include a dedicated item on the agenda of the general meeting to present their climate strategy (without a vote), and the AFEP-MEDEF Governance Code similarly invites boards to report on this strategy to shareholders during annual shareholders' meetings.

"Say on Governance" Resolution

A "Say on Governance" resolution was attempted in 2024 at TotalEnergies, seeking a consultative vote on the separation of the CEO and Chair roles, but the board refused to include it on the agenda even though the board was founded to take this decision, according to the urgent applications judge (*juge des référés*). No comparable new initiatives on ESG appear to have been observed in 2025 among SBF 120 companies.

AFEP-MEDEF Governance Code

Finally, in line with the AFEP-MEDEF Governance Code, ESG criteria continue to form an integral part of executive remuneration in listed companies, both as qualitative and quantitative performance indicators. This trend was confirmed by the IFA/Ethics & Boards Barometer published in December 2024, which reported that 92% of SBF 120 companies include climate or environmental (ESG) criteria in their executives' variable remuneration, whether short or long-term. This reflects growing investor expectations for greater accountability of management in delivering on sustainability objectives.

1.5 Government and Supervision

In France, regulators and supervisory authorities have long played a proactive role in the ESG transition. The AMF began issuing ESG reporting recommendations as early as 2016 and has since combined supervision with a strategy of guidance and support. It publishes an annual report on corporate governance (including certain ESG matters), thematic reports on taxonomy, and recommendations on climate disclosures. In its 2025 supervisory priorities, the AMF confirmed that it would accompany issuers in the first application of the CSRD, adopting a pragmatic approach. Its 2023–2027 strategic orientations also emphasise improving the clarity and completeness of both financial and non-financial disclosures, through guidance, supervision and enforcement. The AMF is also at the forefront of the fight against greenwashing, having updated its ESG Doctrine in 2024 and taken enforcement action against misleading sustainability claims.

The H2A (*Haute Autorité de l'Audit*), which replaced the former H3C as the French audit regulator, is responsible for overseeing statutory auditors and audit quality (including sustainability audits, mandatory with the application of the CSRD). Pending the adoption of a European assurance standard for sustainability information, the H2A has issued guidance on the review of CSRD sustainability audits to clarify expectations for statutory auditors and ensure consistency across the market. The Banque de France, through its prudential authority (*Autorité de contrôle prudentiel et de résolution* or ACPR), integrates climate and sustainability risks into the supervision of banks and insurers, notably by monitoring their risk management and disclosure practices.

1.6 Market Participants

Under French and EU law, ESG regulation is set to affect companies across all sectors. Recent proceedings under the duty of vigilance have made clear that no industry is exempt, with companies from very different fields already facing formal notices. Particular scrutiny will apply to businesses with a significant environmental impact, especially those with high greenhouse gas emissions given strengthened disclosure obligations, as well as to companies whose activities create risks for human rights, whether by affecting local communities or their own employees.

Several ESG requirements are cross-cutting, though scrutiny will be particularly intense for high-impact sectors.

Dedicated law on specific sectors might also be adopted, depending on political will (eg, oil, the fast-fashion industry, etc).

1.7 Geopolitical Developments

Geopolitical and political developments have a direct impact on ESG progress in France. At the EU level, debates around competitiveness and "regulatory burden" have led to calls for phased timelines and simplification of sustainability reporting and due diligence rules (CSRD and CS3D), which France supported for mid-sized companies. At the same time, political momentum around climate change, energy transition and gender equality remains strong, with legislative initiatives such as the Law on Climate (2021 cross-cutting reform aimed at accelerating the ecological transition, covering areas such as consumption, transport, housing, land use and biodiversity, while introducing new obligations for companies and sanctions for environmental harm) and the Loi Rixain continuing to drive implementation. Despite recent developments in the United States regarding diversity, the diversity policies of large French listed companies have not changed.

2. Corporate Governance

2.1 Developments in Corporate Governance

Key ESG developments in corporate governance for the coming year in France include the progressive entry into force of the CSRD for smaller companies.

This roll-out is expected to be accompanied by adjustments under the proposed Omnibus directive, which would reduce certain disclosure obligations.

At the same time, the CS3D, adopted at EU level in 2024, still needs to be transposed into French law, with the scope of obligations potentially narrowed if the Omnibus proposal is adopted.

On the social and governance side, the Loi Rixain will reach its first milestone in 2026, requiring companies with more than 1,000 employees to ensure that women represent at least 30% of senior executives and governing bodies, rising to 40% by 2029. This coincides with the implementation of the EU Women on Boards Directive, which was transposed into French Law in 2024. It further strengthens gender-balance obligations for listed companies in that, while the Copé-Zimmerman Law already imposed a 40% quota on shareholder-elected directors in listed companies and large companies, from 1 January 2027 employee-shareholder representatives (ARSA) will also be included in this calculation, and employee representatives (ARS) will, for the first time, be subject to a separate parity rule once more than two sit on the board.

There is also much discussion on the evolution of shareholders' rights, particularly the ability to include resolutions on the agenda of general meetings.

The issues of directors' expertise and training, particularly in AI and cybersecurity, are also a point of attention, and changes are being made in these practices.

2.2 Differences Between Listed and Unlisted Entities

Requirements Applicable to Listed and Unlisted Companies

In France, several governance and sustainability obligations apply regardless of whether a company is listed or not, since they are triggered by size thresholds. The CSRD, for instance, applies progressively to both listed and unlisted companies that meet balance sheet, turnover or headcount criteria, with large listed groups among the first to publish reports in 2025 (see **1.4 Governance Trends**). The 2017 Duty of Vigilance follows the same approach: companies with more than 5,000 employees in France or 10,000 employees worldwide must prepare and publish a vigilance plan (notably, the first court decisions on the merit regarding vigilance obligations concerned unlisted companies), and the forthcoming CS3D will extend and implement vigilance obligations at EU level for both listed and unlisted companies.

Extra Requirements Applicable to Listed Companies

However, listed companies are subject to a more demanding governance framework. They must include additional information in the corporate governance report (included in the annual management report), and their shareholders vote on executive pay through mandatory "Say on Pay" resolutions. This vote covers the information disclosed by the company regarding corporate officers' remuneration, which must notably present an equity ratio comparing executive pay with the remuneration of the average and median employee within the company.

Listed issuers are also required to establish an audit committee – a rule that also applies to other public-interest entities (such as banks and insurance companies) – which is responsible for monitoring the quality and integrity of sustainability reporting, overseeing the effectiveness of internal control and risk management systems relating to such reporting, and ensuring the statutory auditor's independence in providing sustainability assurance.

Listed companies are also required to adhere to a corporate governance code on a "comply or explain" basis (in practice, most often the AFEP-MEDEF Code for large listed companies) including recommendations on certain ESG matters (directors' training, ESG criteria in executive officers' remuneration, presentation of the transition plan at the shareholders' meeting). Finally, listed companies fall under the supervision of the AMF, which requires that all public disclosures, including ESG communications, be accurate, precise and fair, creating potential additional liability.

2.3 Role of Directors and Officers

The 2019 French PACTE Act (Law No 2019-486, 22 May 2019) codified a principle initially developed by case law by providing that "the company is managed in its corporate interest", while adding that it must also be managed "taking into consideration the social and environmental issues related to its activity". This minimum standard applies to all companies and directors are under a best-efforts duty to consider the social and environmental impacts of the company's activities. In practice, this means that boards and officers must be able to demonstrate that such considerations were duly taken into account; however, they are not required to prioritise them over other interests. A breach of this duty may give rise to directors' liability, but a company decision cannot be annulled solely for failure to comply with this obligation.

Building on this baseline, ESG requirements increasingly shape the role and responsibilities of directors and officers in France. Under the CSRD, in-scope companies must explicitly describe in their sustainability reports the role of their administrative, management and supervisory bodies with respect to sustainability matters, as well as the expertise and skills of their members in this field. In listed companies, the board's audit committee is given a particularly prominent role – it is responsible for monitoring the quality of sustainability information and must explain how it has contributed to the integrity of such disclosures. The ESRS adopted by the European Commission also require disclosure of the actions taken by the directors to ensure adequate due diligence on sustainability issues. While these standards clarify expectations, they expressly state that they do not expand the legal duties of boards beyond those already provided in existing legislation. In practice, directors are expected to develop appropriate ESG knowledge.

In listed companies, the AFEP-MEDEF Code recommends that board members receive training, if necessary, on the company's business model and sector, including its social and environmental responsibilities, and particularly climate issues. Furthermore, investors closely scrutinise how directors and officers discharge these responsibilities, notably as ESG criteria increasingly influence the level of executive remuneration.

Directors' responsibilities for ESG are also reinforced through the duty of vigilance, since vigilance plans must be prepared and implemented by the company's corporate organs.

Directors have a general duty of care in the performance of their corporate office. The growing body of regulations and recommendations on ESG matters is gradually raising the standard of what is expected from a diligent director, and may incidentally be taken into account by courts in potential liability actions involving ESG issues. However, litigation based on directors' or executive officers' liability is rare in France, and there do not appear to be any reported cases where they have been held personally liable for failing to consider social or environmental impacts.

Regarding the composition of corporate bodies, French law requires the presence of employee representatives on the board of large companies (*sociétés anonymes*) – classified as more than 1,000 employees in France or 5,000 worldwide, with one or two directors depending on the board's size – as well as employee-shareholder representatives when employees hold more than 3% of the share capital. As described above, gender-balance rules also play a central role. Also see **2.1 Developments in Corporate Governance** regarding gender equality on the board of directors.

2.4 Social Enterprises

Since the 2019 PACTE Act, France has created two legal tools to embed social and environmental objectives into corporate forms.

First, companies of any form may adopt a *raison d'être* in their by-laws, setting out the principles and long-term purpose, beyond profit-making, that guide their activities. Once enshrined in the by-laws, this becomes binding on directors, although failure to comply does not invalidate corporate acts.

Second, companies may choose to become mission-driven companies (*sociétés à mission*). This status, which requires a by-laws' amendment approved by shareholders, entails defining a r *aison d'être*, setting specific social and environmental objectives, and creating a dedicated mission committee (including at least one employee) to monitor their fulfilment. Compliance is reviewed annually and is subject to verification by an independent third party. If objectives are not met, the commercial court may order removal of the *société à mission* designation. Companies in various sectors have adopted this status (eg, Danone, Ecotone, and Omie & Cie in food; Ramsay Santé in healthcare; Vranken-Pommery Monopole in beverages and wines; Mirova in financial services; and FREY in real estate). Also, while most *sociétés à mission* are SMEs, some larger companies have also adopted this status; among listed issuers, Danone remains the only CAC 40 company to do so.

Several companies have combined the status of mission-driven companies with B-Corp certification (eg, Danone, Mirova, FREY, etc).

2.5 Shareholders

ESG obligations are increasingly influencing the relationship between French companies and their shareholders. Enhanced disclosure duties under the CSRD mean that shareholders now receive far more detailed information on the company's ESG strategy, risks and performance. Shareholders are also increasingly invited to engage with these issues in general meetings, through "Say on Climate" consultations or dedicated agenda items on sustainability strategy, even when no vote is required (see **1.4 Governance Trends** and **6.2 Climate Activism**).

Moreover, investors scrutinise how boards and executives integrate ESG into governance, notably through the link between ESG performance and executive remuneration (as recommended by the AFEP-MEDEF Code), and may challenge boards where commitments appear insufficient. Litigation based on the duty of vigilance has also opened new avenues for stakeholders, including shareholders and trade unions, to hold companies accountable for human rights and environmental risks in their operations and supply chains.

3. Sustainable Finance

3.1 Progress in Green Financing

See **1.1 General ESG Trends**.

3.2 Sustainable Finance Framework

EU Reporting Duties

At EU level, the Sustainable Finance Disclosure Regulation (SFDR) imposes disclosure duties on financial market participants – such as asset managers, institutional investors and other providers of financial products – regarding sustainability risks, principal adverse impacts and the ESG characteristics or objectives of their products. The EU Taxonomy Regulation establishes common criteria to determine when an economic activity can be considered environmentally sustainable. Issuers must disclose in their sustainability reports the proportion of turnover, CapEx and OpEx linked to taxonomy-eligible and aligned activities, while financial institutions must disclose the degree of alignment of their portfolios. In addition, sustainability requirements are embedded in delegated acts under the AIFM, UCITS and MiFID II frameworks (see Commission Delegated Regulations of 21 April 2021), which require investment firms and asset managers to integrate sustainability risks and clients' sustainability preferences into governance processes, product design and suitability assessments.

National Reporting Duties

At national level, Article 29 of the 2019 Energy and Climate Law (Law No 2019-1147, 8 November 2019) significantly enhances ESG reporting duties for financial institutions. It requires asset managers and insurers to disclose their overall investment strategies, taking into consideration sustainability matters across their portfolios. Institutions must provide qualitative and, where relevant, quantitative information on how ESG factors are integrated, how portfolio alignment with climate objectives is assessed, and what measures are taken to mitigate negative externalities. In particular, they must disclose their alignment strategies with international climate objectives set by the Paris Agreement, as well as their alignment strategies with long-term biodiversity objectives. In addition, France has introduced two state labels — the ISR (socially responsible investment) and Greenfin labels – to certify sustainable investment products and guide investors. The AMF has also made sustainable finance a supervisory priority: through its "ESG Doctrine" (AMF Position 2020-03, updated in 2024 to align with ESMA fund-naming Guidelines), it requires that ESG disclosures be clear, accurate and not misleading, and that funds using ESG or sustainability terms meet minimum thresholds and exclusions. The AMF has further announced that the fight against greenwashing and the supervision of sustainability disclosures will remain among its enforcement priorities.

3.3 Access to Green Financing

Access to sustainable finance in France is steadily expanding for companies, though it remains uneven across firm size. In 2024, assets managed under funds classified as SFDR Article 8 (promoting environmental or social characteristics) and Article 9 (targeting sustainable investment objectives) reached EUR2.7 trillion, representing nearly 60% of assets under management in France. These classifications indicate that the funds actively direct capital toward companies that meet sustainability criteria, with Article 9 funds requiring a higher standard of alignment with measurable sustainability objectives.

French corporations also benefit from access to a range of sustainable financing instruments, notably green bonds, sustainability-linked bonds, and sustainability-linked loans. France is among the EU's largest issuers of sustainable debt, with volumes more than doubling in recent years. Large listed companies, in particular, are frequent issuers of green bonds to finance renewable energy projects, energy efficiency measures, or sustainable infrastructure. Banks have also developed sustainability-linked loan facilities, where the cost of capital is tied to ESG performance indicators.

However, access remains more challenging for small and medium-sized enterprises, which often face higher compliance costs and limited resources to meet disclosure and ESG reporting standards.

3.4 Stranded Assets and Non-Bankables

The energy transition for companies with exposed activity involves difficulties that may arise from the presence of investors with very different objectives (anti-ESG versus green funds) or the difficulty of finding serious buyers for critical assets.

3.5 Challenges Ahead

In France and the EU, one of the main challenges lies in the limited availability of consistent and reliable data, particularly as CSRD scope reductions and phased reporting will leave disclosure gaps for several years. Asset managers are expected to report more comprehensively to their investors while often relying on incomplete information from issuers. At the same time, regulators are strengthening supervision to address risks of greenwashing, while some issuers and investors adopt a more cautious approach, sometimes referred to as "green-bleaching". Finally, market participants must also navigate diverging trends, with Europe maintaining a strong ESG focus while parts of the US market show increasing resistance to ESG considerations, adding complexity for global strategies.

4. ESG Due Diligence

4.1 Soft Law Becoming Hard Law

Considering that the ESG regulatory framework in France has progressively evolved for more than two decades – with the first mandatory ESG disclosures introduced as early as 2001 under the New Economic Regulations Act (*Nouvelles Regulations Economiques* – NRE, Law No 2001-240, 15 May 2001) – what is happening in France can hardly be called a transformation of soft law into hard law. Rather, France has long relied on statutory obligations to frame corporate ESG responsibilities.

This trajectory was reinforced in 2017 with the introduction of the EU Non-Financial Reporting Directive (NFRD) transposed in all EU member states, which required large companies to disclose detailed non-financial information, including on social and environmental matters. The NFRD has now been replaced by the CSRD, which considerably extends the scope of companies subject to reporting obligations, broadens the range of ESG information to be disclosed, and requires third-party assurance. This shift reflects a clear move towards stricter and more standardised sustainability disclosure requirements, as part of the evolution of hard law rather than a transformation of soft law.

As described above, since 2017 the Duty of Vigilance Act has already required large companies to adopt, publish and implement vigilance plans to identify and mitigate serious risks in their operations and supply chains. With the adoption of the CS3D, which is awaiting transposition, this framework will soon be extended at EU level, with lower thresholds and supervision entrusted to national authorities.

Alongside these statutory obligations, French case law has long imposed on directors a duty to act “prudently and diligently” (eg, Cass. com., 30 March 2010, *Crédit Martiniquais*). The “normally diligent director” standard inevitably evolves as new sustainability and vigilance obligations are imposed on companies. Following the PACTE Act, directors are now expected to demonstrate that they have taken ESG risks into account in their decisions, documented their reasoning, and ensured that they are adequately informed and trained on such matters. A failure to do so may expose them to liability if damage arises.

Hence, it is true that soft law recommendations pave the way for the evolution of the judicial interpretation of these directors’ duties regarding ESG matters. The AFEP-MEDEF Code already recommends that board members receive adequate training and request all relevant information, including on ESG issues, to participate meaningfully in board deliberations. Similarly, the OECD/G20 Corporate Governance Principles emphasise directors’ competence and ongoing training. These recommendations are now reinforced by legislative and regulatory texts, as well as by supervisory authorities, so that the “duty of diligence” increasingly overlaps with a duty of competence.

This reflects a broader trend, driven by vigilance obligations, the forthcoming CS3D, and enhanced disclosure under the CSRD, combined with the evolving judicial interpretation of directors’ duties.

4.2 Towards Vertical Responsibilities

In France, due diligence obligations in the value chain are significantly increasing. As described above, the French Duty of Vigilance law already requires large companies to establish, implement and publish vigilance plans to identify and prevent serious human rights, health, safety and environmental risks arising from their own activities, those of controlled entities, and the operations of established subcontractors and suppliers.

At the European level, these requirements will be expanded under the CS3D, adopted in 2024 and now awaiting transposition into French law. The directive lowers the applicability thresholds compared to those of the French regime, extends due diligence obligations across the value chain, and introduces supervision by national authorities empowered to impose sanctions. Its entry into force has been delayed to 2028 following the Stop-the-Clock Directive, and its scope may still be modified under the ongoing Omnibus proposal, which seeks to limit the scope of obligations, particularly regarding indirect business partners.

4.3 Partner Selection

The French Duty of Vigilance Act has already had an impact on how companies conduct their activities and select their suppliers and subcontractors, and this trend is expected to be reinforced by the forthcoming CS3D for in-scope companies. Companies are increasingly attentive to human rights, environmental and governance risks in their value chains, which influences supplier screening and contractual arrangements.

That said, there does not appear to have been a disproportionate increase in litigation based on the Duty of Vigilance Act. Recent decisions also suggest that the courts will not step into the role of companies in designing vigilance plans, but will instead focus on the methodology, transparency and diligence with which they are prepared and implemented.

4.4 ESG in M&A Due Diligence

ESG increasingly plays a role in M&A transactions in France, with dedicated ESG due diligence becoming more common, particularly in sensitive sectors. Except in certain specific cases, however, ESG considerations are not yet a deal breaker. ESG strategies, on the other hand, are increasingly a driver of investment or divestment decisions.

5. Transparency and Reporting

5.1 Key Requirements

See **2.2 Differences Between Listed and Unlisted Entities**.

5.2 Transition Plans and ESG Targets

CSRD/ESRS (Disclosure Obligation)

Under the CSRD, in-scope companies must report how they address climate, including the key features of a climate-transition plan (ESRS E1-1) where climate is considered to be material following the double materiality assessment (ie, taking into account both the company's impacts on the environment and the environment's financial impacts on the company). The standards aim to provide decision-useful, comparable information, not to impose an emissions-reduction outcome. Hence, targets are tracked annually; companies must describe assumptions, uncertainties and mitigation actions; and (post-2030) targets are to be periodically re-assessed. When a transition plan is adopted, companies must also explain how it is embedded in and aligned with the undertaking's overall business strategy and financial planning.

The EC has also introduced transitional reliefs. During the first year, undertakings may omit the anticipated financial effects of environmental topics. Undertakings with fewer than 750 employees may defer reporting on Scope 3 GHG emissions.

CS3D (Obligation to Adopt and Put Into Effect a Climate Plan)

Beyond disclosure, the EU's 2024 CS3D requires in-scope companies to adopt and put into effect, on a best-efforts basis, a climate-change mitigation transition plan aligned with EU climate-neutrality/Paris goals (with oversight by national authorities). This is a substantive obligation (prepare/implement a plan), complementing the CSRD's reporting duty. France still has to transpose the CS3D.

However, the Stop-the-Clock Directive, already transposed in France, has postponed the application of CS3D obligations to a progressive schedule starting in 2028.

Further, the Omnibus proposal (2025), yet to be adopted, significantly weakens this requirement. The obligation to put these plans into effect is replaced by a clarification that this transition plan includes outlining implementing actions (planned and taken). The EU Council further suggests limiting the requirement for companies to adopt a climate transition plan for the mitigation of climate change, and empowering supervisory authorities to advise companies on the design and implementation of such plans. To further reduce burdens and provide companies with sufficient time for adequate preparations, the Council has also postponed the obligation to adopt transition plans by two years.

5.3 Regulation of ESG Labels

Sustainability claims can have adverse effects: they can mislead consumers about the environmental merits of a product (ie, so-called "greenwashing"), which can moreover affect fair competition on the market. Public authorities have therefore taken recent measures to better define the legal framework applicable to them.

At the national level, the so-called AGEC Law (Law No 2020-105 of 10 February 2020 on anti-waste and for a circular economy) and the 2021 French Climate Law (Law No 2021-1104 of 22 August 2021 on combating climate change and strengthening resilience to its effects) have notably prohibited advertisers from claiming in an advertisement that a product or service is carbon neutral (or equivalent) without complying with a specific framework as defined by Decree No 2022-539 of 13 April 2022. The Ministry of Economy has published guidelines to help companies comply with the national legal framework.

At the EU level, Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 has recently amended Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition. It aims to provide more transparent information for consumers and make companies more responsible in their environmental communication on the market. It notably provides for a definition of "environmental claim" and "sustainability label" and provides a legal framework applicable to them.

Directive (EU) 2024/825 must be transposed into national law by 27 March 2026. In France, it will be transposed through the next draft law on various provisions for adaptation to EU law (so-called "DDADUE"), which is examined by the Conseil d'Etat when this document is drafted.

Moreover, Regulation (EU) 2024/3005 of the European Parliament and of the Council on the transparency and integrity of ESG rating activities was adopted on 27 November 2024 and will apply on 2 July 2026. This regulation aims to strengthen confidence in sustainable investments, as well as the reliability and comparability of ESG rating activities. It notably provides that ESG rating providers established in the EU will have to meet certain conditions involving, among other things, authorisation from ESMA.

Further developments should be expected at the EU level, but remain uncertain at this stage. On 20 June 2025, the European Commission announced its intention to withdraw the Green Claims Directive that it proposed in March 2023 to protect consumers against misleading environmental marketing practices, on the ground that the procedures provided by this draft would be overly complex and costly.

5.4 Supervision

In France, the AMF supervises ESG disclosures made by listed companies and monitors the accuracy of sustainability-related communications, including the use of marketing claims, with a particular focus on preventing greenwashing. The AMF also oversees asset managers and investment products, ensuring compliance with EU rules such as the SFDR and the Taxonomy Regulation.

In addition, once the CS3D is transposed, a dedicated national supervisory authority will be designated to oversee compliance with the new due diligence and climate transition plan obligations. The precise authority has not yet been formally appointed.

See also **5.5 Enforcement** and **6.1 Instruments for ESG Litigation**.

5.5 Enforcement

In France, civil liability may be incurred both by companies and their directors where ESG disclosures are misleading or incomplete. Liability is assessed under the general tort law framework and remains strictly subject to the demonstration of the classic triptych:

- a wrongful act (*faute*);
- damage (*dommage*); and
- a causal link (*lien de causalité*).

The wrongful act may consist of any misconduct, such as failure to comply with or improper performance of a legal obligation, or disregard of a director's duty. The claimant may be any person suffering direct damage, and it is not necessary that the harm relates specifically to a person expressly protected by law, provided that the claimant can demonstrate a legitimate interest to sue (*intérêt à agir*), ie, a personal and direct stake in the claim. Finally, liability requires that the damage be directly caused by the wrongful act.

Shareholders may bring actions on behalf of the company (ut singuli/derivative actions) to pursue directors' liability, while individual actions by shareholders are only possible if they suffer distinct personal damage (distinct from the company's damage) – something rare in practice, except in certain cases of false or misleading information. Third parties (other than shareholders) must establish a particularly serious and intentional fault that is incompatible with the normal exercise of directors' functions (*faute séparable des fonctions*).

With the adoption of the CSRD, companies and directors are expected to demonstrate that they acted diligently in preparing sustainability disclosures and in implementing related commitments. Courts may take into account compliance with the ESRS, the documentation of assumptions and uncertainties underlying forward-looking information, and exchanges with sustainability auditors. The existence of errors in sustainability reporting will not, in itself, automatically establish liability, provided companies rectify material errors and update estimates as required by the standards.

For listed companies and financial market participants, the AMF can impose administrative fines for late, incomplete or misleading disclosures, including sustainability claims. These sanctions can be substantial, reaching up to EUR100 million or ten times the profit derived from the breach. The AMF may also order corrective measures or the publication of the infringement, often resulting in reputational consequences.

From an employment law standpoint, failure to properly inform and/or consult the works council on ESG-related topics may give rise to legal and financial sanctions, which mainly include fines. In particular, an action hindering the proper running of the works council may be regarded as a criminal offence of obstruction known as *délit d'entrave* which is punishable by a fine of up to EUR37,500 against the company (as a legal person) and by a fine of up to EUR7,500 against the representative of the company (as a natural person). The works council may also initiate legal proceedings before the judicial court to compel communication of the relevant information.

See also **6.1 Instruments for ESG Litigation**.

5.6 Expected Progress

In 2025, the first CSRD sustainability reports were published by the largest French companies. Statutory auditors did not identify any major shortcomings at this stage, but issuers frequently reported the significant challenges they encountered in meeting the new requirements. Both the AMF and auditors have accompanied this first wave of implementation with a supportive approach, emphasising gradual improvement.

For companies that were already subject to the obligation to publish a non-financial performance statement under the NFRD, the CSRD mainly represents a deepening and standardisation of prior practices. By contrast, for large unlisted companies and listed SMEs, which will enter into scope in later years, the new sustainability reporting represents a very substantial change in disclosure obligations. The transition therefore raises significant challenges, including the need to build reliable data-collection systems across value chains, strengthen internal controls, and develop board and management expertise in sustainability matters. Over the coming years, progress will depend on companies' ability to adapt their governance, resources and methodologies to the more detailed and assured reporting framework introduced by the CSRD.

6. Climate and ESG Litigation

6.1 Instruments for ESG Litigation

In France, bringing ESG-related cases against companies is possible, but it requires reliance on general and sector-specific legal tools rather than a dedicated "ESG litigation" regime. The main avenues are as follows:

- Civil liability (French Civil Code, Article 1240) – Under general tort law, a claimant must establish misconduct (*faute*), damage, and a causal link between the two. A breach of a statutory ESG-related obligation may constitute misconduct and ground liability for the company or its directors (see **2.3 Role of Directors and Officers**). It should be noted, however, that directors are rarely held liable.
- Consumer actions (misleading practices) – Companies may be held liable if they commit to ethical or environmental standards publicly but fail to comply with them, leading consumers to claim they were misled (Articles L 121-2 to 121-5 and L 132-1 to L 132-9 French Consumer Code).
- Competitor actions (unfair competition) – Ethical commitments are often promoted as a reputational advantage. If they are breached, competitors may argue unfair competition under Article 1240 of the Civil Code, provided they can show loss of clientele resulting from the misleading ESG claims. Evidence may be supported by consumer associations demonstrating that customers' choices were influenced by such commitments.
- Listed companies (disclosure obligations) – For listed companies, publishing false or misleading information concerning ESG matters can amount to market abuse under the EU Market Abuse Regulation (MAR). This may trigger sanctions by the AMF and litigation before civil courts under tort law.
- Criminal law – French criminal law provides for environmental offences under the French Environmental Code (eg, water pollution, harm to protected species, unlawful operation of classified facilities, or illegal waste management), which may trigger the criminal liability of both the company and its directors. In addition, the offence of endangerment of life (French Criminal Code, Article 223-1) could apply in an ESG context where a company knowingly exposes employees or local residents to serious risks, such as toxic substances or asbestos, while the 2021 Climate and Resilience Law introduced the crime of ecocide for severe and lasting damage to ecosystems.

6.2 Climate Activism

Under French law, NGOs and activists play a role in ESG matters, both as litigants and as engaged shareholders. Several NGOs have initiated vigilance plan lawsuits against large corporates, including not only energy groups such as TotalEnergies but also major retailers (eg, Casino for deforestation risks in supply chains) and banks (eg, BNP Paribas for fossil fuel financing). Employee trade unions also frequently rely on vigilance obligations to launch litigations against in-scope companies (eg, La Poste, Teleperformance, XPO Logistics, Yves Rocher, etc).

Regarding listed companies, several NGOs have also increasingly used shareholders' rights to influence companies on ESG matters, including during general meetings: for example, in supporting or filing Say-on-Climate resolutions (eg, at TotalEnergies, Vinci, Engie, etc); by opposing climate transition plans submitted for advisory vote by companies; by asking written or oral questions (eg, the *Forum pour l'Investissement Responsible* annually submits written questions to all SBF 120 companies); and by writing letters requesting companies to undertake ESG commitments.

On a different front, it should be noted that NGOs are also an important party to consider before the administrative courts in France. They have indeed filed cases in order to obtain measures from administrative courts to compel the French State to take further action on environmental matters, especially in the field of climate change (Paris Administrative Tribunal, 22 December 2023, Oxfam France, No 2321828) and plant protection products (Paris Administrative Court of Appeal, 2 December 2025, *Association Notre Affaire à tous*, No 23PA03881).

6.3 Greenwashing

Several NGOs and consumer associations have brought actions against large companies for deceptive business practices under the Consumer Code. For example, TotalEnergies has faced litigation in France regarding allegedly misleading advertising campaigns presenting its activities as aligned with climate goals, while continuing to expand fossil fuel projects (case initiated in 2022 before the Paris Judicial Tribunal). These claims are based on the argument that public ESG commitments which are not honoured mislead consumers in practice.

Regulatory enforcement – the AMF has announced that greenwashing is one of its supervisory priorities, and continuously reviews the sustainability disclosures of asset managers and listed companies.

"Green hushing" and "green bleaching" – while there are no public cases as yet in France explicitly labelled under these terms, both practices are under scrutiny. "Green hushing" (withholding sustainability information) may conflict with disclosure obligations under the CSRD or MAR for listed companies.

6.4 A Turbulent Future Ahead

From a social aspect, the DDADUE Law, dated 30 April 2025, has extended the scope of class actions in labour law. Previously limited to combating discrimination and protecting personal data, class actions may now be brought in respect of any "breach [by an employer] of its legal or contractual obligations". Such actions could be brought forward by representative trade unions and, under certain conditions, approved associations.

Trends and Developments

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Signature Litigation is a specialised firm handling major high-value litigation, arbitration and regulatory investigations. From offices in London, Paris, Frankfurt and Gibraltar, it handles multiparty disputes stretching across multiple jurisdictions and acts for numerous worldwide manufacturers in all industries and financial institutions. Its Paris office comprises lawyers who have trained at major international law firms and who are highly regarded for their expertise. The team is recognised for its work in complex cross-border litigation; commercial, banking, corporate and post-M&A disputes, insurance/reinsurance, product liability and environmental litigation; as well as mass litigation and class actions. Its work on mass and group litigation linked to the field of hazardous substances is well known, with some of its pro-company case law featuring in the Civil, Civil Procedure and Social Security Codes due to its significance.

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ESG in 2025: A Practical Perspective on EU Streamlining and French Ambition

For companies operating in France and across the EU, 2025 has been the year in which ESG obligations both eased and intensified. At EU level, institutions launched a simplification drive that delays certain reporting and due diligence deadlines and proposes a narrower scope for future ESG reporting. In parallel, France has consolidated and expanded national measures, especially on marketing claims, product sustainability information, and restriction of chemicals.

The straightforward takeaway for businesses is twofold. First, the EU has formally paused parts of the timetable, creating planning room without dismantling the underlying framework. Second, France remains a comparatively demanding jurisdiction in which national rules, enforcement, and litigation risks are acute and often move ahead of, or sit alongside, EU-wide harmonisation.

This article explains the current regime, highlights areas of uncertainty and sets out practical implications for businesses, in particular manufacturers, operating in France and the EU.

EU streamlining initiatives: Omnibus I and the Stop-the-Clock Directive

The political and business context in 2025 is defined by a renewed focus on competitiveness and regulatory proportionality. The European Commission's implementation and simplification agenda reflects long-expressed concerns by businesses, including SMEs, that the cumulative cost of ESG rules had begun to crowd out investment and innovation. Within this context, the Commission tabled an "Omnibus I" legislative package in February 2025 mainly targeted at sustainability reporting and due diligence, accompanied by a separate fast-track directive to adjust application dates. The combination was designed to give companies immediate breathing space while co-legislators debate more substantive changes to the framework.

The fast-track element is now law. Directive (EU) 2025/794, widely referred to as the Stop-the-Clock Directive, came into force in April 2025. It postpones by two years the Corporate Sustainability Reporting Directive (CSRD) application dates for companies that had not yet begun reporting, and by one year, certain Corporate Sustainability Due Diligence Directive (CS3D) milestones.

More specifically, large listed companies already reporting for FY 2024 ("wave one") remain on their original timetable. By contrast, large unlisted companies ("wave two") that would have reported on FY 2025 now report on FY 2027, with publication in 2028, and listed SMEs ("wave three") are deferred to reporting on FY 2028, with publication in 2029. Importantly, there is no delay for non-EU parent companies subject to the CSRD's "wave four" regime; they remain due to report in 2029 on FY 2028. The directive also extends by one year the CS3D transposition deadline and first application phase for the largest companies.

Alongside the timing relief, the European Commission's Omnibus I proposals seek to simplify the regime itself. A centerpiece is a proposed narrowing of the CSRD's scope so that mandatory reporting would apply in future to companies with more than 1,000 employees and either EUR50 million in net turnover or EUR25 million in balance sheet total. The Commission has publicly stated that this recalibration could remove a substantial proportion of companies currently in scope, with some estimates being around 80%. These proposals are still under negotiation in the European Parliament and Council, with final adoption unlikely before 2026. Until then, governance is by the existing CSRD, as amended by the Stop-the-Clock Directive, and national transposition laws.

Meanwhile, the European Sustainability Reporting Standards (ESRS) are being adjusted in two steps. First, a targeted "quick fix" adopted in July 2025 gives wave one reporters additional flexibility and ensures they do not have to report more in FY 2025 and 2026 than they did for FY 2024. Second, the European Commission has committed to a broader revision to reduce and clarify data requirements, improve consistency, and enhance interoperability with other frameworks, with a review foreseen by 2027.

It would be wise for companies to treat the Stop-the-Clock relief as strategic flexibility rather than a reason to pause. Investors and NGOs continue to expect ESG disclosures, early movers are setting benchmarks, and delaying internal preparation risks higher future costs. EU institutions have also signalled that simplification is intended to focus resources on the largest impacts, not to dilute the Green Deal's core objectives. A staged, adaptable implementation plan that aligns with the revised dates, monitors the Omnibus I negotiations, and preserves momentum is therefore prudent.

French implementation: alignment on dates and active domestic enforcement

France has been among the most active of the EU member states on corporate sustainability reporting. Order No 2023-1142 of 6 December 2023 and Decree No 2023-1394 of 30 December 2023 transposed the CSRD and introduced the new sustainability report, replacing the former non-financial performance statement. Following adoption of the Stop-the-Clock Directive, France aligned domestic law by enacting Law No 2025-391 of 30 April 2025 (commonly referred to as the "DDADUE law"), which implements the two-year deferral for companies that are not yet reporting.

In practical terms, large public interest entities and other wave one reporters remain on their original timeline, whereas large companies in wave two will report in 2028 for FY 2027, and listed SMEs will report in 2029 for FY 2028. Non-EU parent companies with significant EU activity remain on track to report in 2029 for FY 2028.

Reactions in the French market to these changes have been mixed. Many groups welcome the breathing room and the opportunity to smooth investment in systems and controls. Others, especially companies that had already spent significant amounts to prepare for the original dates, see the delay as disruptive and value eroding. The legal bottom line is that the French implementing framework is in force, enforcement for wave one entities has commenced, and supervisory expectations remain high. From a risk perspective, regulatory instability – whether perceived or real – should be managed by building ESG internal programmes and calibrating the pace of implementation to the revised dates.

French enforcement culture also matters. France's authorities and courts have been active in environmental and consumer matters for years, and the enforcement of sustainability disclosures, marketing claims, and product-related obligations has been rigorous. For companies, a key takeaway is that aligning with EU timing does not dilute exposure to French supervision, controls and litigation.

Green claims and marketing: EU uncertainty, French stability

The EU's proposed Green Claims Directive (GCD) has entered a period of uncertainty. Initially proposed in March 2023 to establish pre-verification of explicit environmental claims and to regulate environmental labels, the proposal advanced through the European Parliament and Council positions in 2024. In June 2025, however, the European Commission announced its intention to withdraw the proposal, citing administrative burden and verification capacity concerns, and an anticipated trilogue was cancelled. As of the date of this article, the proposal has not been formally withdrawn, and the next steps are unsettled.

Even if the GCD were ultimately withdrawn, however, the legal landscape would not be too disrupted. The 2024 Directive Empowering Consumers for the Green Transition (Directive (EU) 2024/825), which amends the Unfair Commercial Practices Directive and the Consumer Rights Directive, will apply as from September 2026 and will restrict generic environmental claims, clarify rules on carbon offsetting claims, and address early obsolescence practices. The Ecodesign for Sustainable Products Regulation (Regulation (EU) 2024/1871, or ESPR) will progressively introduce product requirements, including digital product passports and, in some cases, repairability and durability metrics. Intensified scrutiny of environmental marketing claims is therefore a persistent trend.

France already operates a robust domestic regime. The Climate and Resilience Law of 22 August 2021 reinforced restrictions on claims such as "carbon neutral", requiring a life cycle greenhouse gas inventory, a hierarchy of avoidance, reduction, and compensation, the use of qualifying offsets, a forward-looking reduction trajectory, and annual public reporting, with the obligation to make a link to that report available on the advertising medium or packaging. The Anti-Waste for a Circular Economy Law of 10 February 2020, complemented by subsequent decrees, prohibits generic claims such as "biodegradable" and "environmentally friendly" on products, packaging, and advertising. These provisions sit at the top of France's consumer code rules on misleading commercial practices, which expressly encompass environmental allegations.

Enforcement is also active. The Directorate-General for Competition, Consumer Affairs and Fraud Control ("DGCCRF") has undertaken large-scale investigations of environmental claims. Based on a 2023 assessment, the DGCCRF concluded that a high proportion of non-food product and service claims were "generalising", suggesting an overall environmental benefit without reference to a specific impact and without sufficient substantiation – phrases such as "eco responsible", "ecological" or "environmentally friendly" were recurrent examples. Where claims are not substantiated with clear, proportionate, and scientifically grounded evidence, they are considered misleading.

The sanctions framework reflects the seriousness with which France regards such misleading commercial practices. These practices are punishable by up to two years' imprisonment and a EUR300,000 fine, which can be increased proportionately to up to 10% of the average annual turnover or up to 50% of the expenses devoted to the practice at issue. Where the misleading practice rests on environmental allegations about essential characteristics or the scope of commitments, the proportionate ceiling increases to 80% of the advertising spend. Since 2024, if dissemination is online or via digital media, the maximum criminal penalties may reach five years' imprisonment and EUR750,000.

The risk profile for businesses is therefore clear – regardless of the EU-level GCD outcome, environmental claims in France must be narrowly drafted, specifically substantiated, and consistent across channels and languages.

Product sustainability indices: the French sustainability index and EU labelling

France has progressively integrated the concept of "sustainability", understood as a product's lifespan, into consumer information duties. Since 2021, manufacturers and importers of specified product categories have calculated and displayed a repairability index, on a scale of 0 to 10, based on documentation availability, ease of disassembly, spare parts availability and pricing, and category-specific factors. In 2025, France began phasing in a more comprehensive "sustainability index" (*indice de durabilité*) that for each model combines a repairability score with a reliability score reflecting resistance to stress and wear, maintenance and servicing, and the existence of a commercial warranty and quality process. The sustainability index, also expressed from 0 to 10, has applied since January 2025 to televisions and since April 2025 to washing machines, and will progressively replace the repairability index for other categories.

For manufacturers, these indices entail internal data gathering, documentation, and processes to underpin the calculation, and a duty to provide the index and the detailed scoring table to distributors and, upon request, to consumers within defined timelines. Display obligations are strict both in store and online. Non-compliance exposes companies to enforcement and reputational consequences. Companies should also anticipate gradual expansion to further categories, supported by technical decrees and administratively published calculation grids.

At the EU level, new ecodesign and energy labelling rules for smartphones, cordless phones and tablets have been applied since 20 June 2025. These measures introduce, for the first time at EU level, a repairability score on the energy label for smartphones and tablets, and set design requirements to enhance durability, repairability, and software support. Against this backdrop, and to avoid label proliferation for those categories, smartphones and tablets are covered by EU labelling rules rather than French specific indices. France has adjusted its national framework accordingly for affected categories.

France's pioneering approach to product sustainability information has also attracted single market scrutiny in certain areas. This year, the European Commission has referred France to the Court of Justice of the European Union over mandatory waste sorting labels, including the Triman logo, alleging that national labelling requirements constitute disproportionate obstacles to the free movement of goods under Articles 34 to 36 of the Treaty on the Functioning of the European Union (TFEU). The case will take time to resolve and, until there is a ruling, companies must continue to comply with French requirements. If the court ultimately finds an infringement, France would need to amend its legislation, and harmonised EU rules under the new Packaging and Packaging Waste Regulation may provide a future common framework. For manufacturers, this is a live example of the tension between national innovation and EU harmonisation that should be monitored closely when designing labels and packaging for the EU market.

PFAS restrictions: France's accelerated national trajectory

Per- and polyfluoroalkyl substances (PFAS) remain a prominent regulatory and litigation risk. While several PFAS are already restricted under the EU's REACH Regulation and five member states have submitted a broad REACH restriction dossier, France has moved ahead nationally. Law No 2025-188 of 27 February 2025 establishes a phased ban, from 1 January 2026, on the manufacture, import, export and placing on the market – whether for consideration or free of charge – of cosmetics, ski waxes, and clothing and footwear, and their waterproofing agents containing PFAS, subject to exceptions for protective or safety equipment. From 1 January 2030, the ban extends to all textiles containing PFAS, with exceptions for essential uses, products contributing to national sovereignty where no alternatives exist, and certain industrial technical textiles. Residual concentration thresholds will be set by decree to exclude products containing only trace amounts of PFAS.

France has also adopted a national reduction trajectory for aqueous PFAS discharges from industrial installations. Decree No 2025-958 of 8 September 2025 has set a 70% reduction target by 27 February 2028 and aims for cessation by 27 February 2030. The definition of PFAS covered by this trajectory aligns with a broad structural criterion and includes any substance containing at least one fully fluorinated methyl or methylene carbon atom without hydrogen, chlorine, bromine, or iodine. This trajectory will be operationalised through sectoral guidance and permitting conditions.

The litigation environment around PFAS is starting to be active. PFAS-related cases are slowly progressing in the French criminal, administrative and civil courts, with a concentration of legal actions in the region of Lyon where several chemical plants operate. Group actions in environmental matters may also constitute a procedural avenue. For manufacturers, supply-chain mapping, substitution assessments, emissions control, and robust product stewardship are now essential elements of risk management when placing products on the French market. It is also prudent to ensure that product information, safety data sheets, and marketing claims are updated to reflect the evolving restrictions, and to engage early on with authorities where transitional issues arise.

Conclusion

In summary, 2025 confronted foreign manufacturers operating in France and the EU with a two-track ESG environment. At the EU level, a simplification drive anchored in the Omnibus I package, ESRS "quick fixes" and the Stop-the-Clock Directive narrowed and staggered reporting duties to ease near-term burdens, while in France, vigilant greenwashing enforcement, and new unilateral measures sustained a high-ambition baseline and elevated compliance risk. The EU delays offer tactical breathing space, but investors' and NGOs' expectations continue to press for credible data, making a pause in preparation risky. Even if the GCD stalls, other EU instruments, including the Empowering Consumers Directive and the ESPR, will tighten product-level and marketing obligations, and France's existing regime – backed by DGCCRF scrutiny and significant penalties – already demands robust substantiation of environmental claims. Parallel national initiatives, notably PFAS restrictions with phased prohibitions and discharge-reduction targets, and the roll-out of a sustainability index, add product-specific requirements that could reshape design, sourcing and labeling strategies. At the same time, EU free-movement constraints and recent European Commission actions, such as challenges to French labelling rules, signal that pioneering national measures may face internal market headwinds that businesses must factor into market-access planning.

An adaptive, staged compliance plan – sequencing investments to align with EU deferrals yet meeting France's earlier and stricter requirements – offers the best path to reduce litigation and reputational exposure while preserving commercial flexibility.

GHANA

Trends and Developments

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AB & David Africa is a pan-African business law firm with a network of firms in 30 African countries, serving private and public organisations across the world, including businesses, public sector agencies, financial institutions, and international organisations. The firm's aim is simple: to help clients succeed in Africa with their business and projects by providing guidance, developing strategy, and working with them to implement their strategic mission and objectives. As a full-service law firm, AB & David Africa's ESG cross-practice team is at the forefront of advising on the legal aspects of business and policy regarding green transition and sustainability in the region. The team regularly assists clients within the broader range of legal services in the energy, infrastructure, and natural resources sectors, including providing advice on project development, licensing and permitting, M&A, financing, regulatory compliance, dispute resolution, and taxation.

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The Legislative and Financial Measures Fuelling Ghana's Drive Towards a Sustainable Future

Governments continue to promote and show strong commitment to advancing ESG in various sectors of national and private business interests, which has led to the creation and improvement of policies and legal frameworks towards advancing their ESG goals. This continuous promotion is due to the high priority placed on ESG by stakeholders in business, social and political activities.

Ghana is no exception to these global trends. In light of its commitment to the United Nations' Sustainable Development Goals (SDGs), Ghana has introduced significant policy and regulatory measures to support its SDGs. This article discusses recent ESG developments and highlights notable initiatives driving Ghana's progress toward a sustainable future.

In 2025, Ghana's efforts concerning ESG and its sustainability goals have improved considerably. Recent trends and developments are explored in greater detail under the following themes:

- new legal framework for environment and climate change;
- emerging ESG trends within Ghana's financial sector; and
- developments in Ghana's carbon markets.

New legal framework for environment and climate change

Ghana reached a huge milestone with the passage of a new primary environmental legislation. The Environmental Protection Act 2025 ("Act 1124" was passed on 6 January 2025 to replace the Environmental Protection Act 1994 ("Act 490") as the primary environmental legislation to protect, improve and regulate environmental issues. Act 1124 also sets standards for environmental compliance and enforcement. The change in the regulatory framework was necessary to ensure that Ghana's environmental landscape aligns with current trends and addresses Ghana's international commitments on matters related to climate change.

The key highlights of Act 1124 are discussed here.

Establishment of the Environmental Protection Authority

Act 1124 establishes the Environmental Protection Authority with expanded regulatory powers, replacing the Environmental Protection Agency. The Environmental Protection Authority is established for the purpose of regulating, protecting, co-ordinating and exercising general oversight over all matters relating to climate change and the environment. The new functions of the Environmental Protection Authority include:

- initiating and conducting the prosecution of environment-related offences pursuant to an authorisation by the Attorney-General;
- keeping and maintaining an official bulletin (known as the "Environmental Bulletin") as a secured electronic database for the publication of relevant information determined by the Environmental Protection Authority;
- serving as the designated national authority for carbon market and non-market approaches, the voluntary carbon market, and domestic carbon pricing instruments;
- certifying environmental management practitioners who provide environmental management services,

maintaining a register of individual experts and firms of experts, and publishing the register annually on the website of the Environmental Protection Authority and in the Environmental Bulletin; and
- registration, issuance of permits, and collection of an advance eco-levy for the manufacture of electric and electronic equipment as well as the importation of new and used electrical and electronic equipment.

Establishment of funds

Act 1124 establishes the following funds:

- the Pesticide Management Fund to improve the control and management of pesticides in Ghana;
- the Electrical and Electronic Waste Management Fund to provide financial resources for the management of electrical and electronic waste; and
- the Mitigation Fund to provide funds to implement a bilateral co-operative approval for the creation of authorised internationally transferred mitigation outcomes (ITMOs) and invest in the generation of additional mitigation benefits to increase Ghana's mitigation outcomes.

It is worth noting that the Electronic and Electrical Waste Management Fund is not a new initiative; it existed under the repealed the Hazardous and Electronic Waste Control and Management Act 2016 ("Act 917") and was reinstated in Act 1124. The introduction of the Mitigation Fund, however, represents a significant advancement. It provides the Ghanaian government with a domestic financing mechanism to support the country's unconditional commitments under its Nationally Determined Contributions (NDCs). The Mitigation Fund's sustainability and growth will, nonetheless, hinge on the level of activity within Ghana's mitigation landscape – particularly the engagement of private sector actors, whose fees and participation are essential to maintaining the Mitigation Fund's operations.

Repeal and consolidation of laws

Act 1124 repeals all environmental legislations that regulated environmental protection in Ghana prior to its enactment and consolidates their relevant provisions under various parts of Act 1124. By way of example, Part Two of Act 1124 provides for pesticide control and management, Part Three provides for hazardous wastes and other wastes, Part Four deals with electrical and electronic waste, and Part Five covers climate change. Consequently, Act 917 has been repealed by Act 1124, as Act 1124 mandates the Environmental Protection Authority to regulate hazardous and electronic waste.

Advance eco-levy for electrical and electronic equipment

Persons who manufacture electrical or electronic equipment or import new or used electrical or electronic equipment into Ghana are required to register with the Environmental Protection Authority, obtain a permit, and pay the prescribed eco-levy to the Environmental Protection Authority. The eco-levy is to be paid on items specified in Act 1124, which include new or used pneumatic tyres, air conditioning machines, refrigerators, freezers, electrical screwdrivers, fans, medical, surgical or laboratory sterilisers, cream separators, dishwashing machines, ploughs, weighing machinery, dry cleaning machines, drilling machines, etc.

The payment of the eco-levy may be waived by the Environmental Protection Authority for:

- persons who manufacture electrical and electronic equipment for export only; and
- importation of used electrical and electronic equipment for recycling purposes.

Climate change and carbon markets

Part Five of Act 1124 covers climate change and carbon markets, which is in line with Ghana's obligations under Article 6 of the Paris Agreement. Act 1124 mandates the Environmental Protection Authority to support the formulation of adaptation plans that enhance the resilience and adaptive capacity of human and ecological systems to the impacts of climate change and integrate climate change disaster risk reduction.

To promote and enhance Ghana's climate change efforts and programmes, Act 1124 mandates the Environmental Protection Authority to serve as the designated national authority for the carbon market and non-market approaches, the voluntary carbon market, and domestic carbon pricing instruments. To this end, the Environmental Protection Authority is required to co-ordinate the preparation, review and communication of the international climate change reports required of a party to the United Nations Framework Convention on Climate Change (UNFCCC) and subsidiary protocols, agreements, accords or treaties to the UNFCCC.

Act 1124 further establishes the Ghana Carbon Registry (GCR), a digital platform that serves as a database for carbon market project activities within and outside Ghana. The GCR is also required to track the transfer and use of ITMOs, facilitate the listing and registration of mitigation activities and voluntary carbon market projects, and provide a record of all ITMOs activities and ITMOs issued. Additionally, the GCR is to host and provide public access to all information and activities related to ITMOs. Act 1124 also establishes the Mitigation Fund to provide financial support for implementing a bilateral co-operative approach for the creation of authorised ITMOS.

The above-mentioned provisions in Act 1124 emphasise Ghana's determination and commitment towards achieving its SDGs and promoting sustainable economic development.

That said, considering the complex and cross-border nature of carbon markets (which typically involve international contracts, regulatory compliance challenges, and environmental integrity concerns), the lack of a proactive dispute resolution mechanism under Act 1124 (such as a specialised dispute resolution desk within the Carbon Market Office of the EPA) may create both legal and commercial vulnerabilities. However, Act 1124 authorises the sector minister to issue regulations to facilitate its effective implementation. This provision offers a significant opportunity to develop a comprehensive protocol for managing climate and carbon market disputes in Ghana. Establishing a strong dispute resolution system will be vital to maintaining market confidence, safeguarding stakeholder interests, and upholding the overall integrity of Ghana's growing carbon market ecosystem.

Emerging ESG trends within Ghana's financial sector

In 2025, two major frameworks emerged in both the banking and insurance subsectors to strengthen Ghana's financial system. These frameworks are discussed here.

The ESG Guidelines for the Insurance Industry in Ghana

In consideration of the critical role the insurance industry plays in promoting sustainability and responsible investing in Ghana, the National Insurance Commission issued the ESG Guidelines for the Insurance Industry in Ghana (the "Guideline") in December 2024. The Guideline provides a framework for integrating ESG principles into the industry's operations, underwriting practices, investment practices, and stakeholder engagement.

The Guideline primarily applies to insurers and reinsurers operating in Ghana – although it may provide insights for intermediaries and other stakeholders in the industry. The Guideline encourages insurers and reinsurers to embed consideration of the financial risks from ESG-related exposures in their governance arrangements and decision-making. Insurers are also required to incorporate the financial risks from ESG-related exposures into their existing financial risk management practice and to promote transparency and fairness (among other things). The principles to be adopted in insurance practice and reporting are discussed as follows.

i) General principles

The general principles in the Guideline are environmental stewardship, social responsibility, governance standards, materiality, and responsible investment. The combined effect of the principles is that insurers and reinsurers must consider sustainable underwriting, climate change and resource use, carbon footprint reductions, diversity and inclusion, community engagement, customer welfare, human rights and labour standards, financial inclusion, ethical conduct and compliance, risk management, stakeholder engagement, corporate governance structures and board oversight in their decision-making. Insurers are also required to conduct materiality assessments to identify and prioritise ESG factors that have the potential to materially impact business.

ii) Specific principles

The specific principles in the Guideline are those that are critical for the implementation of ESG practices in the insurance industry. These are ESG governance, ESG management systems, ESG risk management, and stress testing and scenario analysis. Under the specific principles, insurers are required to have robust governance structures that enable them to identify, manage, monitor and report risks they are exposed to at the business and industry level, implement ESG management systems, and report all relevant risks to their respective boards and senior management. The specific principles also require insurers to develop internal capabilities to conduct scenario analysis and stress testing on ESG-related issues.

iii) Reporting and disclosure

The Guideline requires insurers to disclose ESG issues (including materiality assessment reports) in accordance with best practice, international reporting frameworks and Ghanaian-specific guidelines. The reports should cover – at minimum – the environmental impact (carbon emissions and resource use), governance practices (board oversight, risk management, and compliance and ethics), and social practices (diversity and inclusion, employee welfare, stakeholder engagement and product responsibility).

Ghana's Biodiversity Finance Initiative

In April 2025, the Biodiversity Finance Initiative ("BIOFIN") – a global initiative led by the United Nations Development Programme (UNDP) to support countries in the development and implementation of tailored biodiversity finance plans – was launched in Ghana. The programme marks a significant step in the country's efforts to advance environmental sustainability and biodiversity conservation by providing finance that supports such activities. BIOFIN will enable Ghana to mobilise resources for biodiversity protection to contribute towards the achievement of the country's SDG goals.

Following the launch, a steering committee for BIOFIN was inaugurated to spearhead the implementation of BIOFIN in Ghana. At its inaugural meeting in July 2025, a co-chair of the steering committee revealed that the Ministry of Finance is developing an integrated conservation framework that seeks to align biodiversity finance with national climate policy. This will embed nature-based solutions and sustainable investment mechanisms into broader national planning and support the implementation of Ghana's Nationally Determined Contributions (GH-NDCs), the SDGs, the Sustainable Ocean Plan, and targets under the Kunming-Montreal Global Biodiversity Framework.

ESG certification programme

The Chartered Institute of Bankers (CIB) – in collaboration with the International Finance Corporation (IFC), the Environmental Protection Authority and the Swiss State Secretariat for Economic Affairs – developed and organized an ESG certification programme for the financial sector. The initiative aims at introducing sustainability principles into financial decision-making to align the Ghana's banking practices with global standards and investor requirements. The ESG certification programme is structured into six modules over a ten-week period and modules include social impact assessment, corporate governance, regulatory compliance, ethical investment strategies, and sustainable finance frameworks.

Apart from this programme by the CIB, the Carbon Market Office intends to partner with other stakeholders to organise the Carbon Finance Academy Masterclass for project developers, financiers, academics, public servants and industry practitioners.

Developments in Ghana's carbon markets

The promulgation of Act 1124 is a huge step by Ghana towards the achievement of its obligations under Article 6 of the Paris Agreement and meeting the SDGs.

As discussed earlier, Act 1124 has provided the legal framework for the activities of the GCR, with clear functions to track the transfer and use of ITMOs and to facilitate the listing and registration activities and voluntary carbon market projects (among other things). Act 1124 has also established the Carbon Market Committee to approve procedures for the operations of the GCR. These procedures include procedures related to:

- the eligibility of mitigation projects for the voluntary carbon market; and
- the recognition of recommended independent assessment entities accredited either under an international crediting standard or under national modalities for the accreditation of an independent assessment entity.

Ghana–Switzerland bilateral agreement

Ghana and Switzerland signed a bilateral climate agreement at COP26 in Glasgow on 24 November 2020 to regulate the co-operation between the two countries and establish a legal framework for the implementation of greenhouse gas mitigation activities under Article 6.2 of the Paris Agreement. The basis for this bilateral agreement is Ghana's confirmation of the additionality of the mitigation project to its NDC, as well as an agreement to make corresponding adjustments to the national emissions registry. Projects under the Ghana–Switzerland bilateral agreement are sourced under the Klik Foundation track and the UNDP track and currently stand at 14 projects.

In 2025, the focus is on the implementation and monetisation of mitigation outcomes under these projects. One such project is the "Transformative Cookstove Activity in Rural Ghana" mitigation project, which issued Africa's first ITMOs under the Paris Agreement. Details of the project are as follows.

i) Africa's first ITMOs issuance under Paris Agreement's Article 6.2 for NDC use

Switzerland and Ghana achieved a milestone under Article 6.2 of the Paris Agreement through the issuance of ITMOs for the "Transformative Cookstove Activity in Rural Ghana" project. This project marks the first time ITMOs have been issued for NDC use for mitigation activity in Africa.

The ITMOs were purchased by the Klik Foundation directly from the ACT Group, the project owner. The adjusted ITMOs of 11,733 ITMOs minus the Overall Mitigation of Global Emissions (OMGE) contribution levied by Switzerland were issued to the Klik Foundation's account in the Swiss Emissions Trading Registry on 7 July 2025. The Klik Foundation will use the ITMOs to fulfil its obligation under the Swiss CO2 Act, which will in turn be used by Switzerland towards its target under the Paris Agreement. As a result, Ghana has committed to adjusting its greenhouse gas inventory by the amount of mitigation outcomes transferred to Switzerland to avoid double counting.

ii) About the project

Ghana has included improved cookstove activities in its whitelist for carbon markets as additional measures to those implemented under the unconditional NDC to the Paris Agreement. Ghana's Improved Cookstoves (ICS) mitigation activity is a greenhouse gas mitigation project from project co-developer and implementer Envirofit International that improves the lives of citizens. The technology reduces smoke and toxic emissions in individual households by up to 80% and reduces cooking fuel costs by as much as 60%. The stoves are produced in Ghana at a below-cost price subsidised by carbon finance provided by Spark+ Africa Fund. The stoves are offered with access to revolving consumer credit funds provided through established Village Loan and Savings Associations. The production and distribution are undertaken by Envirofit Ghana.

iii) Requirements for the project

The greenhouse gas mitigation project has been designed to prevent risk of over-crediting through Envirofit's newly developed usage and performance monitoring protocol. The project takes a conservative approach to measuring the fraction of non-renewable biomass (fNRB) – a key metric of abatement – at 30% by default. This measurement can be changed if the updated and regional values are available and both Ghana and Switzerland agree to the change.

Ghana–South Korea implementation agreement

The technical negotiations of the bilateral agreement on carbon markets between Ghana and South Korea have been concluded and both countries have met the country participation requirements. The final draft agreement has been submitted by the Ministry of Environment, Science and Technology to the cabinet for consideration. Following cabinet approval, the agreement will be submitted to Parliament for approval before signing. In the meantime, there are five projects on clean cooking, waste management and water treatment undergoing onboarding and feasibility studies for future development pending the approval of the bilateral agreement.

Outlook

In 2025, Ghana has made significant strides in ESG, with new environmental legislation establishing a carbon market registry and an eco-levy on electrical and electronics equipment. The country has also been positioned as a regional leader through its issuance of ITMOs and active carbon market projects. This and the other developments discussed in this update showcase Ghana's determination to strengthen transparency, boost investor confidence and improve regulatory framework to foster the achievement of the country's sustainability goals. Ultimately, Ghana is setting a solid foundation for the ongoing transition to a low-carbon and climate-resilient economy in pursuit of a sustainable net zero future in line with global developments.

INDONESIA

Law and Practice

Contributed by:
Karina Sungkono, Muhammad Anas Fadli and Adeline Anindya Rusdianto
Santoso, Martinus & Muliawan Advocates

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Santoso, Martinus & Muliawan Advocates

Santoso, Martinus & Muliawan Advocates (SMMA) is an independent Indonesian law firm established in 2021. Its partners are alumni of major international law firms in Jakarta and Singapore, and have represented FTSE 100, US Fortune 500 and Asia's largest companies in high-profile transactions, projects and disputes across a wide range of sectors. SMMA is ranked in Band 4 for Capital Market (Indonesia) and in Band 5 for Corporate/M&A (Indonesia) by Chambers Asia-Pacific in 2025. Its partners are also ranked as "Up-and-Coming" lawyers for Projects & Energy, Corporate/M&A and Dispute Resolution by Chambers Asia-Pacific in 2025.

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1. Introduction

1.1 General ESG Trends

Indonesia is progressively embedding ESG principles into its regulatory framework, transitioning from voluntary guidelines towards more binding obligations. This shift reflects the government's commitment to align domestic policies with global sustainability frameworks, including the Paris Agreement and the Net Zero 2060 target.

Presidential Regulation No. 110 of 2025 on the Implementation of Carbon Economic Value Instruments and National Greenhouse Gas Emission Control ("PR 110/2025")

On 10 October 2025, the Government issued PR 110/2025 to replace the previous Presidential Regulation No. 98 of 2021 on the Implementation of Carbon Pricing to Achieve the Nationally Determined Contribution Target and Control over Greenhouse Gas Emissions in the National Development ("PR 98/2021"). PR 110/2025 introduces several key changes from PR 98/2021, namely the following.

1. International carbon trading

PR 110/2025 now recognises two types of international carbon trading, namely:

a. International carbon trading that requires authorisation and corresponding adjustment, covering:

- internationally connected greenhouse gas (GHG) emission trading;
- trading of GHG emission offset that fulfils Articles 6.2 and 6.4 of the Paris Agreement; and
- trading of voluntary GHG emission offset to fulfil other international commitments.

In this case, the authorisation will be issued by the Ministry ofEnvironment based on recommendation from relevant ministries.

b. International carbon trading that does not require authorisation and corresponding adjustment, which covers trading of GHG emission offset that is not used for achievement of Nationally Determined Contribution (NDC) and/or other international obligations, whether under Article 6.4 of the Paris Agreement or under voluntary GHG emissions offset standards.

PR 110/2025 also broadens the definition of "Carbon Unit". Under PR 98/2021, the definition was limited to the units registered under the National Registry System for Climate Change Control (SRN-PPI). It now includes emission reduction and/or absorption being certified under domestic certification, international certification or GHG emission quota. Specifically for international carbon trading, PR 110/2025 states that the GHG emission offset carbon units being traded can be issued based on national standards, UNFCCC standards or other international standards.

PR 110/2025 also states that carbon trading may be carried out without waiting for the achievement of NDC targets.

The introduction of PR 110/2025, together with Indonesia's recent entry into mutual recognition agreements with major international carbon certification organisations (including Verra and Gold Standard), is expected to boost the voluntary carbon market in Indonesia in the near future.

2. Introduction of the National Carbon Unit Registry (Sistem Registri Unit Karbon, or SRUK)

Any carbon units (including those issued by international standards) and carbon trading (including international carbon trading) must now be registered in SRUK. PR 112/2025 defines SRUK as a system to provide and manage data and information on carbon units for the implementation of carbon economic value instruments. The regulation mandates that SRUK shall use a decentralised network system, in which all data and transactions are transparent and traceable, reflect real-time information, and are permanent, connected and able to interact with other registry systems.

3. New NDC sector and subsectors

PR 110/2025 introduced a new NDC sector of "marine and fisheries" and new NDC subsectors of "oil and gas" and "blue carbon management".

In the oil and gas subsector, the Ministry of Energy and Mineral Resources (MEMR) had previously issued MEMR Regulation No. 2 of 2023 on the Implementation of Carbon Capture and Storage, as well as Carbon Capture, Utilisation and Storage, in Upstream Oil and Gas Business Activities, and MEMR Regulation No. 16 of 2024, which governs the carbon capture and storage permitting areas.

The Minister of Marine Affairs and Fisheries recently issued Regulation No. 1 of 2025 on Procedure for the Implementation of Carbon Economic Value in the Marine Sector, which provides more detailed provisions on the carbon pricing mechanism in the marine and fisheries sector, introducing both emission trading and result-based payment schemes. It covers blue carbon management (mangroves, seagrass and coastal wetlands), fishing and aquaculture energy use, and fish-processing operations.

Institutional Restructuring: Environment and Forestry Split

Following the recent administrative transition, the former Ministry of Environment and Forestry has been split into two entities, which are: (i) the Ministry of Environment/Environmental Control Agency (MOE) and (ii) the Ministry of Forestry (MOF). This restructuring is expected to impact the enforcement of existing environmental and forestry regulations. The MOE is tasked with environmental licensing, pollution control and waste management, while the MOF manages forest conservation, sustainable forest use and related regulatory activities.

ESG Reporting by IDX-Listed Companies

In January 2025, the Indonesian Stock Exchange (*Bursa Efek Indonesia*, or IDX) launched a formal ESG reporting mechanism through Form E020, integrated into its electronic system. The form standardises ESG disclosures and aligns them with the Association of Southeast Asian Nations (ASEAN) Exchanges' ESG Common Core Metrics. In addition, the current reporting framework adopts methodologies consistent with the GHG Protocol and ISO 14064 standards for emissions calculation and verification.

Indonesia Taxonomy for Sustainable Finance 2.0

In February 2025, the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan*, or OJK) released Indonesia Taxonomy for Sustainable Finance (*Taksonomi Keuangan Berkelanjutan Indonesia*, or TKBI) Version 2.0, expanding the previous framework beyond the general principles and energy sector by adding: (i) construction and real estate (C&RE), (ii) transportation and storage (T&S), and (iii) parts of agriculture, forestry and other land use (AFOLU), including forestry and palm oil. TKBI 2.0 covers 192 Standard Classification of Indonesian Business Fields (KBLI) codes.

1.2 Environmental Trends

Mandatory Emission Reporting in the Industrial Sector

To enhance the accuracy of industrial emissions data and strengthen monitoring of the sector, the Minister of Industry issued Circular Letter No. 2 of 2025 on Submission of Industrial Emissions Data Through the National Industrial Information System. This circular introduces mandatory emissions reporting obligations for industrial companies and operators of industrial estates, which consists of air pollutant data and GHG emissions data.

Air pollutant data must be based on test reports issued by ISO 17025-accredited laboratories that are also registered as environmental laboratories and referenced in the relevant environmental documentation. By contrast, GHG emissions data are to be reported on a self-assessment basis, using the forms provided on the SIINas platform.

Mandatory Energy Management for Major Energy Users and Suppliers

In March 2025, the MEMR issued MEMR Regulation No. 8 of 2025 on Energy Management. The regulation requires large energy users and providers that fulfil the following criteria to carry out mandatory energy management activities:

- energy providers that utilise energy sources and/or energy equal to or greater than 6,000 tonnes of oil equivalent per year;
- energy source users and/or energy users in the transportation sector that use energy sources and/or energy equal to or greater than 4,000 tonnes of oil equivalent per year;
- energy source users and/or energy users in the industrial sector that use energy sources and/or energy equal to or greater than 4,000 tonnes of oil equivalent per year; and

- energy source users and/or energy users in the building sector that use energy sources and/or energy equal to or greater than 500 tonnes of oil equivalent per year.

The energy management shall be done by way of:

- appointment of an energy manager within the organisation and formation of an energy management team;
- preparation of energy efficiency programmes;
- periodic energy audit; and
- implementation of audit energy results recommendations.

The entities are required to submit annual reports to the MEMR at the latest on 30 June of the following year. The regulation also provides a framework for the MEMR to grant incentives (fiscal and non-fiscal) to entities that comply with the energy management obligations and fulfil the energy efficiency success criteria for three years in a row.

Expanded Scope for Environmental Activism

Recently, the Constitutional Court issued Decision No. 119/PUU-XXIII/2025, which broadens the protection afforded to environmental activism. Previously, individuals could not be subjected to criminal or civil liability for fighting for the right to a proper and healthy environment. However, this protection was narrowly confined to "victims and/or reporting parties" who sought legal remedies for environmental pollution and/or damage. Such limitations weakened public participation, discouraged broader environmental advocacy and created legal uncertainty.

In its ruling, the Court clarified that the phrase "every person" must be interpreted more broadly, recognising the right to a proper and healthy environment as a fundamental human right. This interpretation extends protections beyond victims and complainants to encompass all individuals engaged in environmental advocacy. Many regard this decision as a significant victory for climate and environmental activism in Indonesia.

1.3 Social Trends

More Detailed Social Responsibility Obligations in the Mining Sector

To reinforce the principles of responsible mining practices, Law No. 2 of 2025 on the Fourth Amendment to Law No. 4 of 2009 on Mineral and Coal Mining provides more detailed provisions on mandatory community development and empowerment programmes. Previously, the law merely set out the responsibility obligation without further explanation.

The amendment introduces specific forms of this obligation, which include:

- corporate social and environmental responsibility programmes;
- involvement of local communities and indigenous peoples residing within the mining area; and
- partnership initiatives and community-based economic empowerment programmes.

The preparation of the above programme shall be consulted upon with the MEMR, the relevant regional government, and the local community and/or indigenous peoples.

Circular Letter of Minister of Manpower on Discrimination Prevention

The Indonesian Minister of Manpower has issued Circular Letter No. M/6/HK.04/V/2025 on Prohibition of Discrimination in the Employment Recruitment Process, which reaffirms the prohibition of discriminatory practices in job recruitment on any grounds. Under this circular, companies may impose age requirements only if: (i) the nature of the work objectively necessitates a specific age range with a demonstrable impact on job performance; and (ii) such requirements do not result in losses or a reduction in employment opportunities. The prohibition on discriminatory recruitment also expressly covers persons with disabilities.

1.4 Governance Trends

Improvement in Banks' Corporate Governance

OJK has issued Circular Letter No. 14/SEOJK.03/2025 on Governance Implementation for Commercial Banks ("OJK CL 14/2025"), which expands the criteria for banks' self-assessment from 11 to 16 indicators. The new indicators include (1) sustainable finance and social/environmental responsibility, (2) anti-fraud strategy, including anti-bribery, and (3) governance in the group of banks.

The circular also provides more detailed guidance on preventing and managing conflicts of interest, particularly in transactions with related parties. In this context, banks are required to clearly define related parties, ensure fair treatment based on the arm's length principle, establish exposure limits and conduct independent audits. The first self-assessment report under this circular must be submitted by December 2025.

International Financial Reporting Standards S1 and S2 Adoption

The Institute of Indonesia Chartered Accountants has adopted International Financial Reporting Standards (IFRS) General Requirements for Disclosure of Sustainability-related Financial Information ("IFRS S1") and IFRS Climate-related Disclosures ("IFRS S2") for nationwide implementation starting from 1 January 2027. After a series of lengthy consultations with authorities and stakeholders, a formal launching ceremony, co-hosted by Bank Indonesia, the Ministry of Finance and OJK, was held on 11 August 2025. OJK is aiming for the first reporting under the new standards to begin in 2028, following their formal adoption through the revision of disclosure regulations.

1.5 Government and Supervision

Each authority is responsible for translating laws into implementing regulations within its respective sector. Such implementing regulations are expected to provide clearer standards and actionable requirements for companies to ensure compliance.

For example, in the energy sector, Indonesia has committed to phasing out coal by 2040. To accelerate the transition, the MEMR issued Regulation No. 10 of 2025 on the Roadmap of Energy Transition in the Electricity Sector. This regulation mandates the early termination of coal-fired power plants before the end of their technical or planned operational life, while also considering electricity tariff impacts and the application of just energy transition principles.

1.6 Market Participants

ESG considerations are expected to have a growing impact on business operations across Indonesia. However, the sectors likely to be most affected by ESG laws and regulations in the coming years are energy, waste, industrial processes and product use (IPPU), and agriculture, forestry and other land use (AFOLU). The introduction of measures such as a carbon tax and adoption of international sustainability standards and treaties will significantly increase compliance obligations for companies in these sectors.

1.7 Geopolitical Developments

Indonesia is a member of the United Nations and has ratified the Paris Agreement through Law No. 16 of 2016. On 27 October 2025, the President of Indonesia submitted the country's second NDC, outlining emission reduction commitments for the 2031–2035 period. This document projects that Indonesia will reach its peak emissions by 2030, with emission levels expected to be 8–17.5% lower than those projected in the previous NDC.

At the regional level, Indonesia remains an active member of ASEAN, of which it is one of the founding members. Recently in 2025, the ASEAN Capital Markets Forum (ACMF), in line with its 2022 commitment to promote sustainable development, issued the ASEAN Simplified ESG Disclosure Guide to support small and medium-sized enterprises within supply chains. Looking ahead, OJK will assume the role of ACMF Chair, positioning Indonesia at the forefront of regional ESG standard-setting.

2. Corporate Governance

2.1 Developments in Corporate Governance

The most noticeable development in corporate governance has occurred within the financial sector. The enactment of Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ("Law 4/2023") reinforces the obligation of banks to implement good corporate governance (GCG) in the conduct of their business activities. This mandate is further elaborated under OJK Regulation No. 17 of 2023 on Governance Implementation for Commercial Banks, which, among other provisions, requires banks to take additional measures as part of their governance, risk management and compliance frameworks. Further, OJK CL 14/2025 provides detailed guidelines for banks in applying corporate governance principles. OJK is expected to introduce additional regulations in the coming years.

The adoption of IFRS S1 and IFRS S2 in 2027 is expected to affect corporate reporting practices, requiring companies to adjust their disclosures to meet the new standards. Climate-related reporting will become mandatory under these frameworks, while disclosure of other non-climate ESG information will continue to be voluntary.

Apart from the aforementioned developments, Law No. 16 of 2025 on the Fourth Amendment to Law No. 19 of 2003 on State-Owned Enterprises (SOEs) has also been enacted recently. This regulation removes the provision that previously excluded, among others, directors, commissioners and supervisory board members of the SOE and Danantara (a sovereign wealth fund) from the scope of state officials and reinforces gender equality for employees in executive and managerial positions within the SOEs.

2.2 Differences Between Listed and Unlisted Entities

The main legal basis for general corporate governance in Indonesia is set out in Law No. 40 of 2007 on Limited Liability Companies, as amended by Law No. 6 of 2023 on Job Creation ("Job Creation Law") (the "Company Law").

In essence, the Company Law requires a limited liability company, whether public or private, to comply with the applicable statutory provisions including in its articles of association. Key stipulations include the requirement to hold an annual general meeting of the shareholders (GMS) to ensure transparency on the financial reports, the main responsibilities of the board of directors (BOD) and the board of commissioners (BOC), and the obligation to conduct corporate social and environmental responsibility (CSER).

OJK further regulates specific corporate governance for public companies (including listed companies), which has been enacted under the following regulations:

- OJK Regulation No. 21/POJK.04/2015 of 2015 on the Implementation of Corporate Governance Guidelines for Public Companies ("OJK Reg 21/2015");
- OJK Circular Letter No. 32/SEOJK.04/2015 of 2015 on Corporate Governance Guidelines for Public Companies ("OJK CL 32/2015");
- OJK Regulation No. 15/POJK.04/2020 of 2020 on the Planning and Convening of the General Meeting of Shareholders of Public Companies;
- OJK Regulation No. 14 of 2025 on the Implementation of Electronic General Meetings of Shareholders, General Meetings of Bondholders, and General Meetings of Sukuk Holders;
- OJK Regulation No. 33/POJK.04/2014 of 2014 on the Board of Directors and Board of Commissioners of Issuers or Public Companies;
- OJK Regulation No. 45 of 2024 on the Development and Strengthening of Issuers and Public Companies; and
- OJK Regulation No. 34/POJK.04/2014 of 2014 on the Nomination and Remuneration Committee for Issuers or Public Companies.

For example, OJK Reg 21/2015 and OJK CL 32/2015 set out GCG guidelines ("GCG Guidelines") which address five key areas: (i) relations between companies and shareholders; (ii) the role of the BOC; (iii) the role of the BOD; (iv) stakeholder participation; and (v) transparency. While adherence to the GCG Guidelines is mandatory, the regime follows a "comply or explain" approach. Companies that do not comply must disclose in their annual reports the reasons for non-compliance and any alternative measures adopted. Failure to provide such explanations may result in OJK sanctions, including written warnings and fines.

OJK has also promulgated a number of regulations establishing corporate governance standards applicable to financial institutions, whether bank or non-bank, irrespective of their status as private or public entities, such as:

- OJK Reg 17/2023;
- OJK CL 14/2025;

- OJK Circular Letter No. 12/SEOJK.03/2024 of 2024 on the Implementation of Corporate Governance for People's Economy Banks;
- OJK Regulation No. 73/POJK.05/2016 of 2016 on Good Corporate Governance of Insurance Companies, as lastly amended by OJK Regulation No 43/ POJK.05/2019 of 2019; and
- OJK Regulation No. 48 of 2024 on Good Corporate Governance for Financing Institutions, Venture Capital Companies, Microfinance Institutions and Other Finance Institutions.

2.3 Role of Directors and Officers

Under the Company Law, a company's purpose is not limited to generating profits but also includes the obligation to carry out CSER. However, the Company Law limits such obligation for companies that engage in activities relating to natural resources (eg, mining, agriculture, energy, forestry and manufacturing). In practice, CSER has become an expected and common obligation across all sectors, especially for companies with a social or environmental impact.

Nonetheless, such CSER obligations have influenced the responsibilities of the BOD and executive officers, as Government Regulation No. 47 of 2012 on Social and Environmental Responsibility of Limited Liability Companies ("GR 47/2012") requires them to integrate CSER programmes into the company's annual work plan and allocate funding that is proportionate, reasonable, and recorded as part of the company's expenses. The implementation of CSER must be disclosed and presented to the annual GMS through the company's annual report.

Additionally, public companies and financial institutions, including issuers, are subject to Law 4/2023 and OJK Regulation No. 51/POJK.03/2017 on Implementation of Sustainable Finance for Financial Service Institutions, Issuers and Public Companies ("OJK Reg 51/2017"). These regulations require the preparation of an annual Sustainable Finance Action Plan that contains strategies and initiatives to integrate sustainability principles into business operations and financing activities, and its submission to OJK.

2.4 Social Enterprises

Social enterprises or entities pursuing non-profit objectives are generally established in the form of a foundation. Under Law No. 15 of 2001 on Foundations, as amended by Law No. 28 of 2004 ("Law 15/2001"), a foundation is a legal entity consisting of separate assets intended to achieve specific objectives in the social, religious and humanitarian fields, which does not have members. Different from limited liability companies, all kinds of profit are prohibited from being distributed to the advisers, administrators and supervisors of the foundation. However, there is no restriction preventing a foundation from holding shares in a company.

2.5 Shareholders

In the context of public companies, ESG has become an emerging trend in Indonesia, as reflected in IDX's initiative to establish ESG reporting early this year. This system, supported by the applicable laws and regulations, has led to a growing number of public companies adopting ESG practices. Consequently, shareholders' perspectives in decision-making and policy setting have shifted, with greater alignment towards applicable ESG standards.

Under OJK Reg 51/2017, companies are required to present their Sustainable Finance Action Plan to shareholders through the GMS, thereby encouraging shareholders to recognise the importance of ESG implementation in business operations. The practical implementation of this requirement is also reflected in IDX's official ESG index, which evaluates companies against defined thresholds to determine their compliance with ESG standards.

Further, to strengthen the implementation of GCG, OJK CL 32/2015 sets forth principles and recommendations on GCG to be applied by shareholders in relation to their respective companies.

In addition, the Company Law imposes a general obligation on certain companies, both private and public, to conduct CSER with its realisation reported at the annual GMS. This demonstrates that shareholders are also expected to play an active role in fulfilling ESG-related obligations.

3. Sustainable Finance

3.1 Progress in Green Financing

OJK continues to strengthen the sustainable finance framework through a series of non-binding guidelines designed to direct the market and prepare stakeholders for forthcoming binding regulations. Following the issuance of TKBI 2.0, OJK plans to release TKBI 3.0 in 2026, expanding coverage to include the agriculture, industrial processes and product use (IPPU), and waste sectors, as well as approximately 537 additional KBLI codes. Revisions to sustainable finance regulations are scheduled for 2027, with full implementation targeted by 2028.

In parallel, Bank Indonesia has strengthened its sustainable finance incentives. Through Regulation of the Board of Governors (PADG) No. 21 of 2024 on the Second Amendment to PADG No. 11 of 2023 on Regulations on the Implementation of Macroprudential Liquidity Incentive Policies, it expanded the eligible sectors for incentive-based financing to include water supply, waste management, waste treatment and recycling. Banks that extend financing to these sectors may receive incentives in the form of reduced reserve requirements (*giro wajib minimum*, or GWM) maintained with Bank Indonesia on an average basis. This expansion complements existing incentive-linked financing categories, namely: (i) property loans or financing for environmentally friendly properties; and (ii) motor vehicle loans or financing for environmentally friendly vehicles.

3.2 Sustainable Finance Framework

Although Indonesia has mandated sustainable finance under Law 4/2023, the implementing regulations are still under development. One key step forward has been the issuance of OJK Regulation No. 18 of 2023 on Issuance and Requirements for Debt Securities and Islamic Bonds based on Sustainability, which regulates sustainable debt securities and Islamic bonds (*Efek Bersifat Utang dan Sukuk*, or EBUS), covering:

- green bonds and/or green Islamic bonds;
- social bonds and/or social Islamic bonds;
- sustainability bonds and/or sustainability Islamic bonds;
- waqf Islamic bonds;
- sustainability-linked bonds and/or sustainability-linked Islamic bonds; and
- other types of green EBUS as determined by OJK.

Although not legally binding, OJK strongly encourages banks and other financial institutions to use TKBI 2.0 as a key reference in identifying and classifying sustainable investees and debtors. Financial institutions could utilise TKBI 2.0 as part of their investment decision-making and due diligence processes in credit, financing and insurance. Similarly, credit rating agencies will consider TKBI 2.0 to provide ESG-related data to investment managers in the management of sustainable investment funds and in the selection of investees.

3.3 Access to Green Financing

There is no widely cited market survey on the accessibility of sustainable finance in Indonesia. However, OJK's Sustainable Finance Statistic (per June 2025) indicates steady growth. Bank lending and financing under the environmentally friendly business activity category increased from IDR705,154 billion in 2019 to IDR2,047,366 billion in 2024. Similarly, the issuance of green EBUS rose from IDR500 billion in 2018 to IDR27,190 billion in 2025. These figures suggest that sustainable finance has demonstrated a consistently positive trend over recent years.

3.4 Stranded Assets and Non-Bankables

Currently, there is no hard law in Indonesia that strictly prohibits banks or investors from funding high-emission or traditional industries. However, ESG regulations and market expectations may affect these sectors' access to financing. This raises the risk of stranded assets and limits the ability of "old economy" borrowers to fund their operations or transition.

3.5 Challenges Ahead

The current pressing point lies in ensuring that the government's downstreaming programme is implemented in line with strong ESG standards. For example, since 2020, the government has banned the export of raw nickel ore to encourage the construction of domestic smelters. While this policy supports industrial growth, it also raises ESG concerns, including the environmental impact of smelter operations, energy use and potential community conflicts.

There have been no greenwashing cases brought to trial in Indonesia to date.

4. ESG Due Diligence

4.1 Soft Law Becoming Hard Law

In the industrial sector, the Ministry of Industry (MOI) has published its Industrial Decarbonisation Roadmap, aiming to provide clearer policy directions for emission reduction by the year 2050. In support of this initiative, the MOI plans to enact a Ministerial Regulation on Industrial Decarbonisation in 2026. The proposed regulation is intended to ensure that industry participants comply with the requirements and measures outlined in the roadmap, thereby facilitating the systematic implementation of decarbonisation initiatives across the sector.

Particularly for the financial sector and publicly listed companies, in order to strengthen the implementation of TKBI 2.0, OJK plans to amend OJK Reg 51/2017 to incorporate the standards of IFRS S1 and IFRS S2, effective from January 2027. TKBI will serve as a key indicator of green and sustainable performance under the climate-related disclosure framework.

4.2 Towards Vertical Responsibilities

At present, Indonesia does not have specific regulations requiring the conduct of due diligence within the value chain. Nevertheless, several regulations have been enacted concerning the supply of goods. For instance, as further outlined in **5.3 Regulation of ESG Labels**, Presidential Regulation No. 16 of 2025 on Indonesian Sustainable Palm Oil (ISPO) ("PR 16/2025") mandates that business actors engaged in the palm oil plantation sector, the downstream palm oil industry and palm oil-based bioenergy operations obtain ISPO certification. This certification encompasses compliance with applicable laws and regulations, as well as adherence to principles of traceability and sustainable business practices. Consequently, distributors may also be required to ensure that the goods they handle comply with the certification requirements.

Additionally, the Ministry of Human Rights has developed a voluntary self-assessment platform (*Penilaian Risiko Bisnis dan HAM*, or PRISMA) to assist businesses in identifying potential human rights risks arising from their operations. One of the key indicators assessed under PRISMA relates to the supply chain, including the number and types of suppliers (such as outsourcing arrangements) and the company's policies or criteria for supplier selection.

4.3 Partner Selection

With the emerging trends in ESG due diligence promoted by the international community, such as the EU Due Diligence Directive and the OECD Handbook on Environmental Due Diligence, international investors and other relevant stakeholders are increasingly emphasising the importance of ESG compliance throughout the supply chain. Many are seeking to determine whether there are corresponding ESG-related regulations applicable in Indonesia.

4.4 ESG in M&A Due Diligence

Environmental Aspect of Due Diligence

Under Government Regulation No. 22 of 2021 on Administration of Environmental Protection and Management, environmental approval is a prerequisite to obtaining a business licence. Such approval is mandatory for all business entities or activities. Based on the nature, scale and potential environmental risks of their operations, businesses may be obligated to prepare and submit an Environmental Impact Assessment (*Analisis Mengenai Dampak Lingkungan*, or AMDAL) or other relevant environmental management documents (such as UKL-UPL, Environmental Management and Monitoring Efforts or SPPL, Statement of Capability for Environmental Management and Monitoring). Since an environmental permit constitutes a prerequisite for a company's business licensing, ensuring compliance with this requirement during a due diligence is essential for the company's ability to operate.

Social Aspect of Due Diligence

With respect to employment matters, a merger or acquisition transaction will also cover this aspect, as it is essential for the acquiring company (buyer) to evaluate potential employment-related risks associated with the target company (seller). This due diligence assessment is carried out pursuant to the provisions of Law No. 13 of 2003 on Manpower as amended by the Job Creation Law ("Manpower Law"). The Manpower Law stipulates the fundamental requirements for employers to provide employment agreements, for either a definite or indefinite term, which must include, among other things, provisions on working hours, compensation and minimum wage. Further, an employer is required to submit a Company Mandatory Employment Report (*Wajib Lapor Ketenagakerjaan Perusahaan*) on an annual basis. This reporting obligation is also taken into account during due diligence to verify the company's compliance.

In the context of an acquisition, the transaction is subject to Article 42 of Government Regulation No. 35 of 2021 on Fixed-Term Employment, Outsourcing, Working Hours, Rest Periods and Termination of Employment Relationships (as the implementing regulation of the Manpower Law as amended by the Job Creation Law). Under this provision, employees may exercise the right to request termination of their employment with entitlement to compensation if changes in work requirements arise as a result of the acquisition, particularly where the new controlling party reduces the employees' compensation and/or benefits.

Governance Aspect of Due Diligence

As outlined in **2.2 Differences Between Listed and Unlisted Entities**, the Company Law sets out the fundamental framework for corporate governance applicable to all limited liability companies. GCG compliance under the Company Law, such as annual GMS, the appointment of the BOD and BOC, as well as its financial statements, must also be considered. Further, there are additional corporate governance requirements for specific sectors (such as public companies and financial services institutions) that require special attention when conducting due diligence.

5. Transparency and Reporting

5.1 Key Requirements

Mandatory ESG disclosure in Indonesia currently applies to publicly listed companies and financial services institutions. These entities must submit an annual sustainability report and make it publicly accessible. Under OJK Circular Letter No. 16/SEOJK.04/2021 on the Form and Content of Annual Reports of Issuers or Public Companies, the sustainability report must cover three key components: (i) sustainability strategy and governance, (ii) ESG performance and target achievements, and (iii) sustainability data and metrics.

For example, environmental aspects in a sustainability report must, as a minimum, cover:

- energy use;
- emission reduction;
- waste and effluent reduction; and
- biodiversity conservation.

For non-listed companies, the Company Law requires that the CSER Report be included as part of the annual report submitted to shareholders. However, there is no obligation for these companies to publicly disclose such information.

5.2 Transition Plans and ESG Targets

PR 110/2025 requires businesses to record and report, among other things: (i) their climate change mitigation and adaptation actions and (ii) the extent of their achieved GHG emission reductions and/or removals. The submission shall be made through the SRN PPI.

Several mining companies have also voluntarily published decarbonisation transition plans for their operations.

5.3 Regulation of ESG Labels

Sustainability claims in Indonesia are regulated through both mandatory and voluntary labelling schemes. Palm oil is subject to mandatory certification under PR 16/2025, requiring all producers to obtain ISPO certification before marketing their products, thereby ensuring claims are verifiable. Separately, the MOE administers a voluntary eco-label scheme under MOEF Regulation No. 2 of 2014, which allows products to carry a government-certified eco-label only after independent verification and formal MOE approval.

It is also notable that Law No. 8 of 1999 on Consumer Protection prohibits businesses from making false or misleading claims regarding the condition, liability, warranty, rights or compensation of a product.

5.4 Supervision

ESG disclosure compliance and sustainability-related claims are monitored by several regulators, each with its own authority, including OJK for sustainability report disclosures by financial institutions, listed companies and issuers, and the MOE for eco-label inclusion and general environment-related claims.

5.5 Enforcement

Non-compliance with the sustainability report submission requirement is subject to sanction in the form of reprimands or written warnings.

For non-compliance with ISPO certification, sanctions may include:

- a written warning;
- temporary suspension; or
- revocation of the business licence.

For misuse of the eco-label, businesses may be subject to complaints and sanctions in the form of a warning and an obligation to remove the eco-label logo from their products.

5.6 Expected Progress

As OJK targets 2028 as the start of mandatory reporting aligned with IFRS sustainability standards, publicly listed companies and financial institutions will need to adjust their reporting systems, governance and data collection processes to meet these requirements. In the coming years, progress is expected in the form of gradual capacity-building, pilot projects and alignment with TKBI 2.0.

6. Climate and ESG Litigation

6.1 Instruments for ESG Litigation

Regarding the environment aspect of ESG, pursuant to Law No. 32 of 2009 on Environmental Protection and Management as amended by the Job Creation Law ("Environmental Law"), there are a few mechanisms by which to initiate environment-related cases against companies. In accordance with the Environmental Law, designated parties are authorised to initiate legal action against companies or business activities that result in pollution and/or environmental degradation causing harm to the environment, under the following rights:

- The right for central and regional government: The right to file a lawsuit or take specific actions for the government adheres to the institutions/authorities for environmental matters in the event that they have found businesses and/or activities that caused pollution and/or environmental degradation resulting in harm or loss to the environment.
- The right for civilians: The public has the right to file a representative (class action) lawsuit for their own interests and/or for the interests of the community if they suffer harm as a result of pollution and/or environmental degradation.
- The right for environmental organisations: Environmental organisations have the right to file lawsuits for the purpose of preserving the functions of the environment, where the right is limited only to claims seeking specific actions, without claims for compensation, except for actual costs or expenditures incurred. Such an environmental organisation must also ensure that it (i) has established itself as a legal entity; (ii) has specified in its articles of association that the organisation is founded for the purpose of preserving the functions of the environment; and (iii) has carried out tangible activities in accordance with its articles of association for a minimum of two years.

The procedural mechanisms for handling environmental cases are further regulated by Supreme Court Regulation No. 1 of 2023 on Guidelines for the Adjudication of Environmental Cases. This shows further support for the relevant parties to ensure legal certainty and the protection of justice in the handling of environmental matters.

Regarding the social aspect of ESG, particularly in relation to employment, Indonesia has a long-established and dedicated court system to adjudicate employment cases across the Indonesian territory. Law No. 2 of 2004 on Industrial Relations Dispute Settlement, as amended by the Government Regulation in lieu of Law No. 1 of 2005 ("Law 2/2004"), sets out the mechanisms for resolving disputes between companies and their employees or labour unions, including (i) disputes concerning employee rights; (ii) disputes arising from conflicting interests; and (iii) disputes relating to termination of employment. Law 2/2004 serves as the procedural guideline in resolving the dispute, where consideration shall be given to whether there has been any breach of the employment agreement, company regulations, collective labour agreement or applicable laws, ie, the Manpower Law and its implementing regulations.

Additionally, for consumer-related cases (ie, greenwashing), Law No. 8 of 1999 on Consumer Protection prohibits business actors from producing and/or trading goods and/or services that do not align with the claims stated in the label, packaging, description, advertisement or sales promotion of the said goods and/or services. In addition, this regulation prohibits business actors from promoting goods using exaggerated language or offering something that includes uncertain promises. In such instances, consumers may file a lawsuit against the business actors.

6.2 Climate Activism

In the context of policy-making, NGOs and activists have played an important role. For example, TKBI 2.0, which serves as a reference for financial institutions, investors and business actors, both domestically and internationally, in disclosing information relating to financing, funding and investments in green economic activities, involves stakeholders from different sectors, including associations, NGOs, environmental activists/enthusiasts and academicians, in the determination of the outcome of TKBI 2.0.

Not to mention, NGOs and activists have also been proactively providing opinions and conducting analyses, as well as engaging in advocacy through social media and other channels, with the purpose of communicating and addressing concerns relating to environmental changes, particularly those occurring within the territory of Indonesia. Many NGOs and activists in Indonesia initiate movements to express their concerns against companies, as well as citizen lawsuits against the government, urging for a more sustainability-oriented policy to be implemented (as mentioned in **6.1 Instruments for ESG Litigation**, the Environmental Law specifically enables environmental organisations to file a lawsuit in environmental cases). Even so, the mechanisms for addressing public input remain underdeveloped and require further enhancement to ensure that concerns relating to ESG matters that have been delivered through NGOs, activists and other related parties are effectively communicated, considered and appropriately acted upon within relevant policy and decision-making processes.

6.3 Greenwashing

Presently, there are no claims that have been brought by investors or regulatory authorities for such cases. Except for OJK Reg 51/2017, presently, Indonesia has yet to enforce applicable laws and regulations that have the potential to impose sanctions following claims or lawsuits in the event of greenwashing, green hushing or green bleaching by investors and the regulatory authorities. Even with the enactment of OJK Reg 51/2017, the regulation itself only stipulates that OJK is authorised to impose administrative sanctions and written warnings in the event that the obligated companies do not fulfil the obligation of sustainable finance. Due to these reasons, no claims have been brought to date, as the prospect of initiating proceedings on the basis of greenwashing (including green hushing and green bleaching) by investors and regulatory authorities remains highly unlikely.

6.4 A Turbulent Future Ahead

The prospect of ESG-related proceedings in Indonesia remains limited, largely due to the absence of clear and robust laws and regulations with which to challenge corporate conduct on ESG grounds. In light of this, it is unlikely that many claims will arise in the near future. Nonetheless, there has been increasing demand from stakeholders, including international investors and the general public, for more robust implementation and enforcement of ESG standards. Fortunately, the government has demonstrated support for further strengthening and incorporating ESG standards into policies that are currently being developed and those to be introduced in the future. This means that there might be a chance of increased ESG-related proceedings, upon the development and issuance of regulations and policies in connection with ESG standards.

Trends and Developments

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Introduction

The Government of Indonesia (GoI) has continued to strengthen its environmental, social and governance (ESG) ecosystem by progressively incorporating ESG principles into new laws, regulations and policy instruments. These efforts aim to align Indonesia's national agenda with its commitment under the Paris Agreement and its target to achieve net-zero emissions (NZE) by 2060.

Under the new administration inaugurated in 2024, the GoI has also finalised the National Medium-Term Development Plan for 2025–2029, which places sustainability at the centre of Indonesia's development policy. The plan identifies green economic transformation as a national priority, with strategic focuses including the development of a circular economy ecosystem, low-carbon growth, integrated waste-management reform and the creation of green jobs. Key ESG-related ministries have undergone reorganisation, for example, the re-separation of the Ministry of Environment and Forestry.

Despite growing momentum, Indonesia's ESG regulatory landscape remains fragmented across multiple sectoral regulations. The GoI intends to address this through an "umbrella framework" for ESG under the 2025–2029 National Legislation Programme (Prolegnas). Among 198 priority bills, several are directly relevant to sustainability, including the Bill on Climate Change Management, the Bill on New and Renewable Energy, and the Bill on Corporate Social and Environmental Responsibility.

In parallel, market participants have shown strong responsiveness. Many major listed companies have voluntarily adopted higher-standard reporting frameworks, including GRI 2021, the ASEAN Corporate Governance Scorecard and the SASB Standards (notably SASB for Commercial Banks and SASB for Metals & Mining). These voluntary disclosures indicate that issuers are preparing for the stricter sustainability reporting obligations to be implemented by the Financial Services Authority (*Otoritas Jasa Keuangan*, or OJK) in the coming years.

Indonesia–EU Comprehensive Economic Partnership Agreement

In September 2025, the European Union and Indonesia finalised their negotiations on a Comprehensive Economic Partnership Agreement ("IEU CEPA"). Under the IEU CEPA, tariffs will be removed on over 98% of tariff lines (in value terms, nearly 100%). Approximately 80% of these liberalisations will take effect immediately upon the IEU CEPA's entry into force, with further cuts over a five-year phase-out period to reach 96% liberalisation.

Beyond market access, the IEU CEPA embeds sustainability as a core element of trade policy. It strengthens environmental protection, supports labour rights and women's empowerment, and establishes structured co-operation on climate and environmental issues, including the palm oil sector. Both parties retain their right to regulate and are prohibited from weakening or failing to enforce domestic laws to attract trade or investment. Civil society is also granted a monitoring role.

The IEU CEPA commits both sides to the effective implementation of multilateral environmental agreements such as the Paris Agreement, the Convention on Biological Diversity and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It promotes co-operation on carbon pricing, the transition to a low-carbon economy, circular economy initiatives and the sustainable management of forests, oceans and biodiversity. Dedicated provisions address forest conservation, the prevention of illegal logging and wildlife trade, and the elimination of illegal, unreported and unregulated fishing.

On labour, the IEU CEPA upholds core International Labour Organization (ILO) principles covering freedom of association, the elimination of forced and child labour, non-discrimination and occupational safety. It also promotes decent work, social dialogue and responsible business conduct. Provisions on gender equality align with United Nations and ILO standards to enhance women's participation in trade and the economy.

Sustainability obligations are legally binding and enforceable under the IEU CEPA's dispute settlement mechanism. Trade measures may be applied as a last resort where a party persistently breaches its commitments, particularly under the Paris Agreement or fundamental ILO conventions.

Around the same period, Indonesia also signed a Comprehensive Economic Partnership Agreement with Canada, which includes similar ESG-related provisions. The Trade and Sustainable Development chapter promotes inclusive growth by integrating commitments on labour rights, environmental protection and women's empowerment. It also ensures that both parties uphold ILO and environmental standards, avoid lowering protections for trade or investment purposes, and strengthen co-operation to advance sustainable development.

These agreements are expected to accelerate the integration of ESG principles into Indonesia's business practices and regulatory framework. By linking market access with sustainability commitments, they push domestic industries to meet higher environmental, labour and governance standards. In the long term, this alignment will enhance Indonesia's global competitiveness and attract ESG-focused investment.

Indonesia Taxonomy for Sustainable Finance Version 2

In February 2025, the OJK launched the Indonesia Taxonomy for Sustainable Finance (*Taksonomi Keuangan Berkelanjutan Indonesia*, or TKBI) Version 2, expanding the scope of its 2024 predecessor. The earlier version primarily focused on the energy sector, Indonesia's largest contributor to greenhouse-gas (GHG) emissions, whereas Version 2 now includes 192 additional business classifications (Standard Classification of Indonesian Business Fields codes) across several sectors, including:

- Construction and Real Estate (C&RE);
- Transportation and Storage (T&S); and
- Agriculture, Forestry and Other Land Use (AFOLU), particularly forestry and palm oil plantations.

The TKBI serves as a reference tool for identifying sustainable and transition activities in Indonesia, guiding capital allocation, lending and investment decisions for regulators, financial institutions, rating agencies and both domestic and international investors.

This expansion is a strategic step in aligning Indonesia's sustainable finance architecture with international taxonomies such as the EU Taxonomy and ASEAN Taxonomy, while maintaining local relevance. The OJK has announced plans to release TKBI Version 3 in 2026, further harmonising classification standards and integrating it with the forthcoming adoption of a sustainability disclosure framework based on International Financial Reporting Standards S1 and S2.

Taxonomy for sustainable activities is a key instrument in advancing sustainable finance, as regulated under Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector. Under this law, all financial service institutions (*Pelaku Usaha Jasa Keuangan*), issuers and public companies must implement sustainable finance principles. These entities are required to:

- integrate ESG aspects into their business and investment strategies; and
- develop products and financing mechanisms supporting sustainable and transitional activities.

One of the recent implementations is the launch of an ESG Reporting Platform by Indonesia Stock Exchange (IDX), enabling listed companies to disclose their sustainability performance in a more structured and comparable manner. This initiative strengthens transparency and supports investor demand for credible ESG data. IDX has also introduced several ESG-based indexes, including the IDX ESG Leaders, ESG Sector Leaders IDX KEHATI, LQ45 Low Carbon Leaders and ESG Quality 45, to encourage responsible investment and benchmark companies with stronger sustainability performance.

New National Energy Policy

The GoI has issued Government Regulation No. 40 of 2025 on the National Energy Policy (*Kebijakan Energi Nasional*, or KEN), replacing the 2014 framework. The new policy aligns Indonesia's energy transition agenda with the Paris Agreement and strengthens national targets for decarbonisation, renewable-energy development and implementation of carbon economic value (*Nilai Ekonomi Karbon*, or NEK).

The KEN outlines the national pathway towards achieving NZE by 2060, with periodic review every five years. It sets ambitious energy-mix targets, projecting renewable sources to contribute over 60% of installed capacity by 2060. Specifically, the policy envisions solar energy as the dominant source, accounting for 29.8–30% of primary energy supply, followed by natural gas (14.4–15.4%), biomass (12.2–13.4%) and nuclear power (11.7–12.1%) by 2060.

The regulation also requires high-energy users to submit annual energy-management reports covering energy consumption, efficiency indicators, management performance and audit results. This reporting obligation enhances corporate accountability and strengthens governance within the energy sector.

Under Ministry of Energy and Mineral Resources (MEMR) Decree No. 188.K/TL.03/MEM.L/2025, the GoI approved the Electricity Supply Business Plan (RUPTL) 2025–2034 of the state-owned electricity company PT PLN (Persero), which sets a clear shift towards renewable energy. The plan targets an additional 69.5 GW of power capacity by 2034, with 61% (42.6 GW) coming from renewable sources such as solar, hydro, wind, bioenergy and nuclear. Fossil fuel-based generation will be reduced to 24% (16.6 GW), and no new conventional coal plants will be developed beyond those already committed.

The MEMR also issued MEMR Regulation No. 10 of 2025 on the Energy Transition Roadmap for the Power Sector, which provides guidelines for a moratorium on the development of new coal-fired power plants (*Pembangkit Listrik Tenaga Uap*, or PLTU) and the early retirement of existing units. The early retirement process must be preceded by a comprehensive assessment of technical, legal, commercial and financial aspects, including the identification of funding sources, while ensuring adherence to good governance principles and the business judgement. A pilot project for early retirement of the Cirebon-1 PLTU (660 MW) is currently under way with financing support from the Asian Development Bank.

Currently, Indonesia's target of achieving a 23% renewable share in its national energy mix by 2025 has been postponed to 2030. The GoI has emphasised the need for greater industrial businesses participation to accelerate the energy transition and is revising its NZE roadmap to establish a more realistic path towards carbon neutrality by 2060. As of mid-2025, renewable energy generation reached 16% of the national mix, with a total installed capacity of 15.2 GW.

Carbon Market and Carbon Economy Development

Indonesia has accelerated the development of its carbon market since the launch of domestic carbon trading in 2023.

The GoI recently issued Presidential Regulation No. 110 of 2025 on the Implementation of Carbon Economic Value Instruments and National Greenhouse Gas Emission Control ("PR 110/2025"), which, among other things, provides a clearer regulatory framework for the international voluntary carbon market.

In 2025, Indonesia also hosted its first international carbon-credit transactions and signed Mutual Recognition Arrangements with the Global Carbon Council, Plan Vivo Foundation and Gold Standard. These arrangements ensure that credits verified under those international standards are recognised within Indonesia's Greenhouse Gas Emission Reduction Certification System (SPEI).

While the carbon tax framework is provided under Law No. 7 of 2021 on Harmonisation of Tax Regulations with the objective of achieving the full implementation of carbon trading and the gradual expansion of the carbon tax to other sectors in line with each sector's readiness initially targeted by this year, its full implementation has not yet been enforced as of this date.

Industrial Decarbonisation Roadmap

In August 2025, the Ministry of Industry (MOI) issued the Industrial Decarbonisation Roadmap, targeting nine priority subsectors, which are (i) cement, (ii) iron and steel, (iii) fertiliser, (iv) chemicals, (v) pulp and paper, (vi) textiles, (vii) glass and ceramics, (viii) automotive, and (ix) food and beverages. The roadmap envisions a competitive, NZE industrial sector by 2050 and outlines policy direction for emission reduction, technology adoption and financing mechanisms. This roadmap is aimed to reduce 289.7 million CO2-equivalent emissions.

To translate this roadmap into action, the MOI plans to issue a series of implementing regulations later in 2026. The legal basis will build upon the existing framework of Green Industry Standards (*Standar Industri Hijau*, or SIH). Under Law No. 3 of 2014 on Industrial Affairs, green industry is defined as industrial activity that prioritises the sustainable efficiency and effectiveness of natural resources, aligning industrial growth with environmental protection and public welfare. The respective SIH regulations set detailed technical criteria, which are verified by independent surveyors appointed by the MOI.

In 2025 alone, the MOI issued several new SIH regulations, including for the polyethylene, polypropylene, polystyrene and PVC (MOI Regulation No. 33/2025), white crystal sugar (MOI Regulation No. 30/2025), pulp and paper (MOI Regulation No. 32/2025), safety glass (MOI Regulation No. 31/2025), nitric and ammonium nitrate (MOI Regulation No. 29/2025) and precast concrete (MOI Regulation No. 28/2025) industries. These additions expand the list of existing 62 standards issued in previous years, marking steady progress towards establishing a national framework for industrial sustainability.

Despite regulatory progress, adoption remains limited. As of the end of 2024, only 146 industrial companies had obtained Green Industry Certification. Incentives are still modest, mostly in the form of recognition awards rather than fiscal benefits, though the GoI is preparing a package of fiscal and non-fiscal incentives to accelerate uptake.

ITALY

Law and Practice

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Legance

Contents

Legance is an independent law firm with offices in Milan, Rome and London, with over 400 lawyers. Founded in 2007, Legance distinguishes itself in the legal market as a point of reference for both clients and institutions. Independent, dynamic, international and institutional are the qualities that most characterise the strengths of the firm and have contributed to it becoming a leader in the legal market. The professionals in the ESG and impact team have significant experience in assisting clients – eg, companies, investment funds, managers and other players – in the area of sustainability and ESG-related issues. In particular, the team has built up a strong presence in this area, developing multidisciplinary skills that enable it to support clients who wish to approach sustainability in a rigorous and innovative way.

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Roberto Randazzo co-ordinates the ESG and impact team at Legance. With a background in commercial and corporate law, he has been dealing with ESG and sustainability issues for several years, having developed a transversal and multidisciplinary knowledge of the complex regulatory framework. He provides assistance in relation to sustainability strategy and governance, both in corporate and finance, assisting companies, investment funds and financial institutions with respect to both regulatory and impact measurement profiles. Roberto focuses on sustainable corporate governance, sustainable procurement and value chain, ESG due diligence, ESG data governance, and accountability of directors and companies with respect to ESG profiles.

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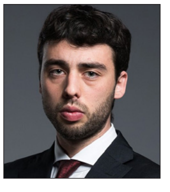

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1. Introduction

1.1 General ESG Trends

2025 saw significant developments in ESG and sustainability laws and regulations, driven both by European legislative initiatives and by the actions of Italy's supervisory authorities. Among the most notable developments was the introduction of new due diligence and public disclosure requirements for companies and financial operators, relating to the following:

- The first was the application of Regulation 2023/1115 (EU) – the Deforestation Regulation (EUDR), which will take effect from 30 December 2025. The EUDR introduces due diligence obligations requiring companies to implement governance and supply chain risk management measures when marketing products derived from certain commodities, namely cattle, wood, soya, cocoa, coffee, oil palm, and rubber. Companies subject to the regulation will be required to publish an annual report describing the EUDR due diligence system adopted in order to comply with such law.
- Secondly, Directive (EU) 2025/794 ("Stop the Clock") was adopted and transposed into Italian law through Article 10, paragraph 1-bis of Decree Law 95/2025. This directive postpones by two years the obligation to publish sustainability reports under Directive 2022/2464 – the Corporate Sustainability Reporting Directive (CSRD) – for the majority of companies subject to its requirements. The Stop the Clock Directive is part of a wider set of amendment proposals, known as the "Omnibus Package", which aims to simplify the current CSRD and Directive (EU) 2024/1760 – the Corporate Sustainability Due Diligence Directive (CS3D).
- Another key development was the consolidation of greenwashing enforcement. The Italian Competition Authority (*Autorità Garante della Concorrenza e del Mercato*, or AGCM) intensified its scrutiny of corporate marketing communications concerning environmental, social, and governance claims. In this area too, Italian authorities anticipated regulatory obligations that, specifically on this matter, will only enter into force under Directive 2024/825, the "Empowering Consumers" directive, on 27 September 2026.
- Finally, Italian judicial authorities, particularly the Milan Public Prosecutor's Office, continued their action against labour exploitation and human rights violations. Investigations initiated in 2024 in fashion and logistics supply chains had already revealed systemic deficiencies in labour, health, and safety oversight. Based on these findings, in May 2025, the Prefecture and the Milan Prosecutor's Office introduced the Protocol for the Legality of Procurement Contracts in the Fashion Supply Chain ("Fashion Protocol"), expanding upon the framework established the previous year for logistics and providing concrete recommendations on the legal safeguards to be implemented.

1.2 Environmental Trends

Environmental law in Italy has seen significant advancements in 2025, through both new national regulations and implementation of legislative innovations at the European Union level.

On 20 June 2025, the Council of Ministers approved the National Action Plan for the Improvement of Air Quality (the "Plan") by resolution. This resolution requires administrations to identify the activities to be implemented for carrying out short- and medium-term measures to combat air pollution, as outlined in the Plan. The Plan is structured into specific areas of intervention, with operational measures defined for each. It recognises that multiple factors influence air quality and adopts a cross-sectoral approach aimed at understanding these challenges and identifying effective solutions, ultimately ensuring cleaner air through the reduction of pollutant emissions.

Decree Law No 116 of 8 August 2025 (currently being converted into law) introduced a range of urgent measures to combat illegal waste-related activities. On the one hand, the decree increases penalties for certain environmental offences, particularly those concerning waste crimes; on the other, it establishes new categories of waste-related offences.

Furthermore, Legislative Decree No 102 of 19 June 2025 amended Legislative Decree No 18 of 23 February 2023 on the quality of water intended for human consumption, with the goal of enhancing the protection of water resources and public health. The most important innovations include (i) stricter requirements for materials that come into contact with drinking water in order to prevent contamination; (ii) the introduction of stricter limit values for perfluoroalkyl substances (PFAS), recognised for their environmental persistence and potential harmful effects on health; (iii) mandatory monitoring of trifluoroacetic acid (TFA) from 31 January 2027; and (iv) reinforcement of controls through the updating of Water Safety Plans.

By virtue of Law No 91 of 13 June 2025, the government has been delegated to adopt several European directives on environmental matters, the most important of which are listed below:

- Directive (EU) 2024/884 of the European Parliament and of the Council of 13 March 2024 Amending Directive 2012/19/EU on Waste Electrical and Electronic Equipment (WEEE): Member states must bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 9 October 2025. Among its key provisions is the reorganisation of national rules on end-of-life photovoltaic panels from household and non-household users, aligning Italian law with EU legislation under which producers bear the disposal costs only for panels placed on the market after 13 August 2012.
- Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the Protection of the Environment Through Criminal Law and Replacing Directives 2008/99/EC and 2009/123/EC: Member states must bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 21 May 2026. This Directive (i) expands the range of environmental offences; (ii) reinforces criminal penalties for actions that cause significant damage to nature (including air, soil, water, ecosystems, fauna and flora); and (iii) increases corporate liability thresholds to ensure greater deterrence.
- Directive (EU) 2024/1785 of the European Parliament and of the Council of 24 April 2024 Amending Directive 2010/75/EU of the European Parliament and of the Council on Industrial Emissions (Integrated Pollution Prevention and Control) and Council Directive 1999/31/EC on the Landfill of Waste: Member states must bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2026. Among the most relevant updates, the European Union has revised measures to combat pollution from large industrial plants, extending their scope to include additional activities, such as mining, pig and poultry farming, above certain thresholds. In addition, the BAT (best available techniques) conclusions will also identify the environmental performance levels associated with specific BATs, and operators will be required to establish and implement an environmental management system in accordance with the Directive and the BAT conclusions.
- Directive (EU) 2024/2881 of the European Parliament and of the Council of 23 October 2024 on Ambient Air Quality and Cleaner Air for Europe: Under this directive (i) detailed short- and long-term air quality plans must be developed, setting out measures to address any breaches of limit values; (ii) air quality roadmaps must be prepared by 2030; and (iii) all citizens will have the right to

seek and obtain compensation when their health has been damaged as a result of a breach of the air quality standards set out in the directive.

From a case law standpoint, in 2024, the Court of Rome ruled on Italy's first climate litigation against the government. The case was filed in 2021 by an environmental NGO alleging that the Italian government's failure to properly address climate change violated Italy's obligations under international law, such as those stemming from the Paris Agreement, also in view of the human rights of current and future generations. The claimants requested a court order for the government to cut Italy's emissions by 92% by 2030, using 1990 levels as a baseline. However, the court dismissed the case, ruling that decisions on national climate policy fall within the purview of political and legislative bodies, and thus cannot be evaluated by any ordinary court.

Regarding the matter under consideration by the Court of Rome, however, it is worth noting the recent decision of the Supreme Court (No 20381/2025). In a case brought by prominent environmental associations and individuals living in regions particularly vulnerable to climate change, the Court ruled against a company for failing to meet internationally recognised climate targets, thereby establishing its liability for financial and non-financial losses resulting from climate change.

The Supreme Court ruled that civil action can generally be brought against polluters for compensation for damage caused by emissions of gases that change the climate, and that Italian courts have jurisdiction over such legal actions. This is consistent with the provisions on non-contractual liability under Italian law. The Court also clarified that the court in the area where the harmful event occurred or may occur has jurisdiction.

According to the Supreme Court, the damage consists of the ultimate effect of the causal sequence triggered by climate change and occurs in the place where the injured parties reside (in this case, Italy).

Furthermore, in July 2024, the Italian Constitutional Court addressed the legitimacy of an Italian regulation that required the judicial authority to authorise the operational continuity of petrochemical companies. The court declared the challenged provision unconstitutional solely in the part where it failed to set a clear time limit for the temporary measures to ensure continuity of production for installations declared of national strategic importance. The court emphasised that safeguarding the environment requires the state to adopt every necessary act to avoid any damage to the environment, considering not only the rights of current generations but also those of future generations.

Based on the above, it is clear that the Italian legal framework, along with the related case law, is becoming increasingly stringent concerning ESG matters, and especially environmental issues. This trend is likely to intensify in light of the upcoming European ESG regulations, as well as the growing public and stakeholder focus on environmental matters.

1.3 Social Trends

Regulatory and jurisprudential developments in the social sphere in 2025 were not as numerous as those in the environmental sphere but were nonetheless significant. With respect to the ESG regulations mentioned in **1.2 Environmental Trends**:

- The EUDR mandates that companies subject to its requirements develop a dedicated due diligence system. Among the envisaged due diligence obligations, companies are required to verify that the products subject to the regulation are derived from commodities sourced legally. This "legality requirement" encompasses, among other things, compliance with human rights standards, thereby obliging companies to adopt legal safeguards to prevent, for instance, forced labour practices in the production process leading to the final product.
- The already mentioned Fashion Protocol aims at setting out both general commitments and specific guidance to strengthen human rights protection across supply chains. Fashion brands, namely those acting as lead companies within the supply chain, are encouraged to adopt codes of conduct that uphold ethical principles, including explicit provisions on human rights for suppliers and subcontractors. These must be complemented by ethical auditing schemes and training programmes

for those responsible for monitoring compliance. Suppliers adhering to the Fashion Protocol must embed these commitments into their contracts, thereby extending responsibility throughout the production chain. In this context, audits play a central role: contracts must allow for periodic inspections, including unannounced checks, conducted by the brands, the commissioning company, or third-party agents, to verify compliance with health, safety, and labour standards. These measures closely align with the due diligence and transparency obligations under the CSRD, CS3D and EUDR, explicitly referenced in the Protocol, effectively anticipating their application. Such protocol shows that, despite uncertainties surrounding the ESG regulatory framework, corporate due diligence for human rights protection across supply chains has become an essential component of business operations.

Beyond regulatory developments, social issues have been a significant focus for Italian courts. In May 2025, the Milan Prosecutor's Office imposed temporary sanctions on two fashion companies. The companies were charged with facilitating human rights violations by failing to (i) verify the operational capacity of suppliers and subcontractors entrusted with production, and (ii) conduct effective inspections or audits to confirm the functioning of the supply chain and actual working conditions. Even where formal and legal safeguards existed, substantive due diligence was lacking, highlighting the ineffectiveness of the organisational and management models adopted.

Finally, a growing number of companies are obtaining UNI/PdR 125:2022 certification for gender equality. This certification, introduced in 2022 as part of Italy's National Recovery and Resilience Plan, prioritises businesses that adopt policies promoting diversity and equal opportunities in the labour market.

1.4 Governance Trends

A significant development, falling under the scope of so-called good governance practices and, particularly, tax compliance, is the recent adoption of Legislative Decree 128/2024, which implements EU Directive 2021/2101. The Decree, enacted on 12 September 2024, introduces requirements for the public disclosure (via company websites) of corporate income tax information and related business data. These requirements provide valuable support for compliance, transparency, and the assessment of tax risks and tax planning strategies, particularly for ESG-focused professionals and rating agencies.

Additionally, in August 2025, the Bank of Italy published key findings and best practices regarding the action plans of banking and non-banking financial intermediaries concerning the integration of climate and environmental risks into corporate processes ("Bank of Italy ESG Best Practices"). Among the reported governance best practices are:

- the formalisation of roles and responsibilities related to climate and environmental risks, through the development of a multidisciplinary task force with the responsibility to integrate climate and environmental risks into the company's strategy;
- the initiation of targeted training programmes for top management or the strengthening of boards' ESG competencies with new members experienced in ESG;
- the development and continuous updating of sustainability policies, even regarding monitoring and controls over the company's products and their supply chains; such best practices could be implemented through co-ordinating measures between Product Management and Sustainability teams; and
- the planning of ESG-related reporting lines to the board through specific briefings.

It is also worth highlighting the growing trend of companies updating their organisational and management model in accordance with Legislative Decree 231/2001 (MOG) by incorporating ESG procedures to mitigate the risk of committing criminal offences. The MOG allows companies to be exempt from administrative liability arising from crimes, and given that many offences are linked to ESG issues (eg, environmental crimes, violations of human rights, etc), ESG procedures, such as due diligence processes, play a crucial role in monitoring and preventing such criminal conduct.

1.5 Government and Supervision

Regulators and supervisory authorities play a crucial role in driving the ESG transition.

Regulators codify and enforce ESG practices, marking a shift from a voluntary approach based on guidelines and non-binding standards (soft law) to stricter regulations imposing ESG reporting and due diligence obligations (hard law). In Italy, the integration of sustainability into the regulatory framework is not only the result of EU legislation but also of national initiatives. These initiatives aim to recognise and promote companies that pursue both business and social-environmental objectives through specific legal statuses, such as benefit corporations, social enterprises, and innovative start-ups with a social vocation (see **2.4 Social Enterprise** and **5.1 Key Requirements**).

Similarly, national supervisory authorities ensure the proper enforcement of ESG regulations within their respective areas of competence, by adhering to the guidelines of the European Supervisory Authorities (ESAs). For instance:

- In August 2025, the Bank of Italy published its periodic report on key findings and best practices identified in the action plans of non-bank intermediaries regarding the integration of climate and environmental risks. The report highlighted best practices such as stricter supplier selection and more stringent monitoring of commercial and financial partners from an ESG perspective, in line with the judicial initiatives of the Italian prosecutors.
- Similarly, in early 2025, Consob (the "*Commissione Nazionale per le Società e la Borsa*"), the public authority responsible for regulating the Italian financial markets, issued Attention Notice No 1/25 on compliance with sustainable finance obligations, in order to guide the industry in applying existing provisions, offering examples of good and poor practices. Specifically, Consob emphasised:
  - (a) clearly defining ESG characteristics or sustainability objectives, and avoiding generic statements that may constitute greenwashing;
  - (b) identifying concrete indicators to assess each characteristic/objective;
  - (c) establishing criteria for selecting investments consistent with the stated characteristics/objectives; and
  - (d) ensuring clarity and accuracy of pre-contractual and periodic product disclosures regarding ESG profiles.

1.6 Market Participants

ESG laws and regulations impact various sectors and industries, as already evident. Current regulations apply to all market participants, with specific ESG reporting and due diligence obligations generally designed for financial operators and companies. Although, at first sight, such initiatives seem to target larger companies, their scope extends to SMEs as well, which are often contractually required to meet similar reporting and due diligence standards if they are part of the relevant supply chains.

Some "critical" sectors are already under increased regulatory scrutiny. The EUDR applies to companies of all sizes operating in industries with a significant contribution to deforestation. Indeed, the EUDR targets products derived from commodities such as cattle – impacting, for example, meat processors and fashion or luxury brands – and wood, affecting businesses such as paper manufacturers and producers of packaging, books, or magazines.

Furthermore, judicial authorities have begun thorough investigations on human rights violations, particularly in the logistics and fashion sectors.

In summary, ESG regulations are poised to impact all industries, but some are already experiencing more intensive oversight.

1.7 Geopolitical Developments

In recent years, not only global institutions such as the United Nations, but also NGOs, activists, and the general population, have recognised the need to do more to promote sustainability.

In particular, the younger generations are showing a growing awareness and consideration for environmental and social issues, giving momentum to global climate movements through activists engaging in issues related to sustainability, inclusion, diversity and, especially, human rights. These social movements represent increasing grassroots pressure on governments and companies to make more responsible choices, but progress is not always aligned at an institutional and political level.

From a political perspective, ESG and sustainability policies are strongly influenced by European-level strategies such as the European Green Deal. However, the implementation of these policies faces numerous challenges, especially regarding the distribution of funds and generating tangible value from both an environmental and social standpoint.

Italy, in particular, seems to follow more European directives rather than developing a coherent and long-term internal strategy. Political fragmentation in Italy reflects a diverse vision on sustainability: the left wing tends to focus on climate, education, and social assistance, while the right wing places greater emphasis on security, subsidies for renewable energy, energy efficiency, and economic development. However, the short-term nature of recent Italian governments hinders the development of a clear and strategic vision on sustainability and ESG.

In Italy, as in Europe, attention remains primarily on the environmental aspect of ESG (the "E" in ESG), although there is still a lack of systemic acceptance and sufficient incentives to foster an effective transition. Moreover, ESG has the political tendency to be considered a mere reporting task for disclosure, instead of a strategy to spur innovation and enhance governance and risk management. The public infrastructure that could support this transformation is lacking, and the transition process entails high costs, which, in a context of high taxation, presents a significant challenge for Italian companies. These companies show resistance to making radical changes toward sustainable innovation.

Even more concerning is the inadequate focus on governance (the "G" in ESG), while the social aspect (the "S" in ESG) is frequently only superficially mentioned and lacks a defined vision. The social aspect is currently gaining public prominence thanks to judicial actions, which have not yet been followed up by corresponding legislative measures. In this context, Italy needs to better develop a comprehensive and strategic ESG balance.

2. Corporate Governance

2.1 Developments in Corporate Governance

In Italy, the implementation of the CSRD through Decree 125/2024, the upcoming EUDR and CS3D and the recent actions of Milan's prosecutor's office will bring notable changes to corporate governance. Boards of directors will increasingly be responsible for overseeing ESG risks, impacts and opportunities (IRO), aligning corporate strategy with sustainability goals.

According to Delegated Regulation 2023/2772 setting the European Sustainability Reporting Standards (ESRS) – ie, the principles according to which companies subject to the CSRD's requirements must draft their sustainability reports, companies are required to disclose detailed information on how the board is informed on ESG topics, its competencies on ESG issues, and how it ensures that sustainability risks and opportunities are identified and managed. It is clear that the increasing role played by sustainability in the successful development of companies requires the creation of dedicated ESG committees and/or functions, with specific expertise and competencies. Moreover, the sustainability statement under Decree 125/2024 must be approved by the board of directors, forming part of the management report attached to the financial statement, and the EUDR will require reporting on the related due diligence system.

Consequently, it is crucial for companies to establish solid governance procedures to oversee the sustainability reporting process, manage its underlying content, and address IRO management. As an example, ESG due diligence processes will be a key aspect for avoiding greenwashing and for implementing Decree 125/2024 correctly, as well as for structuring an efficient supply chain risk management process. While due diligence is the core element of the CS3D and the EUDR, which will introduce specific due diligence obligations as to how the process must be conducted, companies must already consider Decree 125/2024 and the guidance emerging from recent judicial actions. Indeed, ESG due diligence represents the basis of the materiality assessment required by the ESRS, which, in turn, informs the sustainability statement. As a result, it offers an opportunity to develop a coherent and harmonised system of sustainability governance and compliance.

2.2 Differences Between Listed and Unlisted Entities

In Italy, corporate governance requirements differ significantly between listed and unlisted companies due to regulatory frameworks and market expectations. Listed companies are subject to stricter governance rules imposed by both national legislation and European regulations. The primary legislation governing corporate governance in Italy is the Italian Civil Code, supplemented by the Consolidated Law on Finance (TUF) and regulations from Consob.

Listed companies must adhere to rigorous transparency, accountability, and reporting standards, including disclosing detailed information on their governance structures, board composition, and internal controls. These companies may also comply with the Corporate Governance Code developed by the Italian Stock Exchange (*Borsa Italiana*), which sets voluntary best practices for governance, including recommendations on board independence, diversity, and sustainable governance.

Listed companies may also adopt, on a voluntary basis, the Corporate Governance Code (the "Code"). While the Code is not legally binding, it operates under a "comply or explain" principle. This means that listed companies must either adopt the recommendations or explain why they have chosen not to. Many Italian listed companies voluntarily adhere to the Code because it offers a competitive advantage in attracting institutional investors, enhances stakeholder trust, and aligns with increasing expectations for sustainable governance and ESG performance.

On the other hand, Italian unlisted companies, particularly smaller or privately held ones, are generally subject to less stringent governance requirements. These companies must comply with the Italian Civil Code but are not bound by the additional layers of governance oversight required for listed companies. However, large unlisted companies or those with significant public interest, such as financial institutions, may still be subject to heightened governance and transparency standards under specific sectoral regulations, for instance, ESG laws such as the CSRD.

2.3 Role of Directors and Officers

The growing importance of ESG requirements significantly influences the role and responsibilities of directors and officers. Under Italian law, directors have fiduciary duties to act in the best interests of the company, including the duty of care and diligence. With the introduction of Decree 125/2024, directors of large listed companies must now integrate sustainability considerations into their decision-making processes, aligning with the principle of informed decision-making. Moreover, the increasing scrutiny of supply chain management by judicial authorities demands that directors fully identify, assess, and manage ESG-related risks, as well as consider the long-term effects of corporate activities on stakeholders such as employees, suppliers, the environment, and society at large. Failure to take these factors into account may result in adverse externalities stemming from decisions that are not in the best interests of the company and could breach directors' fiduciary duties.

Such fiduciary duties are now extended to ensuring accurate and transparent sustainability reporting in line with Decree 125/2024 and best practices to avoid greenwashing. Directors must ensure that sustainability disclosures, such as those related to carbon emissions, human rights, and supply chain impacts, are fully compliant with reporting standards and principles. Failure to provide accurate or complete ESG reports can expose the company to regulatory sanctions and reputational damage, and directors may be held personally liable for failing to oversee these risks. Sanctions for incorrect or misleading sustainability reporting could include administrative fines or legal actions. This elevates the stakes for directors, making it essential to adopt robust governance frameworks and internal controls to ensure compliance with ESG requirements.

Additionally, ESG due diligence under the CS3D, which will be implemented alongside the CSRD, further increases the responsibilities of directors. Directors will need to proactively assess, monitor, and mitigate ESG risks throughout the company's value chain. Failure to conduct proper due diligence, particularly regarding environmental and human rights impacts, can lead to legal liabilities and sanctions. This expanded responsibility requires directors to take a long-term, sustainable approach to governance, ensuring that they not only protect shareholder value but also consider broader stakeholder interests. This shift means that directors and officers must be more engaged in corporate sustainability strategies, making ESG considerations a core part of their fiduciary duties.

2.4 Social Enterprises

In Italy, there are several specific legal forms and statuses for companies and/or not-for-profit entities, to be distinguished depending on their key characteristics and purpose. This range of legal forms and statuses, starting with the most social/public mission-driven, comprises traditional non-profit organisations, social enterprises, socially responsible businesses and corporations practicing social responsibility, also known as purpose-driven companies.

Non-profit organisations cannot generate income in order to share dividends; however, within strict limits (eg, not more than 50% of the profits) this is allowed for social enterprises (*Imprese Sociali*) according to Legislative Decree 112/2017. Italian social enterprises are not-for-profit companies carrying out their business activity pursuing general interest purposes. They adopt responsible and transparent management practices, promoting the broadest possible involvement of workers, users, and other stakeholders in their activities.

As to socially responsible businesses and corporations practicing social responsibility, companies may adopt a specific legal status – benefit corporation (*Società Benefit*) status. According to Law 208/2015, benefit corporations are required, inter alia, to include in their articles of incorporation “benefit objectives”, which companies must pursue as a corporate purpose. These objectives must be related to positive impacts on people, communities, stakeholder engagement, the environment, and social and cultural activities.

Another socially responsible business legal status is the “innovative start-up with social vocation” (SIAVS), which is required to pursue social purposes.

These legal statuses include the obligation to publish specific annual reports to give evidence of the social purposes they have promoted (see **5.1 Key Requirements**).

In addition to legal statuses, there is the B Corp Certification, a private certification scheme issued by the American non-profit organisation B Lab. This certification requires companies to undergo a specific evaluation process called the B Impact Assessment, which measures and verifies their positive social or environmental impact and the shared value they create. Certified B Corp companies are also required to publish the results of their evaluation process online.

2.5 Shareholders

In Italy, the newly introduced and upcoming ESG obligations and considerations are transforming the relationship between companies and their shareholders. Companies now need to provide transparent and comprehensive reporting on ESG matters, shifting corporate focus from purely financial performance to long-term sustainability. This affects shareholders by broadening their understanding of the company’s risk profile and performance beyond traditional financial metrics, giving them insights into how well the company manages sustainability impacts, risks, and opportunities (IROs).

For shareholders, this increased transparency promotes informed decision-making. Particularly, institutional investors are increasingly interested in how a company addresses ESG risks and opportunities, as these factors are seen as critical to long-term value creation. Furthermore, companies measuring and improving their ESG performance are more likely to attract ESG-conscious investors and maintain better relations with long-term stakeholders. On the other hand, non-compliance with ESG obligations or inadequate reporting may lead to reputational damage, potential regulatory sanctions, and diminished shareholder value, potentially leading to shareholder activism or demands for governance changes.

Moreover, ESG obligations also strengthen shareholder engagement. Shareholders are now more empowered to question management and the board on how they are addressing ESG risks and opportunities, setting long-term strategies, and complying with reporting requirements. Shareholders may push for more sustainable practices or hold the company accountable for failing to meet its ESG obligations, fostering a more responsible and engaged corporate culture.

3. Sustainable Finance

3.1 Progress in Green Financing

From a legal perspective, no particular new developments are noted: the European regulatory framework on sustainable finance has been consolidating since the adoption of the SFDR in 2019, and of the other corollary EU regulations, and continues to be the benchmark.

From a supervisory perspective, authorities played, and are expected to play in future, a crucial role in promoting sustainable finance. Bank of Italy ESG Best Practices and Consob ESG Warning are two clear examples of how these authorities are actively supporting, and indeed requiring, the market's transition towards sustainable finance.

Looking forward, the following developments are anticipated:

- an update to the existing regulatory framework based on the current review by the EU Commission and the ESAs of the SFDR and the related Commission Delegated Regulation (EU) 2022/1288, which supplements the SFDR with regard to regulatory technical standards specifying the details of the content and presentation of sustainable finance disclosures (RTS);
- new regulatory tools, complementing the current framework, such as the ESG rating regulation, whose publication in the EU official journal is pending; and
- an increase in supervisory activities by national authorities in co-ordination with ESAs, as planned in the Bank of Italy's ESG Best Practices and Consob's ESG Warning and following the surge of ESG practices and expectations (eg, the ESMA 2024 Guidelines on funds' names using ESG or sustainability-related terms, as well as the ESMA 2024 Final Report on Greenwashing).##BulletedLast##

3.2 Sustainable Finance Framework

In addition to the already mentioned regulations and expectations, guidelines, etc, of the supervisory authorities, the implications arising from the following should be carefully considered:

- ESG provisions on investor protection under Directive (EU) 2014/65 (MiFID II);
- legal and technical criteria for environmentally sustainable activities provided by the Taxonomy Regulation;
- integration of clients' "sustainability preferences" in the assessment of suitability of investment operations, under EU Delegated Regulation 2017/565;
- express integration of ESG assessments in the risk assessment processes of banking institutions, under the European Banking Authority (EBA) Guidelines on the management of environmental, social and governance (ESG) risks; such guidelines put into effect the amendments to Directive 2013/36/EU (Capital Requirements Directive, CRD) and Regulation (EU) No 575/2013 (Capital Requirements Regulation, CRR);
- consideration of sustainability-related objectives in financial product governance processes, under EU Delegated Directive 2017/593;
- increased access, comparison and verification of sustainability information of companies and their value chains, under the ESG corporate transparency (and governance) rules of Decree 125/2024; and
- new due diligence rules and standards on the environment and human rights, for companies and their value chain, under the CS3D.

3.3 Access to Green Financing

While the supply of "sustainable" capital (and related transparency obligations) has grown, the requirements and terms under which such supply is conditioned have increased, precisely to avoid greenwashing, making access to this capital more burdensome.

To access such capital, companies shall, for example, comply with good governance practices (which are increasingly defined) and analyse and report on sustainability-related risks, impacts and opportunities (environmental, climate but also social). This requirement has implications for how companies present themselves, particularly in terms of their internal organisation, strategic direction, governance, and their relationships with suppliers, as well as with the broader value chain.

At the same time, the entry into force of transparency and due diligence obligations on companies, particularly large ones, with effects on SMEs through the supply chain, is fostering a progressive alignment between supply and demand for capital, in terms of ESG compliance.

3.4 Stranded Assets and Non-Bankables

There is major concern that these market players remain excluded from ESG capital, while one of the pivotal goals of the EU regulatory framework on ESG is precisely to foster an inclusive and just transition.

The most recent example of such concerns is the speech from the president of Confindustria (the main association representing manufacturing and service companies in Italy) who, during the assembly held in Rome on 18 September 2024, pointed out the need to review the European Green Deal and that decarbonisation pursued even at the price of deindustrialisation is a debacle.

Legislators and supervisory authorities, however, seem to have already taken note of these market signals, as evidenced, for example, by proposals toward an amendment to the sustainable finance regime, in particular the SFDR, to encourage investment in the just transition of stranded assets, etc.

3.5 Challenges Ahead

The key challenges in sustainable finance in the coming years are:

- simplifying the regulatory framework without undermining the investments made so far by companies and financial operators, through further clarification by the relevant authorities, including national ones (eg, Q&A, interpretations, guidelines, best practices, etc);
- strengthening supervision and enforcement of the rules (including sanctions), to ensure a common playing field and preserve fair competition (by discouraging greenwashing phenomena that alter the proper capital allocation, misleading other investors and business partners); and
- clarifying, including through the establishment of a taxonomy (such as the existing green taxonomy), the scope of disclosure and due diligence obligations with respect to social issues (eg, human rights compliance).

4. ESG Due Diligence

4.1 Soft Law Becoming Hard Law

Originally, ESG due diligence was governed by soft law instruments, such as the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (“OECD Guidelines”) and the UN Guiding Principles on Business and Human Rights (UNGPs). However, ESG due diligence is now fully embedded within hard law regulations. This occurs through two mechanisms:

- The first is the incorporation of the OECD Guidelines and the UNGPs into Directives and Regulations, making them part of mandatory due diligence requirements, as seen in frameworks such as the CSRD, CS3D, SFDR, Taxonomy Regulation or Regulation (EU) 2017/821 (Conflict Minerals). This also involves the activation of specific agencies established by governments, such as the National Contact Point for Responsible Business Conduct (NCP), to promote the OECD Guidelines, and related due diligence guidance, and to handle cases as a non-judicial grievance mechanism. Italy activated its own NCP.
- The second is the establishment of dedicated due diligence provisions, such as Regulation (EU) 995/2010 (Timber Regulation) and its successor, the EUDR. The shift from soft law to hard law is driven by the critical role the due diligence practice plays in the transition to more sustainable development models, aligned with the goals of both the EU and the United Nations. Indeed, due diligence can no longer rely on voluntary approaches, being a key activity to prevent ESG risks and negative impacts, and to protect companies and their directors from potential liabilities.

4.2 Towards Vertical Responsibilities

In Italy, due diligence requirements have significantly expanded since 2017, when the Non-Financial Disclosure (DNF) first mandated large public-interest entities to map the sustainability profiles of their supply chains to identify potential ESG risks and impacts.

The practice of ESG due diligence further spread in 2021 with the introduction of the SFDR, which requires specific assessments to determine whether an investment promotes social or environmental characteristics or contributes to sustainable investment objectives.

The adoption of the CSRD in 2022, which mandates reporting on a company's due diligence practices to prevent, mitigate, or address actual or potential environmental and human rights impacts, extended ESG due diligence across supply chains. This expansion was further supported by the legislative process for enacting Decree 125/2024, implementing the CSRD, and adopting the CS3D, which aims to introduce mandatory due diligence obligations, shifting the focus from mere disclosure to proactive risk management.

In 2025, due diligence practices gained additional momentum with the Fashion Protocol and the EUDR. Cases involving human rights violations in subcontracting chains led to the prosecutors' intervention, with Italian judicial authorities launching significant investigations into labour abuses within the logistics and fashion industries – sectors critical to the country's economy.

In particular, cases of "*caporalato*" (illegal recruitment and labour exploitation) received notable attention. The Milan Court established a task force to combat exploitation in the fashion and logistics sector, urging companies to adopt robust due diligence measures to prevent human rights violations within their supply chains. These efforts led to the drafting of the Fashion Protocol, promoted by the Prefecture of Milan, that aims to enhance transparency and address labour exploitation and illegal labour intermediation.

Looking ahead, ESG due diligence practices are expected to become even more prevalent, as they help mitigate reputational and compliance risks, as well as potential sanctions and liabilities for companies and their directors.

4.3 Partner Selection

ESG due diligence practices have a significant impact on supply chain partners. In fact, the CSRD, EUDR and CS3D for suppliers, and the SFDR for investment portfolios, mandate the verification and disclosure of a supply chain's ESG performance and impacts.

As a result, market operators subject to these regulations are increasingly adopting binding tools such as ESG clauses in supply chain contracts (in line with the so-called European Contractual Model Clauses, available online) to enforce:

- adherence to ESG principles outlined in ethical codes or supplier codes of conduct;
- verification of compliance with these principles through mandatory assessments or ESG audits;
- measurement of the suppliers' ESG performance and impacts; and
- verification of compliance with ESG principles throughout the supply chain.

These measures aim to mitigate legal and reputational risks, often providing companies with the option to terminate contracts in case of non-compliance with contractual obligations.

Consequently, ESG due diligence on supply chain partners and investee companies is increasingly becoming an exclusion criterion, in line with the growing trends of "sustainable procurement" and "responsible investment" adopted by companies and financial operators.

4.4 ESG in M&A Due Diligence

ESG is becoming increasingly important in the M&A landscape due to its relevance across three key areas: (i) regulatory compliance; (ii) risk management; and (iii) market opportunities.

Regarding point (i), the past five years have seen a significant increase in sustainability regulations at EU level, in both the corporate and finance sectors, imposing ESG reporting and due diligence obligations on a growing number of market participants. Along with these obligations, the regulations introduce specific penalties for companies and personal liability for directors and supervisory bodies, shifting sustainability from being a "marketing-related" issue to a core responsibility of legal and compliance functions and, above all, boards of directors.

As for point (ii), ESG risks are crucial because they could have actual or potential financial impacts affecting the company's financial position (performance, cash flows, access to finance, or cost of capital) in the short, medium, or long term. For this reason, risk management systems should be improved with potential ESG events that could negatively affect the company.

Regarding point (iii), particularly in light of the ESG reporting requirements imposed on financial operators by the SFDR and on large companies by Decree 125/2024, having strong sustainability governance – including ESG data governance – along with positive ESG performance or a sustainable business model, is becoming a valuable asset. It serves as a potential competitive advantage in (i) public and private procurement processes; (ii) access to financing; and (iii) relationships with investors and/or clients who are required to report on the ESG performance of their investment portfolios or value chains.

These factors, when combined, highlight the strategic importance of ESG matters, which now extend far beyond marketing, as was the case in the past, and beyond mere regulatory compliance.

5. Transparency and Reporting

5.1 Key Requirements

Under Italian law, sustainability reporting obligations may depend on (i) the size or (ii) the legal status of the company.

With respect to point (i), under Decree 125/2024, large listed companies must already report on the undertaking's impacts on sustainability matters, while the "Stop the Clock" Directive interrupted the reporting process for unlisted large companies (defined as those exceeding at least two of the three following criteria: balance sheet total of EUR25 million; net turnover of EUR50 million; and an average number of employees during the financial year of 250) until 2027. Moreover, the Omnibus Package has introduced an element of uncertainty regarding the future application of sustainability reporting requirements, as even the size criteria themselves are currently under review.

The reporting obligations include the disclosure of, among other things:

- the business model and strategy with regard to sustainability risks;
- the sustainability objectives set by the company and the progress made towards achieving them;
- the sustainability due diligence process put in place;
- the main actual or potential adverse impacts related to the company's value chain; and
- the indicators related to sustainability information.

With respect to the second bullet point, according to the Italian legislation, companies with specific legal statuses promoting benefit or social objectives are required to report on their ESG performances or impacts. In particular:

- According to Law 208/2015, benefit corporations are required to draft an annual report, attached to the financial statement, concerning the pursuit of common benefit objectives. The report shall include (i) information regarding the attainment of the benefit objectives and assess how effective the actions taken by the company have been, and (ii) the measurement of the impacts related to governance, employees, stakeholders, and the environment areas, according to specific external evaluation standards.
- According to Legislative Decree 112/2017, social enterprises are required to draft a report on the impact they have generated. To provide guidance on the content of this report, the Ministry of Labour and Social Policy issued its own guidelines on 4 July 2019. On 23 July 2019, a second set of guidelines was released to further define the criteria and methods for voluntarily assessing social or environmental impact.
- According to Circular 3677/C of the Ministry of Economic Development, SIAVS are required to

draft an annual social impact assessment, according to the criteria outlined in the Circular. The report also serves as a self-certification to the Chamber of Commerce, demonstrating a company's continued compliance with the requirements of its particular legal status and confirming its eligibility for benefits and incentives.

Further, any company subject to the EUDR will be required to report on the dedicated due diligence system it has put in place to tackle deforestation risks.

5.2 Transition Plans and ESG Targets

According to the reporting obligations outlined in the regulations mentioned in **5.1 Key Requirements**:

- Benefit corporations and social enterprises, which embed benefit and social objectives in their by-laws, are required to disclose the actions and results undertaken to achieve these objectives.
- Companies reporting under Decree 125/2024 are obliged to disclose whether they have, or do not have, transition plans or commitments to targets.
- SIAVS are only required to describe the social impacts generated by operating in specific social sectors.

5.3 Regulation of ESG Labels

The Italian Consumer Code contains general provisions regarding sustainability claims. The Code, which regulates misleading advertising and consumer protection, also applies to practices of greenwashing and social washing. This approach aligns with (i) the European Commission's guidelines, which explicitly categorise greenwashing and social washing as forms of unfair commercial practices, and (ii) precedents set by the AGCM.

This stance has been reaffirmed by Directive 2024/825, "Empowering Consumers for the Green Transition through Better Protection Against Unfair Practices and Better Information" (ECD), which updates Directive 2005/29/EC (UCPD). The ECD formalises principles already laid out in the European Commission's guidelines, explicitly introducing the concepts of greenwashing and social washing into the legal framework. Specifically, the ECD:

- identifies as unfair commercial practices:
  - (a) misleading information regarding the environmental or social characteristics of a product, or aspects related to circularity (eg, durability, repairability, recyclability);
  - (b) environmental claims about future performance which are not substantiated with information related to the programmes to achieve such performance; and
  - (c) promoting irrelevant benefits to consumers that do not stem from the product's or company's actual characteristics; and
- updates Annex I of the UCPD, listing commercial practices which are in all circumstances considered unfair:
  - (a) generic or exaggerated environmental claims;
  - (b) claims related to positive environmental impacts that are based on carbon offsetting; and
  - (c) claims related to legally mandated requirements.

It is important to note that the ECD defines environmental claims as any commercial communication conveyed in any form, including text, images, graphics, or symbols, such as labels. Therefore, in addition to the above, claims based on sustainability labels that are not supported by an authorised certification system or established by public authorities are included in the blacklist of commercial practices that are considered unfair in all circumstances.

5.4 Supervision

The competent regulatory authorities in Italy responsible for verifying ESG disclosure compliance are:

- Consob for listed companies subject to the CSRD;
- Consob and Bank of Italy, for financial operators subject to the SFDR; and
- AGCM for all market operators subject to the Consumer Code.

5.5 Enforcement

With regard to non-compliance with the CSRD for false or misleading ESG disclosures, administrative monetary penalties are foreseen exclusively for publicly listed companies, in accordance with the provisions of TUF. Additionally, because the sustainability statement required by Decree 125/2024 is included in the management report, all companies may be subject to the general regime governing false statements in financial reports, which could involve criminal law provisions.

Similarly, non-compliance with the SFDR for false or misleading ESG disclosures also results in administrative monetary penalties, again in accordance with the TUF.

In cases of non-compliance related to unfair competition for false or misleading ESG disclosures, actions constituting unfair competition can be prohibited, and compensation for damages may be required, according to the Italian Civil Code provisions.

Regarding greenwashing – ie, non-compliance with misleading advertising regulations for false or misleading ESG disclosures, according to the provisions of the Consumer Code, the AGCM may (i) prohibit the advertisement and (ii) impose an administrative monetary fine ranging from EUR5,000 to EUR5 million, depending on the seriousness and duration of the violation.

With respect to EUDR obligations, the Ministry of Agriculture, Food Sovereignty and Forests, is the competent authority for carrying out inspections, verification of the annual reports regarding the due diligence system, as well as for imposing sanctions, through the executive action of the DIFOR (General Directorate of Mountain Economy and Forestry), which will deal with wood and its derivatives, and the ICQRF (Central Inspectorate for the Protection of Quality and the Repression of Fraud in Agri-food Products) which will be responsible for the other products and raw materials involved (coffee, cocoa, beef, soy, palm oil, rubber and various derivatives). Potential sanctions include confiscation and fines of up to 4% of revenues.

5.6 Expected Progress

In the coming years, companies are expected to make significant strides in meeting their ESG reporting obligations, driven by increasing regulatory and supervisory pressure, investor demand, and rising public awareness.

With frameworks like the CSRD, SFDR and ECP becoming mandatory, companies will likely enhance their sustainable corporate governance models. This will enable better management of ESG-related impacts, risks and opportunities, incorporating robust policies, procedures, and internal organisational measures to strategically govern ESG. These efforts will help mitigate key risks – especially reputational and legal risks – while creating long-term value for both shareholders and stakeholders at large.

However, several challenges remain. First, companies will face the complexity of collecting accurate and comprehensive ESG data across various business operations and global supply chains. Second, the need to align with multiple regulatory frameworks and ensure consistency in ESG disclosures across jurisdictions will continue to be a significant challenge. Third, the risk of greenwashing – whether intentional or unintentional – will persist, as companies may feel pressured to overstate their sustainability initiatives. Finally, integrating ESG considerations into core business strategies, while also ensuring adequate internal resources and expertise, will require a substantial cultural and operational shift within many organisations.

In summary, while companies are likely to make substantial progress, navigating the evolving regulatory landscape, ensuring transparency and accuracy, and aligning with global standards will remain ongoing challenges. This is due to the inherent complexity of a new system that must be understood and adapted by individual market participants based on their unique characteristics and needs.

6. Climate and ESG Litigation

6.1 Instruments for ESG Litigation

In Italy, the commencement of ESG-related legal actions depends on the type of claim and the parties involved. In recent years, there has been a notable rise in such cases, underscoring the practicality and effectiveness of existing legal mechanisms in addressing ESG issues. In particular, the main avenues for pursuing these actions include:

- civil court proceedings, which may involve (i) ordinary proceedings initiated either by private individuals under tort law, seeking compensation for damages or orders mandating specific actions due to companies' violation of ESG-related regulations, or by competitors under the unfair commercial practices rules, aiming to obtain injunctive relief or other remedies; or (ii) class actions for injunctive or declaratory relief brought by consumer associations or individuals to obtain a court order against unlawful acts or omissions, such as cease-and-desist orders or orders mandating specific actions;
- administrative court proceedings before the AGCM to determine the existence of unfair business practices under the Consumer Code or misleading advertising under the Advertising Law, which may result in sanctions; and
- proceedings before the Advertising Self-Regulation Jury (*Giurì di Autodisciplina*, the "Jury"), based on the Self-Regulation Code: If a company has adhered to the Code, the Jury can order the company to stop disseminating any commercial communication found to be in violation. If the communication clearly violates the Code, the Chairman of the Control Committee can also issue a desist order. The decisions are publicly available and can be subject to further public announcements, naming the involved parties.

6.2 Climate Activism

In understanding the Italian jurisdiction, it is useful to consider, again, the broader European context. The primary objectives of European Union ESG laws include providing ESG information to civil society actors, including NGOs and activists, enabling them to hold companies accountable for their impacts on people and the environment.

In addition, the CSRD requires companies to implement:

- stakeholder engagement activities, meaning an ongoing process of interaction and dialogue between the company and its stakeholders that allows the company to listen, understand, and respond to their interests and concerns; and
- grievance mechanisms, meaning processes through which stakeholders can raise concerns and seek remedies; these processes can be managed by the organisation either independently or in collaboration with other parties, and must be directly accessible to the organisation's stakeholders, thus preventing both harm and grievances from escalating.

To conclude, the forthcoming CS3D will mandate companies to establish a fair, publicly available, accessible, predictable, and transparent procedure for handling complaints from individuals or entities concerning actual or potential adverse impacts related to the company's operations, those of its subsidiaries, or its business partners throughout the chain of activities.

Complaints may be submitted by:

- natural or legal persons who are affected, or have reasonable grounds to believe they might be affected, by an adverse impact, as well as their legitimate representatives, such as civil society organisations and human rights defenders;
- trade unions and other worker representatives on behalf of individuals employed within the relevant value chain; and
- civil society organisations that are active and experienced in areas related to the environmental issues at the heart of the complaint.

With this in mind, in Italy, in addition to several mediation proceedings under the OECD Guidelines initiated before the NPC, some NGOs, including ReCommon and Greenpeace, have also initiated the first climate litigation cases against the state and against a company operating in the energy sector. In light of these developments, coupled with the rise of environmental activism, NGOs and activists play a significant role in shaping the ESG landscape in our jurisdiction.

6.3 Greenwashing

On 16 July 2024, the AGCM launched an investigation into several fashion companies over potential unlawful practices in the promotion and sale of clothing and accessories, in violation of the Consumer Code.

According to the AGCM, in some cases, these companies sourced supplies from workshops employing workers:

- who received inadequate wages; and
- who worked hours beyond legal limits and in unsafe and unhealthy conditions, in contrast to the companies' claims of excellence in production.

The alleged unfair commercial practices relate to corporate communication emphasising the craftsmanship and quality of the creations. On the contrary, the companies were apparently sourcing from workshops that employed exploited workers, thus misleading consumers. The AGCM clarified that the investigation was also prompted by actions taken by the Milan Prosecutor's Office and the Milan Court.

Another investigation has been recently launched by the AGCM, targeting another fashion company that promoted an image of sustainable production and marketing for its clothing through generic, vague, confusing, and/or misleading environmental claims.

Furthermore, in April 2024, the Italian Council of State, the highest authority on administrative matters, ruled on the legitimacy of sanctions imposed by the AGCM against an Italian oil company for greenwashing and misleading advertising. The Council of State, taking into account the upcoming ECD, upheld the legitimacy of the green claims, provided the product had a demonstrably lower environmental impact compared to others in the same category and that the claim was supported by clear, sufficient, and contextual information enabling customers to accurately understand the product's sustainability.

This trend in judicial decisions was confirmed in 2025 when, on 29 July 2025, the AGCM imposed another sanction for unfair commercial practice on a fashion brand. Specifically, two companies belonging to the group disseminated misleading ethical and social responsibility statements that were inconsistent with the actual working conditions found at suppliers and subcontractors. These statements were included in the companies' code of ethics and in documents published on their websites.

6.4 A Turbulent Future Ahead

The future of ESG-related litigation in Italy is set to grow considerably in the coming years. This growth is driven by several factors, including increasing regulatory focus on the enforcement of ESG standards and the rising awareness among both consumers and activists about companies' environmental and social impacts.

We may expect to see a marked increase in enforcement actions, particularly related to greenwashing and violations of supply chain transparency. Both administrative authorities like the AGCM and private litigants are likely to pursue cases concerning misleading ESG claims, and Italian courts will face growing scrutiny on corporate compliance with new EU regulations such as the CSRD and the CS3D.

Moreover, with more companies required to disclose their ESG metrics and sustainability efforts, there will likely be more cases challenging the authenticity of those claims. As ESG policies continue to mature, coupled with increased activism and legal scrutiny, the number of ESG-related proceedings in Italy will undoubtedly rise. We will also likely witness a corresponding increase in contractual disputes over violations of ESG clauses, which are becoming more prevalent in a broad variety of commercial agreements.

Trends and Developments

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Legance is an independent law firm with offices in Milan, Rome and London, with over 400 lawyers. Founded in 2007, Legance distinguishes itself in the legal market as a point of reference for both clients and institutions. Independent, dynamic, international and institutional are the qualities that most characterise the strengths of the firm and have contributed to it becoming a leader in the legal market. The professionals in the ESG and impact team have significant experience in assisting clients – eg, companies, investment funds, managers and other players – in the area of sustainability and ESG-related issues. In particular, the team has built up a strong presence in this area, developing multidisciplinary skills that enable it to support clients who wish to approach sustainability in a rigorous and innovative way.

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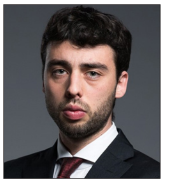

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The EU ESG Regulatory Review Process and the Italian Scenario

The year 2025 started with a significant slowdown in the evolution of ESG regulation within the European Union, in sharp contrast with the acceleration of recent years. Geopolitical tensions and consequent competitiveness considerations, including capital flows allocation, have shifted the focus of EU institutions from strengthening sustainability rules to safeguarding economic competitiveness.

In this context, the European Union has launched a review process of the main ESG regulations, aimed at greater flexibility and simplification of compliance burdens for companies. The core of this review concerns Directive (EU) 2022/2464 on corporate sustainability disclosure (CSRD), Directive (EU) 2024/1760 on corporate sustainability due diligence (CS3D), and Regulation (EU) 2023/1115 on due diligence regarding deforestation risks (EUDR), for which amendment proposals have been presented to reduce implementation complexity and compliance costs.

The complexity of this process, combined with a heated political debate over reducing corporate obligations, led to the adoption of Directive (EU) 2025/794 ("Stop the Clock"), transposed in Italy through Article 10, paragraph 1-bis of Decree Law 95/2025, which postponed by two years the obligation to publish sustainability reports under the CSRD for the majority of companies subject to its requirements. The Stop the Clock Directive was welcomed by the EU and member states' legislators because it gave more leeway to discuss the so-called Omnibus Package regarding the simplification of obligations deriving from the CSRD and CS3D.

Thus, while at the European level there is a clear shift towards simplification, there is also counter pressure from financial institutions and civil society, calling for the preservation of governance safeguards and sustainability information necessary to inform decisions and prevent ESG risks and negative environmental and social impacts. This is especially true when considering the profound pending review of the whole sustainability legal framework: where obligations and impacts on companies are still not yet clear and defined, solid governance structures shall take the lead.

Risk protection and the safeguarding of fundamental rights in business activities remain fundamental values for European and national institutions. This is demonstrated both by the growing number of ESG disputes and by enforcement proceedings initiated by judicial and supervisory authorities. In Italy, several high-profile cases have confirmed the need for transparent conduct by companies, fully respectful of human rights and the environment.

Protecting Human Rights: The Role of the Judiciary

In 2025, Italian judicial authorities, particularly the Milan Public Prosecutor's Office, continued their action against labour exploitation and human rights violations, with a specific focus on illegal recruitment and labour exploitation ("*caporalato*"). Investigations initiated in 2024 in the fashion and logistics supply chains had already revealed systemic deficiencies in labour, health, and safety oversight. Based on these findings, in May 2025, the Prefecture and the Milan Prosecutor's Office promoted the Protocol for the Legality of Procurement Contracts in the Fashion Supply Chain ("Fashion Protocol"), building on the framework already adopted for logistics the previous year.

This voluntary protocol is not limited to setting out general commitments but offers concrete guidance to strengthen human rights protection along the supply chain. Brands are suggested to adopt a Code of Conduct setting out ethical principles and rules for suppliers and subcontractors, accompanied by training programmes for those responsible for monitoring compliance. Suppliers adhering to the Protocol must embed these commitments into their contracts, thereby extending responsibility throughout the production chain. In this context, audits play a central role: contracts must allow for periodic inspections, including unannounced checks, conducted by the brand, the commissioning company, or third-party agents, to verify compliance with health, safety, and labour standards.

These measures closely align with the due diligence and transparency obligations under the CSRD and the CS3D, explicitly referenced in the Protocol, effectively anticipating their application. This illustrates that, despite uncertainties surrounding the ESG regulatory review process, corporate due diligence for human rights protection across supply chains has become an essential component of business operations.

The process for a transition towards a stronger protection of human rights is further driven by ongoing judicial investigations. In May 2025, the Milan Prosecutor's Office imposed judicial administration measures on two fashion companies. The companies were charged with facilitating human rights violations by failing to (i) verify the operational capacity of suppliers and subcontractors entrusted with production, and (ii) conduct effective inspections or audits to confirm the functioning of the supply chain and actual working conditions. Even where formal and legal safeguards existed, substantive due diligence was lacking, highlighting the ineffectiveness of the organisational and management models adopted.

Supervisory Authorities and the Fight Against Greenwashing

2025 also saw consolidation in the area of greenwashing enforcement, with several investigations by the Italian Competition Authority (*Autorità Garante della Concorrenza e del Mercato* or AGCM), which continued to monitor corporate marketing communications relating to environmental, social, and governance aspects. Here too, Italian authorities anticipated regulatory obligations that, specifically on this matter, will only enter into force under Directive 2024/825 ("Empowering Consumers") as of 27 September 2026.

Among the AGCM's interventions on "green claims" were two cases concerning human rights violations, originating from the Milan Prosecutor's actions against fashion and luxury companies. Ethical and social responsibility statements made by these companies were found to be misleading, as they were inconsistent with the exploitation practices and inadequate wages discovered in their supply chains. Outcomes differed: in one case, a EUR3.5 million fine was imposed; in another, the company submitted a set of corrective commitments, subsequently recognised by the AGCM as sufficient to remedy unlawful conduct in accordance with the option set out in the Regulation on Investigative Procedures in the Areas of Consumer Protection and Misleading and Comparative Advertising.

As a result, the AGCM, considering these commitments sufficient to resolve the issues raised by the contested commercial practice, effectively endorsed such corrective commitments as a best practice for preventing human rights abuses. The measures undertaken included:

- revision of the company website's "Sustainability" section to provide detailed information on the production chain, organisational arrangements, supplier ethical standards, selection criteria, and aggregated audit results;
- strengthening the supplier selection and audit process by establishing a dedicated internal monitoring unit, developing a digital platform for data storage and tracking, and updating General Terms of Purchase;
- funding of EUR2 million over five years for initiatives promoted by independent, qualified entities (public or private) to identify victims of labour exploitation and support their social and professional reintegration; and

- implementation of recurring internal and external training programmes for personnel in marketing, communications, and media, focused on consumer protection regulations and ethical standards in commercial communication.

The AGCM also undertook two further interventions – one sanctioning decision and one "moral suasion" measure – in relation to environmental claims. In one case, misleading commercial practices involved environmental statements about circularity, recyclability, and sustainability of products that were not substantiated by evidence and, in some instances, were even contradicted by the company's own sustainability report. The "moral suasion" case targeted the claim "CO_2 impact zero" used to promote a product that, despite certain environmental features, could not avoid emissions during production. Actually, the AGCM anticipated the Empowering Consumers Directive, which classifies such claims as misleading unless substantiated by recognised certifications such as the EU Ecolabel or certification ISO 14024.

The Deforestation Regulation: Upcoming Obligations for Companies in Italy

A further regulatory development of immediate relevance for companies operating in Italy is the forthcoming application of the EU Deforestation Regulation (EUDR). Adopted on 30 June 2023, the Regulation will apply from 30 December 2025 to medium and large undertakings, while small and micro undertakings established as such before 31 December 2020 will only be subject to its provisions from 30 June 2026. An exception applies to products already covered by Regulation (EU) 995/2010 on timber supply chains.

It should be noted that on 23 September 2025, the EU Commission published a letter stating its intention to propose a one-year postponement of the application of the EUDR. However, a formal proposal still needs to be enacted, after which the EU institutions' "trilogues" will commence.

The EUDR introduces stringent due diligence requirements aimed at ensuring that certain commodities and derived products are not linked to deforestation or forest degradation. In order to determine whether a company is subject to the EUDR, it will be necessary to assess, among other things, whether the products it places or makes available on the EU market – or exports outside the Union – fall within the list of commodities and relevant products set out in Annex I of the EUDR. This Annex includes goods containing, or produced from, the following raw materials: cattle, cocoa, coffee, palm oil, rubber, soya, and wood.

Therefore, if a company commercialises such products, it must demonstrate that:

- they are "deforestation-free";
- they have been produced in compliance with the relevant legislation of the country of production (including human rights and environmental law requirements); and
- they are accompanied by a duly completed due diligence statement.

The practical implementation of these obligations will require significant investment in supply chain traceability, contractual safeguards with suppliers, and monitoring systems capable of verifying compliance across jurisdictions. While some companies in scope – particularly those with international supply chains already exposed to sustainability regulations – have started preparing for these obligations, others have yet to take adequate steps. This divergence highlights a potential risk of uneven readiness in the Italian market, where businesses failing to anticipate compliance may face enforcement measures and reputational harm once the EUDR becomes applicable. In particular, the sanctions envisaged by the EUDR consists in, inter alia, fines of up to 4% of the company's revenues and confiscation of non-compliant products.

The Financial Sector: ESG Risks, Supervision and Best Practices

In a market context increasingly focused on sound management and communication of sustainability matters, given the potential operational and reputational consequences on the business, ESG risks have become critical for financial operators, given the close correlation between risk and financial return.

This is a central issue of sustainable finance regulation: Regulation (EU) 2019/2088 (SFDR) and Delegated Regulation (EU) 2022/1288 (RTS) particularly focus on business resilience to environmental and social events that may affect investment profitability, requiring specific safeguards.

Recent actions by Italian financial supervisory authorities reflect this concern. In August 2025, the Bank of Italy published its periodic report on key findings and best practices identified in the action plans of non-bank intermediaries regarding the integration of climate and environmental risks. Since 2022, Bank of Italy had required financial operators to prepare – and update – action plans on integrating ESG risks into business models, strategies, governance, risk management systems, and market disclosures. The latest report highlighted best practices such as stricter supplier selection and more stringent monitoring of commercial and financial partners from an ESG perspective, in line with the judicial initiatives of the Italian prosecutors.

The supervisory activities to prevent ESG and climate risks are also supported by two studies published by the Bank of Italy itself in November 2024 ("ESG risks and corporate viability: insights from default probability term structure analysis") and May 2025 ("Modelling transition risk-adjusted probability of default"). These studies found that companies with higher ESG scores exhibit lower default risk and less credit risk volatility, particularly over the long term.

Similarly, in early 2025, Consob (*Commissione Nazionale per le Società e la Borsa*), the public authority responsible for regulating the Italian financial markets, issued Attention Notice No 1/25 on compliance with sustainable finance obligations in order to guide the industry in applying existing provisions, offering examples of good and poor practices. Specifically, Consob emphasised:

- clearly defining ESG characteristics or sustainability objectives, and avoiding generic statements that may constitute greenwashing;
- identifying concrete indicators to assess each characteristic/objective;
- establishing criteria for selecting investments consistent with the stated characteristics/objectives; and
- ensuring clarity and accuracy of pre-contractual and periodic product disclosures regarding ESG profiles.

Concluding Remarks

In the Italian context, the tensions surrounding the 2025 ESG regulatory review reflect only an apparent contradiction. The EU's political choice to ease regulatory pressure does not entail weaker protection of fundamental rights such as environmental preservation and human rights safeguarding. Rather, it represents a reduction of compliance burdens to make them more sustainable for businesses. However, at the same time, the current rethinking of the whole EU sustainability legal framework creates uncertainties as to how sustainability shall be taken into account in decision-making processes regarding both strategy and compliance. This combination of factors highlights the need for a clearly defined governance structure capable of adapting to and addressing differing expectations – from investors, judicial and supervisory authorities, consumers, and others – as well as diverse legal requirements, irrespective of ongoing reforms.

This is evidenced by the actions of the judiciary and supervisory authorities, which – going beyond the EU regulatory review – have demonstrated that sustainability is not merely a matter of formal compliance. Rather, it concerns risk prevention and the mitigation of environmental and social impacts, both of which can significantly influence corporate restructuring, business strategies, and daily operations. These interventions do not conflict with European law but instead give practical effect to principles already embedded within the legal framework, including constitutional provisions and the protection of the environment and fundamental rights enshrined in both national and international sources.

At the same time, the current shift towards tangible action rather than mere disclosure should not be viewed solely as an additional burden. Companies that proactively align with sustainability legal requirements will not only meet supervisory expectations but also gain better access to sustainable finance, including green bonds and taxonomy-aligned credit facilities. This approach strengthens credibility with institutional investors, who face increasing pressure to ensure portfolios are resilient to ESG risks, including greenwashing, ESG litigation and regulatory scrutiny. It also allows businesses to stand out in an increasingly competitive global market, where demonstrable sustainability performance is becoming a key factor.

To conclude, sustainability must not be regarded as mere regulatory compliance, but as a strategic factor of governance and competitiveness, as well as an essential tool for preventing legal and reputational risks. It is a decisive element to be integrated into corporate governance structures in order to ensure the long-term economic and financial stability of companies.

JAPAN

Law and Practice

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TMI Associates

Contents

TMI Associates is one of Japan's top five law firms, with 670 attorneys and 100 patent/trade mark specialists, totalling 1,300 personnel as of October 2025. With offices in Shanghai, Silicon Valley, London, Paris and, most recently, Brussels, it provides a full spectrum of global legal services. Lawyer expertise covers corporate transactions, investment, trade, project and energy, ESG, M&A, intellectual property, and dispute resolution. The newly established Energy Practice Group offers specialised support for clients advancing carbon neutrality and ESG goals, with a focus on renewable energy and sustainable infrastructure. TMI remains committed to supporting Japanese and international clients as they navigate complex global markets and environmental initiatives.

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1. Introduction

1.1 General ESG Trends

The Japanese government and businesses continue to show a high level of interest in ESG, with the government implementing a number of measures to promote ESG initiatives in which the public and private sectors can invest. This commitment is reflected in the Basic Policies for Economic and Fiscal Management and Reform 2025, released in June 2025, which emphasise collaborative efforts to emphasise social challenges and achieve sustainable economic growth. The policies underscore the need for strategic, long-term investments in areas such as:

- green projects;
- digital transformation;
- scientific and technological innovation;
- frontier exploration; and
- economic and energy security.

Key developments in ESG and sustainability laws and regulations in 2025 are as follows.

Amendment to the GX Promotion Act Mandating Participation in the Emissions Trading System

In May 2025, an amendment to the GX Promotion Act was enacted, requiring business operators that emit substantial amounts of carbon dioxide to participate in the emissions trading system. The rule applies to businesses whose average CO_2 emissions over the past three fiscal years exceed 100,000 tons, with the system scheduled to begin in fiscal year 2026.

At present, detailed guidelines regarding the government's allocation of emission allowances are under discussion. Under the new rules, affected businesses must submit their emission targets and report their actual emissions, both of which must be verified by a registered verification body. Since both businesses and verification bodies will need time to establish the necessary systems, the government has indicated that only limited assurance will be required for the first three years; thereafter, the government will require full enforcement starting in fiscal year 2029.

Enactment of the Amendment to the Act on the Promotion of the Utilization of Sea Areas for Renewable Energy, Establishing Regulations for the Installation of Offshore Wind Power Facilities in EEZ

In June 2025, an amendment to the Act on the Promotion of the Utilization of Sea Areas for Renewable Energy was enacted, and it establishes new regulations for granting permits for the installation of offshore wind power facilities in the Exclusive Economic Zone (EEZ). Under the amended law, the government designates areas within the EEZ with favourable conditions, such as wind resources and seabed characteristics, and invites interested developers to submit project proposals. Installation is permitted only after consultations with power developers, shipping companies and fisheries, and if the project meets the established permit criteria.

In 2025, two new areas off Hokkaido – Matsumae and Hiyama – were designated as promotion zones for offshore wind, reflecting progress in project development. At the same time, as of the end of August 2025, the consortium led by Mitsubishi Corporation, selected in the first round of developers, announced its withdrawal from the project due to rising project costs. It highlights how material and construction cost increases are adversely affecting the business environment. The government is considering measures to improve the project environment, including for areas where bidding has already concluded. Future developments in this industry are expected to draw close attention from relevant stakeholders.

1.2 Environmental Trends

Since the Japanese government declared (in October 2020) its goal to achieve carbon neutrality with net-zero greenhouse gas emissions by 2050, the Japanese government's efforts to tackle climate change have accelerated. This commitment has been supported by the enactment of various regulatory and supportive laws and policies designed to promote sustainability and reduce emissions.

Currently, discussions are underway to draft the seventh iteration of the Basic Energy Plan, which sets out the foundational framework for Japan's energy policy, the GX2040 Vision, which includes industrial policies, and the Global Warming Countermeasures Plan as released in February 2025. With the emergence of AI expected to lead to a rapid increase in electricity demand, the government has indicated a policy of promoting renewable energy as a main power source and maximizing its deployment, while also utilising nuclear power to ensure stable supply and maintain energy self-sufficiency. In addition, the revised Plan for Global Warming Countermeasures sets ambitious targets towards achieving net zero by 2050, aiming to reduce greenhouse gas emissions by 60% by fiscal year 2035 and by 73% by fiscal year 2040 compared with 2013 levels. These targets have been reflected in Japan's new Nationally Determined Contribution (NDC) submitted to the United Nations.

In the 2025 National Diet Session, the amended GX Promotion Act, which requires participation in the emissions trading system, and the amended Act on the Promotion of the Utilization of Sea Areas for Renewable Energy, which establishes regulations for granting permits for offshore wind power facilities in the Exclusive Economic Zone, were enacted. For more details, please refer to **1.1 General ESG Trends**.

The Law on the Promotion of a Hydrogen Society and the CCS Business Act, both enacted in 2024, are being implemented sequentially, with eligible projects being selected and project formation progressing steadily.

1.3 Social Trends

On 1 November 2024, the Order for Enforcement of the Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators (commonly referred to as the "Freelance Act") came into effect. As diverse work styles continue to evolve and freelancing becomes more prevalent, this law aims to establish an environment where individuals acting as sole proprietors can engage in stable business activities. It is intended to ensure fair transactions and improve working conditions for freelancers.

Under this law, clients (ie, the commissioning party) are required to do the following.

- Clarify transaction terms – Clearly specify details such as the scope of work, remuneration, payment deadlines, and deliverables in writing or through electronic means (eg, email or contract management systems).
- Set and comply with payment deadlines – Pay remuneration within 60 days after the delivery of the agreed deliverables in principle. Any delay in payment or unjustified reduction of fees may result in administrative guidance or corrective measures.

In addition, a new obligation has been introduced for clients to implement measures to prevent harassment against freelancers, including the establishment of consultation systems and the implementation of recurrence prevention measures.

In April 2025, the Tokyo Ordinance on the Prevention of Customer Harassment came into effect. This ordinance defines the responsibilities of businesses, customers and workers operating within Tokyo and characterises customer harassment (*kasu-hara*) as "serious acts of nuisance directed at workers in connection with their duties that harm their working environment". Furthermore, on 4 June 2025, an amendment to the Act on Comprehensive Promotion of Labor Measures, Stabilization of Employment, and Enrichment of Workers' Vocational Lives (commonly known as the "Comprehensive Labor Measures Promotion Act") was enacted. The amendment imposes an obligation on employers to take employment management measures to protect workers from customer harassment, with implementation targeted for 2026.

Accordingly, companies are expected to address customer harassment not merely as a matter of "complaint handling" but as part of their broader duty to protect employees' working environments and ensure occupational safety and health.

In addition, as the European Union's Corporate Sustainability Due Diligence Directive (CSDDD) and Corporate Sustainability Reporting Directive (CSRD) move towards implementation between 2026 and 2028, their extraterritorial application to Japanese companies is becoming increasingly likely. Japanese companies, particularly those with significant operations or sales within the EU, are therefore expected to establish governance and due diligence frameworks aligned with these directives and to enhance transparency in sustainability reporting in anticipation of the upcoming enforcement timelines.

1.4 Governance Trends

Release of the Final Version of the SSBJ Standards

In June 2022, the Working Group on Corporate Disclosure of the Financial System Council proposed creating a dedicated section in securities reports to integrate sustainability information. Following this proposal, on 31 January 2023, the Cabinet Office Order on Disclosure of Corporate Information was amended to include sustainability-related disclosures. This amendment introduced a new section titled "Approach and Efforts on Sustainability" in securities reports, mandating the disclosure of sustainability information.

In response, the Sustainability Standards Board of Japan (SSBJ), established in July 2022, published in March 2025 the following three standards that conform to the IFRS Sustainability Disclosure Standards (ISSB Standards) issued by the International Sustainability Standards Board (ISSB):

(a) Application of Sustainability Disclosure Standards (the universal standard for sustainability disclosures);
(b) General Disclosure Standard (Thematic Disclosure Standard No 1); and
(c) Climate-Related Disclosure Standard (Thematic Disclosure Standard No 2).

The SSBJ Standards have also been confirmed by the ISSB as ensuring functional equivalence with the ISSB Standards.

Effective Date of SSBJ Standards

Regarding the scope of companies subject to disclosure under the SSBJ Standards, which is planned to cover all or certain companies listed on the Tokyo Stock Exchange Prime Market, the Financial Services Agency's Working Group on the Disclosure and Assurance of Sustainability Information published an interim summary of key issues in July 2025. In this summary, the Working Group presented the following roadmap for the implementation timeline of the SSBJ Standards.

Among these, items (a) and (b) are to be finalised as stated below, while item (c) will continue to be reviewed based on domestic and international developments, with a conclusion targeted within this year.

(a) Companies with a market capitalisation of JPY3 trillion or more – fiscal year ending March 2027.
(b) Companies with a market capitalisation of JPY1 trillion to less than JPY3 trillion – fiscal year ending March 2028.
(c) Companies with a market capitalisation of JPY500 billion to less than JPY1 trillion – fiscal year ending March 2029.

1.5 Government and Supervision

In Japan, the Cabinet Office plays a key role in overseeing economic policies, including those related to ESG initiatives, and is responsible for setting the overall direction of such policies. For instance, the Cabinet Office established the GX Implementation Council, which, in July 2023, formulated the "strategy for Promoting a Carbon-Neutral Growth-Oriented Economic Structure" and facilitated the enactment of the GX Promotion Act. Furthermore, while the Cabinet Office provides overall co-ordination, the formulation and implementation of specific laws and policies based on government initiatives are carried out by individual ministries and agencies, according to their respective roles. Below are the main agencies involved.

Ministry of Economy, Trade and Industry (METI)

The METI is tasked with enhancing private-sector economic vitality, promoting industrial development, and ensuring a stable supply of mineral resources and energy. Together with its external agency, the Agency for Natural Resources and Energy, it oversees laws and policies related to renewable energy, hydrogen, and carbon capture and storage (CCS), among other areas.

Ministry of the Environment (MOE)

The MOE oversees matters related to the preservation of the global environment, pollution prevention, and the protection and management of natural environments.

Financial Services Agency (FSA)

The FSA is responsible for planning and drafting domestic financial systems, including matters related to sustainable finance. It handles regulations concerning ESG disclosures, legal frameworks for carbon credit trading, and other related areas.

1.6 Market Participants

The following industries are most expected to be impacted by legal regulations related to ESG initiatives.

- *Impact of the legalisation of emissions trading* – As mentioned earlier, the Japanese government plans to fully implement an emissions trading system by fiscal year 2026, requiring participation for large corporations regardless of industry. Companies required to participate in this trading system are likely to experience substantial operational and financial impacts as they adapt to the new requirements.
- *Impact of revised sustainability disclosure standards* – The Sustainability Standards Board of Japan (SSBJ) is scheduled to finalise its new sustainability disclosure standards by the end of March 2025. These standards will be introduced in stages, starting with companies listed on the Prime Market with a market capitalisation of JPY3 trillion or more, beginning with the fiscal year ending March 2026. Businesses across various industries subject to these new sustainability disclosure requirements will need to adapt, potentially incurring compliance costs and operational changes.

These upcoming regulatory changes highlight the need for industries to proactively prepare for the shift towards stricter ESG-related compliance measures.

1.7 Geopolitical Developments

In September 2025, Prime Minister Ishiba announced his resignation, prompting a leadership election within the Liberal Democratic Party. Ms Takaichi was elected as the party's first female president and subsequently appointed Prime Minister. However, no significant changes are expected regarding the direction of ESG-related policies.

Regarding the impact of political movements and geopolitical factors from abroad, Japan, due to its limited land area and lack of natural resources, is highly susceptible to global conditions, particularly in areas such as fuel security and resource acquisition. Furthermore, many Japanese companies have operations in multiple countries, which means they are inevitably influenced by political developments in those regions.

Additionally, regulations that apply to companies outside the European Union (EU), such as the EU's Corporate Sustainability Due Diligence Directive and the Carbon Border Adjustment Mechanism (CBAM), have also begun to affect companies based outside the EU but operating within its market. These regulations have a direct impact on Japanese companies, as they must comply with these international standards to maintain their market presence in the EU and other regions.

2. Corporate Governance

2.1 Developments in Corporate Governance

As noted in our discussion at **1.4 Governance Trends**, in March 2025, the Sustainability Standards Board of Japan (SSBJ) published the finalised version of the

SSBJ Standards. The Standards have also been confirmed by the ISSB as conforming to ISSB Standards. Regarding the disclosure of sustainability information in securities reports, a broad roadmap has been established, and it indicates that the application of the SSBJ Standards will cover all or certain companies listed on the Tokyo Stock Exchange Prime Market, with companies having a market capitalisation of JPY3 trillion or more scheduled to apply the Standards from the fiscal year ending March 2027.

While progress is being made in establishing a disclosure framework for sustainability information in securities reports, it is recognised that such information – often comprising qualitative, estimated and forward-looking elements – tends to be inherently more uncertain than financial information. This characteristic has raised concerns that companies may be reluctant to disclose such information due to potential liability for misstatements or other inaccuracies, highlighting the need for measures to address this issue.

Looking ahead, in order to enhance disclosure in securities reports and clarify the scope of liability for misstatements, and considering the unique characteristics of sustainability information, discussions are expected to advance on frameworks such as the introduction of safe harbour rules.

2.2 Differences Between Listed and Unlisted Entities

Corporate governance requirements in Japan differ significantly between listed and unlisted companies.

For listed companies, in addition to the Companies Act, more advanced governance is required under the Financial Instruments and Exchange Act, the securities listing regulations established by stock exchanges, and the Corporate Governance Code.

The Corporate Governance Code outlines principles for listed companies to:

- ensure shareholder rights;
- collaborate appropriately with stakeholders other than shareholders;
- secure proper information disclosure and transparency;
- fulfil board responsibilities; and
- engage in dialogue with shareholders.

The aim is for listed companies to maintain systems for transparent, fair and decisive decision-making, thereby achieving effective corporate governance.

Companies listed on the Prime Market are subject to stricter governance requirements than those on other markets. These include:

- the appointment of independent outside directors;
- the establishment of nomination and remuneration committees; and
- climate change disclosures based on frameworks such as the Task Force on Climate-Related Financial Disclosures (TCFD).

Additionally, as mentioned in **1.4 Governance Trends**, companies listed on the Prime Market are expected to be sequentially required to disclose sustainability information in accordance with the SSBJ Standards, based on their market capitalisation.

Unlisted companies, on the other hand, must establish governance in accordance with the Companies Act but are not required to meet the high-level governance standards of listed companies, such as disclosure obligations or the appointment of independent directors.

2.3 Role of Directors and Officers

The revised Corporate Governance Code (published in June 2021) requires companies to disclose their efforts related to sustainability. In response, there has been a growing trend among companies to incorporate ESG initiatives into executive compensation. This trend is expected to continue, as companies seek leadership incentives with sustainability goals. Consequently, it is anticipated that executives will play a key role in driving ESG initiatives.

Under Japanese corporate law, directors and executive officers, as agents of the company, are obliged to perform their duties with the care of a good manager (duty of due care, Companies Act Articles 330 and 402 (3), and Civil Code Article 644). They are also required to comply with laws, the articles of incorporation, and shareholder resolutions in performing their duties (duty of loyalty, Companies Act Article 355 and Article 419 (2)). However, at present, promoting ESG is not considered a statutory obligation for directors and executive officers.

Regarding the scope of their managerial discretion, the business judgment of directors and executive officers is generally not considered a breach of the duty of due care unless there is a grossly unreasonable element in the decision-making process or its substance. Therefore, whether or not directors and executive officers consider or actively promote ESG initiatives is largely left to their discretion. Consequently, the decision to pursue or not pursue ESG initiatives is not, in and of itself, considered a violation of their duty of due care or duty of loyalty.

That said, with regard to ESG factors, such as human rights, which are increasingly recognised as essential for companies to address on an international scale, a failure to address such issues – despite the absence of specific legal regulations – could potentially be construed as a violation of the duty of care or duty of loyalty.

2.4 Social Enterprises

In Japan, there are several systems to support social enterprises and not-for-profit organisations. These include the following:

- Certified Specified Non-Profit Corporations;
- Public Interest Incorporated Associations; and
- Public Interest Incorporated Foundations.

These organisational forms are utilised in areas such as environmental protection, education, and welfare services.

Organisations such as Specified Non-Profit Corporations, General Incorporated Associations, and General Incorporated Foundations that meet requirements for public interest activities can receive certification from the government to become Certified Specified Non-Profit Corporations or Public Interest Incorporated Associations and Foundations.

All these organisations are non-profit by nature, meaning they do not operate with a profit-distribution model seen in traditional corporations. Unlike for-profit businesses, these organisations do not issue shares, and any surplus funds generated from their activities cannot be distributed to members, directors or investors. Additionally, because they are non-profit, these organisations tend to be fragile and financially unstable, relying on donations and other funding sources for operations. The inability to distribute profits as financial returns makes it difficult for them to attract conventional investors who seek economic gains.

Unlike Benefit Corporations in the US, Japan does not have a legal framework that balances profit-making with public benefit. Therefore, some companies establish themselves as corporations while obtaining a B-Corp certification issued by private organisations, adopting business practices that prioritise profit reinvestment and a commitment to social impact. Recent policy discussions, including those led by the Cabinet Office and local governments, have also focused on expanding support for “social enterprises” through financial assistance, capacity-building programmes and impact measurement standards.

2.5 Shareholders

In the revised Japan Stewardship Code of 2020, “stewardship responsibility” is defined as the obligation of institutional investors to enhance the corporate value and sustainable growth of investee companies. This is achieved through constructive, “purposeful dialogue” based on a deep understanding of the investee companies, their business environments, and consideration of sustainability (including ESG factors and long-term sustainability) aligned with their investment strategies. The Code clarifies the importance of incorporating sustainability into the stewardship process to expand long-term investment returns for business operators and beneficiaries.

Additionally, some institutional investors have begun establishing and disclosing their sustainability investment policies – ie, statements outlining how asset owners and financial institutions incorporate sustainability considerations into their investment practices.

Furthermore, on 28 August 2024, the Cabinet Secretariat issued the Asset Owner Principles, emphasising the responsibility of asset owners to achieve their respective investment objectives and deliver appropriate investment outcomes to beneficiaries. These principles highlight the need for asset owners to make efforts that contribute to the sustainable growth of investee companies, including considerations related to sustainability.

3. Sustainable Finance

3.1 Progress in Green Financing

Through the proactive efforts of investors, financial institutions and the government's diverse initiatives, along with the influence of international trends, sustainable finance has made significant strides in Japan in recent years. Japan issued GX Transition Bonds 2024 onwards; in March 2025, the Sustainability Standards Board of Japan (SSBJ) published a domestic sustainability disclosure standard. These developments demonstrate steady progress in the country's commitment to sustainable finance.

However, despite these advancements, several challenges remain. Key issues include:

- the need for further understanding and education on sustainable finance;
- talent development;
- the consistent implementation of GX policies at regional level; and
- strengthening collaboration with the international community.

Additionally, while climate change has traditionally been the central focus of both domestic and global discussions, attention is now expanding to other critical issues such as biodiversity and human capital.

In 2025, no major regulatory changes related to sustainable finance have been observed. However, the Fifth Report of the Expert Panel on Sustainable Finance, released in June, emphasises the need to continue promoting sustainable finance by leveraging the frameworks already established for practical implementation, while also enhancing opportunities to raise awareness and understanding among a broad range of investors, including individual investors.

3.2 Sustainable Finance Framework

In Japan, several guidelines and frameworks have been established to promote sustainable finance. These include the following:

- Green Bond Guidelines (Ministry of the Environment);
- Green Loan Guidelines (Ministry of the Environment);
- Sustainability-Linked Bond Guidelines (Ministry of the Environment); and
- Sustainability-Linked Loan Guidelines (Ministry of the Environment).

The Green Bond Guidelines and Green Loan Guidelines were revised in July 2025 to expand the green list set out in Appendix 1, Schedule 1.

3.3 Access to Green Financing

In Japan, access to green bonds expanded rapidly following the Ministry of the Environment's first green bond guidelines in 2017 establishing a framework of issuance, and the amount of green bonds issued by domestic entities in 2023 exceeded JPY3 trillion. In addition, the development of domestic guidelines for various types of sustainable finance, as shown in **3.2 Sustainable Finance Framework**, has led to access to sustainable finance other than green bonds. As mentioned in **1.1 General ESG Trends**, the GX Economic Transition Bond was also issued 2024 onwards as the world's first state-sponsored transition bond.

In addition to these developments, Japan has set up several information and data platforms to support access to valuable resources related to sustainable finance. Some of the key platforms include the following.

ESG Bond Information Platform (Japan Exchange Group)

Launched in July 2022 by the Japan Exchange Group, this platform aims to create an environment where both issuers and investors in green-related investments can access useful information. It provides centralised access to detailed data on ESG bonds, including:

- Green Bonds;
- Social Bonds;
- Sustainability Bonds;
- Sustainability-Linked Bonds;
- Transition Bonds; and
- Transition-Linked Bonds.

The platform includes links to bond-related information, issuer details (including ESG strategies), evaluation data, and reporting information, making it a comprehensive resource for sustainable finance participants.

Green Finance Portal (Ministry of the Environment)

Managed by Japan's Ministry of the Environment, this portal serves as a central hub for information on green finance, providing resources to support investment in environmentally sustainable projects and initiatives.

Financial Products Contributing to Sustainable Development Goals (Securities Dealers Association)

The Securities Dealers Association offers information on financial products designed to contribute to the SDGs. This platform highlights various investment options, such as SDG-linked bonds, and provides resources to help investors to make investments for their sustainability objectives.

3.4 Stranded Assets and Non-Bankables

The Japanese government currently views transition finance as a crucial tool for enabling sectors that are difficult to decarbonise – often referred to as "hard-to-abate" sectors – to achieve long-term decarbonisation to conform to their transition strategies. Given the technical challenges associated with decarbonisation, these sectors require specialised financial mechanisms to support their transformation. As such, the government is actively working to promote the development and adoption of transition finance, focusing on improving its accessibility and reliability.

Specifically, the government is engaged in a range of initiatives to support the growth of transition finance. These efforts include:

- development of basic guidelines;
- sector-specific technology roadmaps;
- support for model cases; and
- examination of finance-driven emissions.

3.5 Challenges Ahead

Greenwashing

Amid the increasing number of domestic and international funds that highlight ESG in their names and investment strategies, concerns have been raised in Japan regarding whether their actual investment practices conform to these claims, commonly referred to as the issue of "greenwashing". In response, FSA began conducting surveys of Japan asset management companies and investment trusts from November 2021. In May 2022, the FSA summarised its findings in the Progress Report on the Sophistication of Asset Management Operations 2022, under the section "Expectations for Asset Management Companies Handling ESG Investment Trusts".

Based on this report, the FSA revised the comprehensive supervisory guidelines for financial instruments business operators in March 2023. These revisions define the scope of ESG investment trusts and establish specific criteria for verifying both the disclosure of ESG-related information for publicly offered investment trusts and the organisational frameworks of investment trust management companies.

For more information on ESG labels, please refer to **5.3 Regulation of ESG Labels**.

Financed Emissions

International financial alliances, such as GFANZ, supported by major financial institutions, require member institutions to pursue ambitious net-zero targets, including the emissions of their investee companies referred to as financed emissions. Some financial institutions, however, are concerned that providing capital to hard-to-abate industries, where immediate decarbonisation is challenging, may temporarily increase their financed emissions. This concern could potentially lead institutions to refrain from investing in such sectors.

In response to this issue, METI, FSA and the Ministry of the Environment established a working group comprising globally active financial institutions. In October 2023, the group published its Approach to Addressing Challenges of Financed Emissions. This document clarifies the expected roles of financial institutions in achieving carbon neutrality and the characteristics of financed emissions. It also proposes solutions to ensure that financing for decarbonisation innovation and transitions in hard-to-abate industries is appropriately recognised and promoted. The proposed solutions are categorised into two areas:

- methods for calculating and disclosing financed emissions; and
- methods for disclosing indicators other than financed emissions.

4. ESG Due Diligence

4.1 Soft Law Becoming Hard Law

Within the overall context of ESG, the trend of transitioning from soft law to hard law, while not as pronounced as in the EU, also appears to be gaining traction in Japan.

The field of Governance has traditionally been subject to regulation under hard laws, such as the Companies Act, the Financial Instruments and Exchange Act, and stock exchange rules. It is anticipated that governance will continue to see strengthened regulation through hard law in the future.

Environment has historically been partially regulated by hard laws related to environmental protection. In recent years, even areas previously governed primarily by soft law, such as climate change, have seen the introduction of hard law regulations, including the Act on Promotion of Global Warming Countermeasures and the Building Energy Efficiency Act. This trend is expected to continue.

With respect to Social, while labour issues have traditionally been regulated through hard laws, such as labour laws, the protection of self-employed individuals not recognised as workers, such as gig workers, has been inadequate. This situation has begun to change with the enactment of the Freelance Law, effective November 2024, which establishes the responsibilities of contractors towards self-employed individuals, bringing this area under hard law regulation. Although the regulation of the social aspect, including human rights, remains limited under hard law, it is expected that the transition from soft law to hard law in this area will continue in the future.

4.2 Towards Vertical Responsibilities

In Japan, companies are not legally obliged to conduct supply chain due diligence. However, it is not uncommon for Japanese companies engaged in global transactions to be requested by overseas business partners to conduct supply chain due diligence and provide confirmation. Additionally, some Japanese companies in specific industries manage their supply chains down to the end stages and are known to implement supply chain due diligence in certain cases.

Furthermore, Japan established the “Guidelines on Respecting Human Rights in Responsible Supply Chains” on 13 September 2022. While these guidelines are not legally binding, they call on all companies conducting business activities in Japan to carry out human rights due diligence for their supply chains. Furthermore, industry-specific guidelines, such as those for the textiles industry, are being developed. In industries where human rights violations are more likely to occur in the supply chain, the necessity of human rights due diligence is expected to gain greater recognition moving forward.

Moreover, the EU Corporate Sustainability Due Diligence Directive (CSDDD) is expected to have extraterritorial application to certain Japanese companies. For these companies, compliance with the directive will likely lead to the implementation of human rights due diligence in the future.

4.3 Partner Selection

Japan’s guidelines are not legally binding, so their impact on companies’ supply chain selection remains unclear at this stage. However, there seems to be a growing consensus that engaging with business partners who pose human rights or environmental risks represents a potential liability for companies when selecting their supply chains. Therefore, it will be important to closely monitor developments in this area going forward.

4.4 ESG in M&A Due Diligence

In M&A transactions, there is growing interest from buyers in assessing whether the target company has any ESG-related issues. This has led to an increasing trend of conducting ESG due diligence, including incorporating ESG-related representations and warranties in SPAs, as well as addressing ESG-related deficiencies and establishing ESG frameworks during the post-merger integration (PMI) phase.

Currently, ESG regulations in Japan are relatively lenient towards unlisted companies, so ESG due diligence is not yet considered mandatory in M&A transactions. However, as ESG regulations are expected to become stricter through hard law and to expand to cover unlisted companies, addressing ESG considerations in acquisitions of unlisted companies is expected to become a standard practice in the future.

5. Transparency and Reporting

5.1 Key Requirements

As referenced in **2.2 Differences Between Listed and Unlisted Entities**, the Corporate Governance Code stipulates that listed companies should appropriately disclose their sustainability initiatives when presenting management strategies. This includes providing clear and specific information on investments in human capital and intellectual property, ensuring alignment with their management strategies and challenges.

In particular, companies listed on the Prime Market are expected to gather and analyse necessary data on the impact of climate change-related risks and opportunities on their business activities and earnings. They are also encouraged to enhance the quality and quantity of disclosures in line with internationally recognised frameworks such as the Task Force on Climate-Related Financial Disclosures (TCFD) or equivalent standards.

As noted in **1.4 Governance Trends**, in March 2025, the Sustainability Standards Board of Japan (SSBJ) published the finalised version of the SSBJ Standards. The Financial Services Agency (FSA) subsequently outlined a broad roadmap for the disclosure of sustainability information in securities reports, and it indicated that the SSBJ Standards will apply to all or certain companies listed on the Tokyo Stock Exchange Prime Market, with companies having a market capitalisation of JPY3 trillion or more expected to comply starting from the fiscal year ending March 2027.

5.2 Transition Plans and ESG Targets

In Japan, there are currently no regulations that legally require companies to publish transition plans or commit to specific targets. While companies listed on the Prime Market are encouraged under the Corporate Governance Code to enhance disclosures based on frameworks such as the TCFD, the disclosure of transition plans is not mandatory.

However, companies participating in the GX League are required to register data such as emission reduction targets. As of 2024, the GX League includes over 700 companies, collectively accounting for more than half of Japan's GHG emissions. Consequently, the publication of transition plans and emission reduction targets is expected to gain momentum.

In the finalised SSBJ Standards published in March 2025, companies with climate-related transition plans are required to disclose the specific content of those plans, including the key assumptions used in their development. Companies listed on the Prime Market are expected to be sequentially required to disclose sustainability information in accordance with the SSBJ Standards, based on their market capitalisation. Going forward, companies subject to the requirements are expected to be required to disclose their climate-related transition plans.

Additionally, companies subject to the EU's Corporate Sustainability Reporting Directive (CSRD) through its extraterritorial application will need to present transition plans in accordance with CSRD requirements.

5.3 Regulation of ESG Labels

The following restrictions and conditions apply to making sustainability claims and to ESG labels.

Act Against Unjustifiable Premiums and Misleading Representations

Promotional practices aimed at environmentally conscious consumers must be substantiated by reasonable evidence. Claims such as “sustainability”, “biodegradability”, “environmentally friendly” or “carbon neutral” made without adequate proof may violate the Act Against Unjustifiable Premiums and Misleading Representations. Such representations could be deemed misleading if they falsely suggest superior quality or environmental benefits.

Consumer Contract Act

Under the Consumer Contract Act, if a business provides false or exaggerated explanations about its environmental matters – such as “sustainability”, “biodegradability”, “environmentally friendly”, “carbon neutral” – that do not conform with the actual performance of the product or service, consumers who are misled may rescind their contracts based on such false representation.

Unfair Competition Prevention Act

Displaying claims such as “sustainability”, “biodegradability”, “environmentally friendly”, “carbon neutral” contrary to actual performance, which results in unfairly attracting customers from competitors and causing or potentially causing harm to other businesses’ commercial interests, may constitute an act of unfair competition subject to injunctions. If the act is deliberate or negligent, it may also be subject to claims for damages.

Energy Conservation Act and Building Energy Conservation Act

For certain products, such as home appliances, buildings, building materials and vehicles, laws mandate the use of energy efficiency labelling under the energy conservation labelling system. Misrepresentation of performance that violates government standards is subject to recommendations, orders, public disclosure and penalties.

5.4 Supervision

In Japan, the following regulatory authorities oversee compliance with ESG disclosures:

- Financial Services Agency (FSA);
- Tokyo Stock Exchange (TSE); and
- Public Prosecutors Office.

Regulatory bodies responsible for supervising ESG marketing to protect consumers include the Consumer Affairs Agency, which administers the Act Against Unjustifiable Premiums and Misleading Representations, and the Japan Fair Trade Commission (JFTC), which enforces the Unfair Competition Prevention Act.

5.5 Enforcement

False Statements in Disclosures Under the Financial Instruments and Exchange Act

The Financial Instruments and Exchange Act mandates the disclosure of ESG-related initiatives in sections such as “Approach to and Initiatives for Sustainability” and “Employee Status” in securities reports. If these disclosures include “false statements on material matters” or “omissions of material facts that should be disclosed”, they may be deemed false statements, subjecting the company to penalties such as:

- fines;
- criminal sanctions;
- administrative measures; and
- civil liabilities.

If forward-looking statements disclosed in the securities report differ from actual outcomes, companies are not immediately held liable for false statements, provided they include reasonable and specific explanations deemed acceptable. This is expressly set out in the Guidelines for Corporate Disclosure.

Currently, the Financial Services Agency’s Working Group on the Disclosure and Assurance of Sustainability Information is discussing the introduction of safe harbour provisions. This is in response to concerns that because sustainability information is generally more uncertain than financial information, companies may be reluctant to disclose it proactively due to potential liability for misstatements or inaccuracies.

In particular, with respect to sustainability information on Scope 3 greenhouse gas (GHG) emissions – which often relies on data obtained from third parties outside the company’s control or on estimates – the Working Group has decided to prioritise the establishment of a safe harbour. In its interim summary of key issues (published in July 2025), the Working Group reached broad agreement that companies would not be held liable for misstatements in quantitative Scope 3 GHG emissions data if the following conditions are met:

- the company has conducted appropriate internal review of the suitability of the third-party data used (including the appropriateness of how the data was obtained) and the reasonableness of any estimates, and has provided explanations of these reviews; and
- the disclosed information falls within a range generally considered reasonable.

Additionally, some members of the Working Group have expressed the view that the scope of the safe harbour should be expanded more broadly to cover value chain information in general. Discussions on the details, including the content of the safe harbour, eligibility requirements, scope of application, and its effects, are expected to continue.

False Statements in Disclosures Under the Corporate Governance Code

Under the Corporate Governance Code, sanctions under the Tokyo Stock Exchange's listing rules apply only if a company fails to submit the required disclosures or does not follow the "comply or explain" principle.

These sanctions include:

- designation as a security on alert;
- requests for improvement reports;
- public announcements; and
- fines for breach of listing agreements.

False statements, however, are not subject to these sanctions.

5.6 Expected Progress

For disclosure items related to climate change, the Corporate Governance Code currently requires companies listed on the Prime Market to disclose such information as a de facto obligation. For companies not listed on the Prime Market, disclosure is only required if the company deems the information to be significant.

Even among listed companies, there are differences in company size and varying levels of readiness for sustainability disclosures. As a result, the scope of required sustainability disclosures is being expanded gradually. However, as noted in **1.4 Governance Trends**, in March 2025, the Sustainability Standards Board of Japan (SSBJ) published the finalised SSBJ Standards. A broad roadmap has been established for the disclosure of sustainability information in securities reports, indicating that the Standards will apply to all or certain companies listed on the Tokyo Stock Exchange Prime Market, with companies having a market capitalisation of JPY3 trillion or more expected to comply starting from the fiscal year ending March 2027.

Looking ahead, companies are expected to need to secure the necessary personnel and develop appropriate information-gathering systems and data infrastructure in order to prepare disclosures that comply with the SSBJ Standards.

6. Climate and ESG Litigation

6.1 Instruments for ESG Litigation

Japanese Legal System and ESG-Related Litigation

Unlike the United States, the Japanese legal system does not have mechanisms such as class action lawsuits, which allow a large group of plaintiffs to collectively bring a case against a company. Similarly, discovery procedures, which enable parties to obtain evidence from opposing parties during litigation, are not part of the Japanese legal system. Additionally, legal proceedings in Japan often take a long time, and complex cases like ESG-related lawsuits can take several years to reach a decision.

For plaintiffs, filing ESG-related lawsuits against companies poses significant challenges, including the financial burden of litigation and the difficulty of gathering evidence. Moreover, standing is required to bring a lawsuit, and this requirement can sometimes pose a hurdle for ESG-related claims where harm may be diffuse or collective (eg, environmental damage or corporate governance failures affecting society at large).

Thus, initiating ESG-related lawsuits against companies in Japan is not an easy task. However, such litigation can be pursued through the following methods.

Tort claims

If corporate activities have a negative impact on ESG factors, plaintiffs may file injunctions based on violations of personal or property rights or seek damages based on tort claims. For example, in Japan, there have been cases where residents living near planned thermal power plants have filed lawsuits against companies, seeking injunctions or damages based on tort law. Recently, in August 2024, 16 young people residing in Japan filed partial injunction lawsuits against ten of the country's major thermal power companies, demanding that CO_2 emissions be reduced at least to the levels indicated by the IPCC. These cases, known in Japan as the "Youth Climate Lawsuits", are currently under review.

Injunctions or damage claims by qualified consumer organisations

As noted, Japan does not have a class action system. However, qualified consumer organisations, certified by the government, can file lawsuits for injunctions or damages related to greenwashing. That said, there have been no known cases of this occurring to date. There is, however, a case where an NGO filed a complaint with an advertising self-regulation body, alleging that a specific company's advertisement was an instance of greenwashing. The body declined to review the complaint, stating that the matter exceeded its capacity.

Shareholder derivative suits

It is possible for shareholders to file derivative lawsuits alleging a breach of directors' duty of care in relation to the company's ESG initiatives. However, it would appear that no such cases have been brought in Japan to date.

6.2 Climate Activism

Domestic and international environmental NGOs are increasingly playing a significant role in ESG matters. In recent years, there has been a growing trend of NGOs becoming shareholders in Japanese companies and exercising shareholder rights, including the submission of shareholder proposals at general meetings. Notably, environmental NGOs both in Japan and abroad have submitted shareholder proposals to Japanese companies, urging them to strengthen measures against climate change.

Additionally, major proxy advisory firms have reportedly established policies requiring listed companies to improve gender diversity on their boards of directors. Furthermore, as noted in **6.1 Instruments for ESG Litigation**, the Youth Climate Lawsuits are being supported by environmental NGOs in Japan.

6.3 Greenwashing

In December 2022, the Consumer Affairs Agency ordered ten companies selling biodegradable plastics to take corrective action after requesting evidence to support their claims and determining that no reasonable basis was provided.

An earlier case occurred in 2008, when the Japan Fair Trade Commission issued corrective orders to eight major paper manufacturers for misleading representations regarding recycled paper content. This became a significant social issue, with the Paper Manufacturers Association and the presidents of five major companies holding a press conference to announce a contribution of JPY1 billion towards environmental conservation.

There appear to have been no cases in Japan where investors have brought claims alleging greenwashing.

As noted in **6.1 Instruments for ESG Litigation**, there have been cases in which NGOs filed complaints with advertising self-regulatory bodies, claiming that certain companies' advertisements constituted greenwashing. However, these bodies refused to review the complaints, stating that the matters were beyond their review authority, and no further examination has been conducted.

6.4 A Turbulent Future Ahead

Japan is often described as having a culture that tends to avoid litigation, especially when compared to Western countries. There are few cases where citizens use lawsuits to assert their rights against the government or corporations on ESG issues. This may partly stem from systemic constraints, such as the absence of a class action system like in the US and the high costs individuals face when initiating lawsuits.

In addition, Japanese companies generally demonstrate a strong commitment to complying with legal frameworks and norms. Many Japanese companies demonstrate a high level of responsibility towards environmental and social issues, integrating these concerns into their business practices. For example, Japan has the highest number of companies signing the TCFD among all countries. This corporate culture likely contributes to the avoidance of lawsuits, as companies often take proactive measures to address issues early and mitigate litigation risks before disputes escalate.

On the other hand, Japan has a history of large-scale pollution lawsuits in the 1970s, driven by the severe environmental pollution issues of that era.

While ESG-related litigation remains limited in Japan today, the potential for an increase in such cases in the future continues to exist. This potential increase could be driven by:

- the introduction of mandatory legal ESG disclosures;
- growth in ESG investment; and
- the proliferation of ESG-related product labelling.

Additionally, as noted in **6.1 Instruments for ESG Litigation**, the Youth Climate Lawsuits have now been ongoing for one year and, depending on their outcomes, similar lawsuits may be filed in the future.

Trends and Developments

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TMI Associates

TMI Associates is one of Japan's top five law firms, with 670 attorneys and 100 patent/trade mark specialists, totalling 1,300 personnel as of October 2025. With offices in Shanghai, Silicon Valley, London, Paris and, most recently, Brussels, it provides a full spectrum of global legal services. Lawyer expertise covers corporate transactions, investment, trade, project and energy, ESG, M&A, intellectual property, and dispute resolution. The newly established Energy Practice Group offers specialised support for clients advancing carbon neutrality and ESG goals, with a focus on renewable energy and sustainable infrastructure. TMI remains committed to supporting Japanese and international clients as they navigate complex global markets and environmental initiatives.

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Introduction

In recent years, ESG (environmental, social and governance) considerations have become an essential aspect of corporate management in Japan. They are now widely recognised as factors for sustainable business growth and long-term corporate value.

In response to the growing interest in ESG from both businesses and the government, the Japanese government has been implementing a number of measures to promote ESG initiatives and public and private sector investment in them. This commitment is reflected in the Basic Policies for Economic and Fiscal Management and Reform 2025, released in June 2025. The policies include the need for strategic, long-term investments in areas such as:

- green initiatives;
- digital transformation;
- scientific and technological innovation;
- frontier exploration; and
- economic and energy security.

Environment

In October 2020, the government of Japan declared its aim to become carbon neutral, reducing overall greenhouse gas emissions to zero by 2050. Since then, the Japanese government's efforts towards carbon neutrality have accelerated. The government of Japan has set out a programme to realise carbon neutrality, strengthen Japan's industrial competitiveness and achieve economic growth by promoting Green Transformation (GX), which will shift the industrial and social structures – traditionally reliant on fossil fuels – towards a cleaner, more sustainable energy system. In February 2023, a basic policy for realising GX – a roadmap for the next ten years – was formulated. This basic policy sets out a programme to promote policies to realise GX, such as:

- making renewable energy the main source of power;
- building production and supply networks for hydrogen and ammonia;
- supporting upfront investment using GX Economic Transition Bonds; and
- introducing carbon pricing such as emissions trading schemes.

Specific measures have already been introduced to realise these policies.

The key to achieving carbon neutrality is how to extract the large amount of investment that is at risk, and several measures are being implemented to achieve this by 2025.

Renewable energy projects

Regarding renewable energy projects, as the introduction of solar and onshore wind power increases in Japan, a country with a small land area, there are concerns about co-existence with local communities and the disposal of used solar panels, and policies have been put in place to address these issues.

In April 2024, amendments were enacted to require the holding of explanatory meetings for local residents when applying for accreditation of business plans or change in accreditation of business plans in connection with business transfers for renewable energy power generation projects above a certain scale under the Act on Special Measures Concerning Promotion of Utilization of Electricity from Renewable Energy Sources (the "Renewable Energy Act"). These meetings must strictly comply with detailed requirements provided by the Renewable Energy Act and guidelines of holding explanatory briefings and others, and the resulting strict procedures have increased the burden on project developers.

With respect to the regulations on recycling of solar panels, which had been under consideration for introduction in 2025, the overall framework is now being re-examined following comments from the Cabinet Legislation Bureau. Under the previous policy direction, manufacturers and importers of solar panels were expected to bear the recycling costs. However, the Cabinet Legislation Bureau has raised concerns regarding consistency with other waste recycling legislation, where such costs are generally borne by the owner. As a result, discussions on system restructuring are currently underway.

In the offshore wind sector, an amendment to the Act on Promoting the Utilization of Sea Areas for the Development of Marine Renewable Energy Power Generation Facilities was passed in June 2025, introducing a new permitting framework for installations located within the Exclusive Economic Zone (EEZ). In addition, two further areas have recently been designated as promotion zones for offshore wind development, and procedural steps for project formation are progressing. On the other hand, challenges remain: in August 2025, a consortium led by Mitsubishi Corporation, which had been selected as a Round 1 operator, announced its withdrawal from the project due to the rising development costs. Increasing material and construction costs result in a deterioration in the business environment. The government is currently assessing measures to improve industry conditions, including for areas where tender processes have already concluded.

Battery storage projects

In recent years, the demand for utility scale batteries storage projects has risen sharply alongside the expansion of renewable energy. According to the Agency for Natural Resources and Energy, the volume of applications for grid connection of utility-scale batteries has reached approximately 143 million kW – about 2.4 times higher than at the end of June 2024 – while contract applications have reached roughly 18 million kW, over the same period.

The battery storage projects are expected to continue their rapid growth; however, the increasing volume of end-of-life batteries is emerging as a future challenge. Used industrial batteries are classified as specially controlled industrial waste, requiring strict management, transportation and disposal. For example, operators must prepare manifests and report disposal volumes to local authorities in accordance with the Waste Management and Public Cleansing Act. At the same time, the Ministry of the Environment's wide-area certification system allows certified operators to collect and recycle batteries in bulk, providing an organised framework for end-of-life battery management.

Furthermore, the Ministry of Economy, Trade and Industry (METI), in its Sector-Specific Investment Strategy to Promote Investment for GX Realization (published on 27 December 2024), highlighted several challenges facing the battery sector. These include greenhouse gas emissions and large-scale resource consumption and disposal associated with battery manufacturing and disposal, as well as human rights and environmental risks related to the extraction and processing of minerals. Ensuring sustainability throughout the supply chain is therefore recognised as an urgent priority.

At the international level, audits of human rights and environmental risks related to nickel, lithium and graphite remain in the early stages, and for cobalt, audit frameworks addressing environmental risks have not yet been established. In response, METI is reviewing methods for conducting due diligence to assess human rights and environmental risks throughout the battery supply chain – taking into account the European Battery Regulation, which came into effect in August 2023 – and is working to refine and enhance due diligence frameworks.

Formulation and review of the GX2040 Vision, the Seventh Energy Master Plan and the Plan for Global Warming Countermeasures

Japan has revised its key climate and energy policies, including the GX2040 Vision, the Seventh Energy Master Plan, and the Plan for Global Warming Countermeasures in February 2025. These plans maintain the goal of achieving carbon neutrality by 2050. They set intermediate targets for greenhouse gas (GHG) reductions: 60% by 2035 and 73% by 2040 (compared to 2013 levels). The government will actively integrate energy and economic policies to enhance the business environment for decarbonisation.

Formalisation of an emissions trading system

Japan has been testing a voluntary emissions trading system (ETS) since 2023. By 2026, the government plans to legalise and implement the ETS, making participation mandatory for companies emitting over 100,000 tons of CO_2 annually. Trading will commence in 2027. Participating firms must submit transition plans outlining their emissions reduction strategies.

Social

Overview

In 2025, the importance of the Social aspect of ESG among Japanese companies continues to grow, with particular attention on business and human rights. Although there are not yet any legally binding laws on business and human rights, companies are now expected to ensure that no human rights violations occur not only within their own operations but also throughout their entire supply chain, and to address any issues that arise. This trend is driven by:

- the acceleration of international efforts under the United Nations Guiding Principles on Business and Human Rights;
- the development of hard law – such as the regulations that, in 2024, made human rights due diligence mandatory for companies in the EU; and
- the increased presence of various soft law guidelines.

These developments have been influencing Japanese companies, serving as a driving force for implementing human rights due diligence and improving disclosures.

On the other hand, Japan still lacks a comprehensive legal framework in this area. Consequently, voluntary initiatives based on soft law – such as guidelines published by the Ministry of Economy, Trade and Industry (METI), the Ministry of Foreign Affairs, and the government's National Action Plan (NAP) on Business and Human Rights – remain predominant. Nevertheless, scrutiny from both investors and consumers is intensifying. Investors increasingly expect companies to integrate human rights compliance into their corporate strategies and risk management. Consequently, human rights issues are becoming a key factor in enhancing corporate value and maintaining competitive standing in the global market.

In Japan, efforts to improve working conditions for employees, collectively referred to as "work style reforms", have been continuously promoted. Additionally, companies with complex supply chains – such as automobile manufacturers – have long been taking steps to manage these chains, even if they have not explicitly referred to these measures as "human rights due diligence". The current heightened focus on human rights appears to be accelerating such efforts and influencing a broader range of companies. Moreover, with the expansion of ESG investment, there is a growing risk that companies failing to strengthen their human rights initiatives will be downgraded by investors, thereby losing competitiveness in the capital markets.

With this backdrop in mind, key points concerning the Social landscape in Japan in 2025 are as follows.

Human rights due diligence

In Japan, there are currently no laws or regulations mandating human rights due diligence for companies. However, in 2022, the government issued the Guidelines on Respect for Human Rights in Responsible Supply Chains, which, while not legally binding, call on businesses operating in Japan to make efforts to respect human rights. Additionally, some Japanese companies may be subject to the extraterritorial application of the EU Corporate Sustainability Due Diligence Directive (CSDDD) and the Corporate Sustainability Reporting Directive (CSRD) issued by the EU. Therefore, as the implementation timelines approach, Japanese companies must also take steps to comply with these regulations.

Enforcement of the Freelance Business Transaction Optimization Act (new freelance law)

The Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators (commonly known as the "Freelance Business Transaction Optimization Act") came into force on 1 November 2024, and 2025 marks its first full year of implementation.

The law seeks to promote fair transactions and improve working conditions for freelancers amid the growing diversification of work styles.

Clients are now required to:

- clearly specify transaction terms in writing or electronically;
- set deadlines for payment within 60 days of delivery; and
- ensure timely payment.

In addition, clients must take measures to prevent harassment against freelancers by establishing consultation systems and recurrence prevention frameworks.

Since its enforcement, the government has published detailed operational guidelines and initiated compliance inspections, positioning the Act as part of Japan's broader efforts to strengthen "Social" elements of ESG and human capital management.

Governance

Overview

Corporate governance refers to the framework for balancing the interests of stakeholders such as the following:

- the company itself;
- the company directors;
- controlling and minority shareholders; and
- creditors.

Specifically, it involves ensuring transparency and fairness in corporate activities to prevent conflicts of interest and promote appropriate decision-making. Key governance mechanisms include:

- "reporting", which involves the disclosure and sharing of information;
- "corrective action" to address problems when they arise; and
- "sanctions" imposed in cases of non-compliance.

In Japan, corporate governance has traditionally been governed by hard law, including the Companies Act, the Financial Instruments and Exchange Act, and stock exchange regulations. In recent years, however, the importance of soft law – such as the Corporate Governance Code and the Stewardship Code, which are not legally binding but carry substantial influence – has grown significantly.

The board of directors, which plays a key role in corporate governance, is subject to hard law requirements such as the mandatory appointment of independent directors under the Companies Act. At the same time, the Corporate Governance Code sets out recommendations to enhance board effectiveness, including strengthening the function of independent directors. It also encourages consideration of gender diversity in board composition, promoting the appointment of women to executive roles.

In the context of ESG, there is a growing trend to consider relationships not only with shareholders and directors, but also with a wider range of stakeholders, such as consumers and local communities. This reflects a broader shift – driven by the rise of ESG as a concept – towards emphasising corporate social responsibility and expanding the scope of governance from a "shareholder-centric" approach to one that is "stakeholder-inclusive".

Furthermore, as set out in METI's Practical Guidelines for Corporate Governance Systems, corporate governance is increasingly being understood as a tool to support appropriate risk-taking and decision-making by companies. As a result, the development of governance frameworks aimed at enhancing long-term corporate value and sustainability is becoming ever more important.

Based on these developments, recent notable trends in the "G" (Governance) of ESG in Japan as of 2025 are as follows.

Disclosure of sustainability information in securities reports and the development of the SSBJ Standards

Background

The updated Corporate Governance Code of June 2021 states that companies should appropriately disclose their sustainability initiatives. In particular, companies listed on the Prime Market are encouraged to enhance the quality and quantity of their climate-related disclosures based on the Task Force on Climate-related Financial Disclosures (TCFD) or an equivalent international framework.

Following this, the Disclosure Working Group Report published by the Financial System Council in June 2022 proposed the creation of a dedicated section in securities reports for integrated sustainability disclosures. Based on this recommendation, the Cabinet Office Ordinance on Disclosure of Corporate Affairs, etc was amended on 31 January 2023, to add sustainability disclosure items. As a result of the revision, a new section titled "Sustainability-related Philosophy and Initiatives" was added to securities reports, requiring companies to disclose sustainability-related information.

Overview of the SSJB Standards

In response, the Sustainability Standards Board of Japan (SSBJ), established in July 2022, published in March 2025 the following three standards that conform to the IFRS Sustainability Disclosure Standards (ISSB Standards) issued by the International Sustainability Standards Board (ISSB). The SSBJ Standards have also been confirmed by the ISSB as ensuring functional equivalence with the ISSB Standards.

(a) Application of Sustainability Disclosure Standards (the universal standard for sustainability disclosures);
(b) General Disclosure Standard (Thematic Disclosure Standard No 1); and
(c) Climate-Related Disclosure Standard (Thematic Disclosure Standard No 2).

Scope of application and expected timeline for SSBJ Standards

Regarding the scope of companies subject to disclosure under the SSBJ Standards, which is planned to cover all or certain companies listed on the Tokyo Stock Exchange Prime Market, the Financial Services Agency's Working Group on the Disclosure and Assurance of Sustainability Information published an interim summary of key issues in July 2025. In this summary, the Working Group presented the following roadmap for the implementation timeline of the SSBJ Standards.

Among these, items (a) and (b) are to be finalised as stated below, while item (c) will continue to be reviewed based on domestic and international developments, with a conclusion targeted within this year.

(a) Companies with a market capitalisation of JPY3 trillion or more – fiscal year ending March 2027.
(b) Companies with a market capitalisation of JPY1 trillion to less than JPY3 trillion – fiscal year ending March 2028.
(c) Companies with a market capitalisation of JPY500 billion to less than JPY1 trillion – fiscal year ending March 2029.

Developments at shareholders' meetings of Japanese companies

In recent years, even in Japan, there has been a growing trend of NGOs and similar organisations becoming shareholders of Japanese companies and exercising shareholder rights, including the right to submit shareholder proposals at shareholders' meetings. Notably, both Japanese and international environmental NGOs have submitted shareholder proposals urging Japanese companies to strengthen their climate change measures.

In addition, it appears that major proxy advisory firms have begun to establish policies requiring listed companies to ensure gender diversity on their boards of directors.

ESG-related litigation (including climate change litigation)

In Japan, ESG-related litigation remains challenging for plaintiffs due to several institutional limitations within the legal system. The country lacks class action and discovery systems, and lawsuits can take years to reach a judgment. Plaintiffs also face burdens related to litigation costs, evidence collection and standing to sue. Nonetheless, from a legal standpoint, actions such as injunctions and claims for damages based on tort, greenwashing lawsuits filed by qualified consumer organisations and shareholder derivative actions alleging a breach of directors' duty of care are theoretically possible.

In practice, there have been a few notable cases of ESG-related litigation in Japan. For example, a lawsuit has been filed by residents opposing the construction of thermal power plants, and a complaint related to greenwashing has been submitted to advertising self-regulatory bodies. Recently (in August 2024), 16 young people residing in Japan filed partial injunction lawsuits against ten of the country's major thermal power companies, demanding that CO_2 emissions be reduced at least to the levels indicated by the IPCC. These cases, known in Japan as the "Youth Climate Lawsuits", are currently under review. In any event, although ESG litigation in Japan faces high hurdles due to institutional constraints within the legal system, it is expected to evolve further under the growing influence of both domestic and international hard and soft law developments.

NETHERLANDS

Law and Practice

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Contents

Stibbe is a leading, independent, international law firm with main offices in Amsterdam, Brussels and Luxembourg, as well as a branch office in London. It provides the highest-quality service in legal advice, transactions and litigation. The dedicated multidisciplinary teams are trusted legal advisers to clients that range from national and multinational companies and financial institutions to government organisations and other public authorities. The firm handles transactions, disputes and projects across a wide range of sectors. A thorough understanding of clients' commercial objectives enables the team to provide suitable and effective advice on complex legal issues and challenges. Stibbe works closely together with other international top-tier firms on cross-border matters outside its home jurisdictions; the firm's independence allows it to team up with any foreign law firm to suit clients' needs and preferences.

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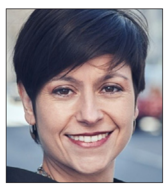

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1. Introduction

1.1 General ESG Trends

The past year has been filled with numerous significant developments related to ESG issues, affecting governments, businesses and investors not only in the Netherlands but all around the globe. ESG legislation has seen challenges in the past year, with a hard backlash in the USA and worries about competitiveness in the EU. This has led to considerable simplification efforts in Brussels and thus affects stakeholders not only in the Netherlands, but also in other EU member states.

There has not been an observable new surge in climate litigation; however, there have been considerable developments. The Court of Appeals in The Hague confirmed that fossil fuel companies like Shell, which in the Court's view have contributed significantly to climate change while simultaneously possessing the means and influence to combat it, have a special responsibility to mitigate dangerous climate change, but it did reject the measures the claimant demanded. The case now awaits reconsideration by the Dutch Supreme Court. The recent landmark advisory opinion from the International Court of Justice on the obligations of states regarding climate change provides the most vulnerable and directly impacted states with additional arguments to challenge industrialised states in both diplomatic and legal proceedings.

Finally, directors are increasingly being held accountable for the ESG compliance of their companies, and there is a trend towards soft law becoming hard law – for example, in the field of business and human rights.

1.2 Environmental Trends

There have been several regulatory developments during the past months regarding the environmental aspect of ESG. At the national level, the Dutch Environment and Planning Act (*Omgevingswet*) entered into force at the beginning of 2024. This new law brings together the majority of existing laws and regulations regarding the built environment, housing, infrastructure and the environment, as well as nature and water. It furthermore implements several EU Directives and international treaties. This law has been in force now for about two years, but due to transitional laws and regulations, case law on the Environment and Planning Act is only just beginning to emerge.

The Environment and Planning Act introduces several new instruments for the competent authorities to regulate the physical environment, including the programmatic approach, the project decision and the environmental plan. Under the Environment and Planning Act, natural persons and businesses that want to carry out activities that impact the physical environment can apply for one single permit covering all aspects of the activity at one online service counter. In principle, however, all previous environmental permits remain valid and businesses do not have to take any action if the manner in which they operate does not change. However, there will be more environmental rules in local regulation and more duties of care will apply. Many of them apply in addition to the permit, and complying with the permit can still lead to enforcement of an evident violation of the duty of care.

The requirements imposed on textile producers under Dutch rules in the context of extended producer responsibility (EPR) for textiles will be further intensified in the coming years. Producers are already required to report how much textile they place on the market. From August 2026, producers will also have to provide the Directorate-General for Public Works and Water Management (*Rijkswaterstaat*) with information about the collection, reuse and recycling of discarded products. Furthermore, textile producers must ensure that by 2026, 55% of the textiles they sold in 2025 (in kilograms) are prepared for reuse or recycled. This percentage will increase in the following years:

- In 2027: 60%
- In 2028: 65%
- In 2029: 70%
- From 2030: 75%

In October 2025, a European EPR scheme for textiles was introduced, by means of a change to the Waste Framework Directive. The Dutch EPR scheme for textiles may need to be adjusted because of this European EPR scheme – for example, because it is not allowed under the European EPR scheme that textile producers fulfil the EPR obligations themselves; they must appoint a producer responsibility organisation to fulfil the EPR obligations on their behalf.

Finally, new rules on industrial emissions (the Industrial and Livestock Rearing Emissions Directive, or "IED 2.0") entered into force in Brussels, which expanded the scope of the existing legislation to include, for example, pig and poultry farms. The revised law also aims to reduce administrative costs and make permitting for the industrial installations and farms concerned more efficient. In addition, industries must submit a transition plan that is in line with the goals of the Paris Agreement and must report on various environmental topics. EU member states have until 1 July 2026 to implement IED 2.0. However, there is still no draft of the Dutch implementation regulation available.

Typically, environmental problems in the Netherlands include the fact that many projects cannot proceed and permits are annulled or revoked because of nitrogen emissions. Water quality and water quantity are also not good in the Netherlands, which have led the *Rijkswaterstaat* to update and revise permits for industrial water discharges to national waters. Many governmental bodies have furthermore signed an agreement in which they agreed to tighten permit requirements concerning various emissions to the air.

The Dutch state is making agreements with huge industrial companies in the Netherlands concerning reductions of carbon dioxide emissions.

1.3 Social Trends

In relation to the social aspect of ESG, a legislative proposal regarding a licensing system for temporary employment agencies has been adopted by the Dutch Parliament and is now pending before the Dutch Senate. Under this proposal, temporary employment agencies will only be able to provide workers if they meet certain minimum requirements and obtain a licence. Companies will also be required to hire temporary workers solely through licensed agencies under penalty of considerable fines. The aim is to improve the position of workers, particularly migrant workers, and to ensure fair competition.

As of 1 January of this year, the Dutch tax authorities have begun enforcing regulations against "false self-employment" (*schijnzelfstandigheid*) under the Deregulation of Labour Relations Act (*Wet Deregulering Beoordeling Arbeidsrelatie*), with the aim of improving the position of workers who are unjustly denied employee rights and strengthening the social security system.

Last year, the implementation process of the EU Directive on equal pay through pay transparency and enforcement mechanisms started, and a concept proposal for the implementation was published for consultation in the first quarter of this year, a year later than expected. The EU Directive must be fully implemented by 7 June 2026.

In the last year, there was a slight increase in cases against corporations where the claimants based their case on infringement of human rights. In the case against Shell mentioned in **1.1 General ESG Trends**, the claimant Milieudefensie based its case on, among other things, Articles 2 and 8 of the European Convention on Human Rights (ECHR), and in a mass-claims case against the pharmaceutical company Abbvie, claimant Stichting Farma ter Verantwoording resorted to, among other things, Article 2 ECHR and Article 12 of the International Covenant on Economic, Social and Cultural Rights.

From an EU perspective, the Corporate Sustainability Due Diligence Directive (CSDDD) will require large companies to identify and – where necessary – prevent, end or mitigate adverse impacts of their business activities on human rights. However, the extent of the due diligence requirements has become uncertain due to the Omnibus proposals, which will be discussed in greater detail in **2.1 Developments in Corporate Governance** and **4. ESG Due Diligence**.

1.4 Governance Trends

Regarding the governance aspect of ESG, 2025 is the third year during which companies have worked with the new Dutch Corporate Governance Code and is the year that the risk management statement (as described in **2.2 Differences Between Listed and Unlisted Companies**) was introduced. This code explicitly states that directors are responsible for sustainable long-term value creation and that companies should develop policies addressing diversity and inclusion.

Furthermore, a members' initiative bill on Responsible and Sustainable International Business Conduct is pending before the Dutch Lower House, with the same objective as the CSDDD. So far, however, the Dutch Parliament has not discussed and voted on the bill in a plenary session, and any further process and discussion on the bill has been paused due to the Omnibus process regarding the CSDDD, since there are proposals for a stricter harmonisation clause within the CSDDD. This means that the bill might not contain more extensive obligations than the CSDDD. For further details of the bill, see **2.1 Developments in Corporate Governance**.

Finally, the Dutch government is working on several initiatives to establish legal business forms for social enterprises and not-for-profit companies. These include a social private limited liability company (*Besloten Vennootschap met een Maatschappelijk doel*, or BVm) and a legal form for steward-owned businesses. For the latter, a proposal was presented in January of this year. These developments are part of a larger trend, in which the relationship between a company and its shareholders is evolving. These issues are discussed in greater detail in **2. Corporate Governance**.

1.5 Government and Supervision

There has been an increase over the last years in the amount of ESG legislation in the Netherlands. The major share of this legislation is under EU auspices, as it covers issues that are difficult to address at the national level while maintaining a level playing field for companies.

Supervision authorities such as the Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten*, or AFM) and the Netherlands Authority for Consumers and Markets (*Autoriteit Consument & Markt*, or ACM) are often tasked with the enforcement of (new) ESG legislation, such as the CSDDD, the Batteries Regulation and the EU Deforestation Regulation (EUDR). As such, regulators play an important role in the promotion and uptake of ESG initiatives.

These authorities had been getting noticeably stricter in recent years, in order to ensure that companies properly adhere to rules concerning ESG issues. However, regarding more extensive and intricate due diligence obligations, the supervision authorities have announced a more lenient approach with a focus on co-operation towards compliance rather than harsh enforcement and immediate fines, such as the National Food and Consumer Product Safety Authority (*De Nederlandse Voedsel- en Warenautoriteit*) regarding the EUDR.

Alongside their enforcement tasks, the supervision authorities also play an important role by providing guidance on ESG legislation. The ACM, for example, has decided that banks are allowed to work together when preparing sustainability reports, and provided insight into the assessment of sustainability agreements between companies under EU competition law.

At the individual level, authorities are tending to take an increasingly cautious approach to ESG matters – for example, by imposing very strict obligations when issuing environmental permits. The authorities seem to prefer to be corrected by the judiciary for being too strict rather than for being too lenient. This might be the result of the outcome of certain lawsuits in which governments were held accountable for their actions/inaction – in the *Urgenda* case, for instance – and the occurrence of various environmental incidents during the past few years. Corporates can and do actively address this imbalance from a business perspective by engaging in constructive discussions with the authorities and, if the government asks too much, by making sure that the option for compensation is utilised. If this does not lead to a positive outcome, one can appeal against the decision of a supervision authority.

1.6 Market Participants

Companies, industries and large agricultural farms that fall within the scope of major ESG legislation such as the CSDDD, the Corporate Sustainability Reporting Directive (CSRD), the IED and the Emissions Trading System will be most affected by the recent regulatory developments. Moreover, the Ecodesign for Sustainable Products Regulation (ESPR) is expected to have a large impact on manufacturers producing goods for the EU market. The ESPR enables the European Commission (EC) to set performance and information requirements for almost all categories of physical goods to improve circularity, energy performance and other environmental sustainability aspects of products placed on the internal market.

In the coming years, the EC will set out those ecodesign requirements in so-called delegated acts. Requirements may cover various product aspects, such as durability, repairability or recycled content. The rules mainly target manufacturers, which are responsible for complying with the ecodesign requirements when designing and producing goods. However, the law also places certain obligations on distributors, importers, and providers of online marketplaces. As such, the regulation is expected to have a big impact on the economy as a whole. A first working plan has been published announcing delegated acts to be adopted for iron and steel (2026), for textile/clothing, tyres, aluminium and horizontal reparability requirements (2027), for furniture (2028), and for mattresses, and recycled content and recyclability of electric and electronic appliances (2029).

Furthermore, recent developments regarding sustainability claims will put pressure on all types of market participants to think carefully before making green claims about their products or organisational behaviour and to properly substantiate public claims regarding environmental impact or performance. In this regard, the recent judgment in the *Fossielvrij/KLM* case and the EU legislative proposal for a Green Claims Directive provide an interesting outlook for the future.

Finally, the EC and competition authorities are increasingly providing more space for market participants (read: competitors) that wish to collaborate in light of sustainability goals. In 2023, the EC published its updated Horizontal Guidelines, including a new section on competition and sustainability agreements, and the ACM updated its Sustainability Policy Rule not much later. Navigating EU competition rules will become increasingly important as more businesses seek to enter into environmental collaboration agreements.

1.7 Geopolitical Developments

At the EU level, we observe continuous policy and regulatory efforts aimed at strengthening competitiveness and improving prosperity. The EC's Strategic Agenda for 2024–29, which sets the EU's priorities for the next four years, already stressed the importance of reinforcing Europe's sovereignty in strategic sectors – for example, by reducing certain dependencies and diversifying supply chains. The agenda furthermore called for significant collective investment efforts and the pursuit of a just and fair climate transition. After the publication of a report by former European Central Bank president Mario Draghi, the Draghi report, on the future of the EU economy, these efforts have seen a significant scale-up. The Draghi report contained serious warnings on the state of the EU economy in comparison with those of the USA and China, and the ramifications for European independence and security.

In the EC working programme for 2025, these ambitions were reiterated and the EC announced the publication of a Clean Industrial Deal, a new Circular Economy Act, a new chemicals industry package, a Quality Jobs Roadmap, a Gender Equality Strategy, a new approach to competition policy and, most importantly, a series of so-called Omnibus packages to simplify the current body of European sustainability laws. These initiatives are expected to affect companies and their ESG policies throughout Europe.

The adopted amendments from the Omnibus have postponed certain ESG-focused due diligence requirements for companies, such as those in the CSRD, the CSDDD and the Batteries Regulation. The substantive proposals in the Omnibus packages that have been presented so far are still subject to the legislative procedure. These proposals aim at simplifying ESG requirements for companies and limiting and reducing administrative burdens while still adhering to their original goals. However, critics have vocally protested against these amendments, saying they amount to deregulation. Many argue that this is connected with the installation of the second Trump administration, which has publicly declared a "war" on ESG. The recently adopted framework for a US–EU trade agreement contains a clause which stipulates that the CSDDD and CSRD will not impose undue restrictions on transatlantic trade, interpreted by many as meaning that US companies will receive some form of an exemption. The framework agreement in general has not been received well in the EU.

In the Netherlands, the new coalition has fallen within one year and now functions as "demissionary" until a new coalition is formed after new elections in October 2025; this is not expected to happen before the end of the year. The coalition had not been able to implement any major ESG policies or regulations, and as a demissionary coalition it is not allowed to adopt any policies or regulations on certain subjects that have been declared "controversial" by parliament, such as emission reduction measures for the aviation sector, climate change, and animal welfare in the agricultural sector. A parliamentary majority has voted in favour of a national import ban on goods out of illegal Israeli settlements on the West Bank. We are also seeing efforts towards countermeasures against Israel at the EU level. With the progressive liberal party D66 winning the elections and having the right of initiative for the formation, a new coalition may implement more ambitious climate and ESG policies and regulations.

2. Corporate Governance

2.1 Developments in Corporate Governance

Corporate social responsibility (CSR), and accountability in this respect, is a hot topic in the Netherlands. National and international trends have developed whereby CSR-related rules based on voluntary adoption have been replaced by statutory regulations in the areas of transparency and due diligence.

European Initiatives

In December 2019, the EC introduced the European Green Deal, the purpose of which is to transform the EU into a modern, resource-efficient and competitive economy. Several legislative initiatives have since been taken, including the CSRD and the CSDDD. In January 2025, the EC presented the "Competitiveness Compass", a new roadmap to restore Europe's competitiveness and boost economic growth. The compass builds on the analysis of the Draghi report and provides a strategic framework for the EC for the next five years. As a result of this Draghi report, the Omnibus packages were introduced.

CSRD

The CSRD entered into force on 5 January 2023 and was due to be implemented by EU member states by July 2024. Several jurisdictions, including the Netherlands, missed this deadline. On 13 January 2025, the Dutch government submitted a bill to the Lower House which aims to implement the CSRD.

As from Financial Year 2024, companies falling under the scope of the CSRD will have to draw up an extensive sustainability report on the basis of European Sustainability Reporting Standards (ESRS). Although the CSRD focuses on reporting, the CSRD requirements also affect the governance of companies. The requirements under the CSRD may, for example, lead to changes in the role and composition of the management board and the supervisory board. The CSRD is being implemented in the Netherlands in the form of various laws and decrees and has not yet been finalised. The CSRD will be discussed in greater detail in **5. Transparency and Reporting**.

To ease the impact of these new obligations on smaller businesses, the EC adopted on 30 July

2025 a voluntary sustainability reporting standard for SMEs (VSME). Developed by the European Financial Reporting Advisory Group, this standard is intended to reduce the administrative burden by providing a common framework for responding to information requests from larger companies and financial institutions subject to the CSRD. SMEs may also choose to report under the VSME to improve access to sustainable finance and strengthen their resilience and competitiveness.

CSDDD

The CSDDD, which entered into force on 25 July 2024, seeks to harmonise EU member states' rules on supply chain due diligence. Under the CSDDD, large companies will need to adopt due diligence policies to identify, prevent or mitigate – and ultimately end – any adverse impact of their operations on human rights, the environment and good corporate governance (including corruption). In-scope companies also need to have a climate transition plan in place to ensure that their business strategy is compatible with limiting global warming to 1.5°C in line with the Paris Agreement. The EU member states have two years to implement the CSDDD into national laws and regulations. The CSDDD has not yet been implemented in the Dutch regulation.

Omnibus Packages

On 26 February 2025, the EC adopted two Omnibus packages intended to simplify ESG legislation and reduce compliance burdens while safeguarding competitiveness:

- The Omnibus I package is the most comprehensive and consists of various components amending, among other things, the CSDDD, the CSRD, (delegated regulations of) the Taxonomy Regulation and the Carbon Border Adjustment Mechanism.
- The Omnibus II package contains a proposal for a regulation amending – among other things – the Invest EU Regulation.

With regard to the Dutch corporate governance framework, the Omnibus I proposal is the most relevant. Firstly, the Omnibus I proposal includes amendments to the CSRD and CSDDD, granting the companies that fall in scope of these Directives additional time to prepare for compliance. The European Parliament approved these amendments on 3 April 2025 through a fast-track procedure, resulting in the so-called "Stop-the-Clock" Directive, which entered into force on 17 April 2025. This Directive postpones the reporting and due diligence obligations under both the CSRD and the CSDDD. Secondly, the Omnibus I proposal seeks to substantially narrow the scope and substantive obligations of the CSRD and CSDDD. This includes for the CSDDD, among other things, the removal of the EU-wide civil liability regime and the limitation of audits to "direct" business relationships, with "indirect" relationships audited only in specific circumstances.

National Initiatives

The Netherlands already has a specific law on human rights due diligence, but this law has still not entered into force. On 13 November 2019, the Duty to Prevent Child Labour Act (*Wet Zorgplicht Kinderarbeid*, or WZK) was published in the Dutch Bulletin of Acts and Decrees (*Staatsblad*). Under the WZK, every company selling goods or rendering services to Dutch end users must take due care to ensure that those goods or services have not been produced using child labour.

In addition, as mentioned in **1.4 Governance Trends**, a member's initiative bill on Responsible and Sustainable International Business Conduct is pending before the Dutch Lower House, with the same objective as the CSDDD. The bill provides for a general duty of care (due diligence) that applies to every Dutch company that knows or may reasonably suspect that its operations or that of its business relations may have adverse effects on human rights and the environment in a country outside the Netherlands. Furthermore, the bill requires certain large companies to exercise due diligence in their production chains, including the conduct of the company's business relations, such as suppliers. It is not certain yet whether this bill will enter into force, as it concerns more or less the same goals and obligations as the CSDDD.

2.2 Differences Between Listed and Unlisted Entities

The corporate governance requirements for listed and unlisted companies in the Netherlands differ.

For both listed and unlisted companies, Book 2 of the Dutch Civil Code sets out the duties and powers of the various corporate bodies, as well as rules on representation, conflicts of interest, the liability of managing and supervisory directors, financial reporting and disclosure.

Listed companies must also comply with the Dutch Corporate Governance Code, even if the shares are only listed on a stock exchange outside the European Economic Area. The Corporate Governance Code contains principles and best practice provisions regulating the relationship between the management board, the supervisory board and the general meeting/shareholders of Dutch listed companies. The Corporate Governance Code was updated on 20 December 2022, and the amendment entered into force on 1 January 2023. The revised code sharpens the focus on sustainability aspects of companies. Sustainable long-term value creation is the key consideration for management boards and supervisory boards when determining strategy and making decisions, and stakeholder interests should be taken into careful consideration. The requirements (the principles and best practice provisions) of the Corporate Governance Code are based on the "comply or explain" principle. Certain principles and best practices may be considered part of the statutory requirement (in the articles of association) for boards and shareholders to act as regards each other in keeping with the principles of reasonableness and fairness and may as such be binding.

On 20 March 2025, the Corporate Governance Code was updated to introduce the risk management statement (*Verklaring Omtrent Risicobeheersing*). Under this new requirement, the management board must state in the annual management report (i) that the company's internal risk management and control systems provide at least limited assurance, (ii) that its sustainability reporting contains no material misstatements, and (iii) the level of assurance these systems provide in relation to the effective management of operational and compliance risks. This statement enhances transparency for stakeholders and strengthens board accountability.

Furthermore, additional governance requirements apply to listed companies and certain large companies – for instance, in the field of diversity.

Under the EU Non-Financial Reporting Directive (NFRD), large public interest entities (listed companies, banks and certain insurers) must have a diversity policy and provide information on it in the corporate governance statement of the management report. Under the NFRD, "diversity" is used in the broad sense of the word (nationality, age, gender, education, professional background and so on). The Dutch Diversity Act (*Wet Ingroeiquotum en Streefcijfers*) introduced a statutory gender diversity quota (one-third men and one-third women) for the supervisory boards of Dutch listed companies on Euronext Amsterdam. Furthermore, apart from two specified exemptions, any appointment that does not improve the balance of the supervisory board of a listed company is null and void. In addition, large companies (whether listed or not) must set more appropriate and ambitious gender target ratios, draw up an action plan and report on this in the management report and to the Social and Economic Council (*Sociaal-Economische Raad*) within ten months of the end of the financial year.

2.3 Role of Directors and Officers

In 2020, a group of professors of Dutch corporate law called for the introduction of responsible corporate citizenship in the statutory duties of managing and supervisory directors. Managing directors should ensure that the company participates in society as a responsible company. Supervisory directors should supervise this. Thus far, the influence of this proposal has been limited to the Dutch Corporate Governance Code, which since 2023 has included a principle that the management board of listed companies is responsible for sustainable long-term value creation. Best practice provisions require companies to (i) engage in dialogue with stakeholders on the sustainability aspects of their strategy and its implementation and (ii) report on their vision for sustainable long-term value creation, related strategy and objectives, the company's impact on people and the environment, consideration of stakeholder interests, and progress achieved. The supervisory board oversees this. The proposal in the CSDDD for a duty of care for directors did not make it into the final Directive.

The question is whether this proposal represents a broadening of the duties of managing and supervisory directors. Managing and supervisory directors of Dutch companies must be guided in performing their duties by the interests of the company and its affiliated enterprise (the corporate interest). The Dutch Supreme Court has determined that the content of the corporate interest depends on the circumstances of the case and that, as a rule, the interest of companies to which an enterprise is affiliated is determined in particular by promoting the ongoing success of the enterprise. In doing so, managing and supervisory directors must exercise due care in relation to all stakeholders of the company, which may entail that directors must ensure that those interests are not unnecessarily or disproportionately harmed. It could be argued that the corporate interest already implies that companies should behave as responsible companies in society. However, there are different opinions on this among Dutch legal scholars.

The 2025 update to the Corporate Governance Code further reinforced directors' responsibilities by introducing the risk management statement. At the same time, reporting requirements under the CSRD also affect the roles and responsibilities of managing and supervisory directors. Companies must provide a description in the sustainability report of the duties and responsibilities of the management and supervisory board with regard to sustainability. Notably, this description should cover not only monitoring the company's impact on sustainability issues (such as climate change), but also how these sustainability issues affect the company (double materiality). Among other things, the company must make it clear how these duties are laid down in the division of tasks of the management and supervisory boards, and in what manner the boards actually perform these duties. The audit committee will have specific duties in the area of sustainability reporting.

As regards stakeholder engagement, there is a growing trend whereby managing and supervisory directors are expected to take into account the interests of an increasing number of stakeholders and also to actually involve those stakeholders in the decision-making process – for instance, in a stakeholder committee or advisory council.

Furthermore, there is also a growing expectation that directors actively engage stakeholders in decision-making – for example, through stakeholder committees or advisory councils. Litigation developments, such as the *Milieudefensie v ING* proceedings filed by Milieudefensie in March 2025, illustrate the risks directors face if their companies' climate strategies are viewed as inadequate or inconsistent with international commitments.

2.4 Social Enterprises

Social enterprises and not-for-profit companies do not yet have a specific legal form in the Netherlands. However, the Dutch government is working on a social private limited liability company, known as the BVm. A BVm draft regulation was submitted for consultation on 21 March 2021. In 2024, the Dutch Lower House also adopted a motion requesting the cabinet to develop a new legal form (*rentmeestervennootschap*) for steward-owned businesses. On 22 January 2025, a Proposal on the Principles of the Stewardship Company (*Voorstel Uitgangspunten van de Rentmeestervennootschap*) was presented. Although not yet widespread (the Netherlands currently has about 100 steward-owned companies), steward ownership is gaining increasing attention among entrepreneurs, politicians, lawyers and investors. Steward ownership is an ownership and governance model based on two central principles:

- self-governance is by those who are closely involved in the company and do not have a primary financial interest (stewards); and
- profits serve the company's mission and are invested or donated to fulfil that purpose rather than distributed primarily to shareholders.

In the Netherlands, steward-owned companies typically use three legal models: (i) the "*Beheerstichting*", a foundation holding the company or majority voting rights to safeguard mission and continuity; (ii) a golden share model, combining non-transferable steward shares with a foundation holding veto rights; and (iii) neutralised capital, where a foundation holds the economic ownership while stewards retain non-transferable voting rights.

It is important to recognise that, in practice, a separate legal form is not necessarily needed to make an impact. Even within existing Dutch legal forms (such as the private limited liability company (*Besloten Vennootschap*, or BV), the public limited liability company (*Naamloze Vennootschap*, or NV) and the co-operative), an enterprise can be designed that fulfils that purpose. Take, for instance, social enterprises structured as a BV. These enterprises can voluntarily restrict profit distributions – for example, by including in their articles of association a special reserve dedicated solely to the BV's societal objectives. Companies are also looking for other ways to express their CSR ambitions. By way of example, it is possible to seek alignment with various private codes and quality marks, such as becoming a B Corporation or complying with the Social Enterprises Code.

2.5 Shareholders

In the Netherlands, there is a widespread discussion about CSR and the role that (institutional) shareholders play in it. For decades, Dutch case law has been based on the principle that shareholders are allowed to act in their own interests, while behaving towards each other and the company in accordance with what is required by reasonableness and fairness. However, institutional investors are increasingly expected to take account of ESG issues in their voting and investment decisions as well as the traditional factors (financial return, risk and costs), owing to either legislation and regulation, codes of conduct or voluntary agreements; this is known as sustainable shareholdership.

The Dutch Corporate Governance Code provides that shareholders of listed companies are expected to recognise the importance of a strategy aimed at sustainable long-term value creation. In addition, institutional investors are, for instance, legally required to adopt an engagement policy. Such a policy includes conducting dialogues with investee companies.

In practice, institutional investors deal with shareholder engagement in different ways. A case in point is the famous annual "Letter to CEOs" by Larry Fink of BlackRock, which has been calling attention to the importance of sustainability, stakeholders and climate change since 2018 (although, as of 2023, his letter has become more cautious). Another form is the filing of shareholder resolutions, such as those regularly submitted by "Follow This" for general shareholder meetings of oil and gas majors, calling for emission reduction targets in line with the Paris Agreement. A third form of engagement is the so-called "Say On Climate", in which shareholders enter into dialogue with boards so that (voluntary) climate action plans are drawn up and submitted to the general meeting for an advisory vote. In the 2024 Dutch AGM season, Unilever submitted climate action plans for an advisory vote at the AGM. A majority of 98% of the shareholders voted in favour of this plan. In the 2025 AGM, shareholders had the possibility to ask further questions about this plan. So far there have been no Dutch listed companies that have either voluntarily or obligatorily given the general meeting an advisory or binding voice regarding their climate policy. The growing attention to ESG concerns is further evident in the fact that, like last year, some Dutch AGMs were attended by shareholders affiliated with environmental groups (eg, Milieudefensie and Extinction Rebellion) in an effort to obtain commitments from the managing and supervisory directors in this area.

Digital Meeting

On 15 January 2024, a digital general meeting bill was submitted to the Dutch Parliament. This bill provides the legal basis for a fully digital general meeting. The current regime only allows for a hybrid meeting, where the shareholder has the choice of either attending the physical meeting or exercising his/her meeting and voting rights remotely. Although the aim was for the new legislation to come into effect on 1 January 2025, this legislation is still pending. The date of entry into force has not yet been determined, but the bill is currently expected to be adopted by 1 January 2026. It is therefore not yet possible to hold a fully digital shareholders' meeting.

3. Sustainable Finance

3.1 Progress in Green Financing

Sustainable Finance Loans, Bonds and Other Investments

The EC has been actively promoting sustainable finance, encouraging the financing of businesses and their assets with green, sustainable and/or sustainability-linked characteristics through various equity and debt investments, debt finance and other financial products. By way of example, in the EC's Recommendation (EU) 2023/1425 of 27 June 2023 on facilitating finance for the transition to a sustainable economy, the EC encouraged the use of green and sustainability-linked loans and bonds and of equity and debt investment strategies to finance undertakings that want to contribute to the transition to climate neutrality and environmental sustainability.

EU Green Bonds and Sustainability-Linked Bonds

The EU Green Bond Regulation 2023/2631 has been in effect since 21 December 2024. The EU Green Bond Regulation sets a gold standard for how companies and public authorities can use green bonds to raise funds on the capital markets on a large scale for green projects. For green bonds to qualify as EU Green Bonds, several requirements need to be met, including the requirement that all funds raised be allocated to projects that are aligned with the EU Taxonomy Regulation – provided that the sectors concerned are already covered by it. A flexibility pocket of 15% will apply to those sectors not yet covered by the EU Taxonomy Regulation and to certain very specific activities. The EU Green Bond Regulation also includes voluntary disclosure requirements for other environmentally sustainable bonds and sustainability-linked bonds issued in the EU.

Equity and Debt Securities

In relation to debt and equity securities, the European Securities and Markets Authority (ESMA) published a statement on 11 July 2023 that specifically addresses ESG-related disclosures in prospectuses. Issuers and their advisers must consider ESG-related matters when preparing prospectuses, to the extent that the effects of those matters are considered material. This also includes any sustainability information that the issuer is already required to report in accordance with the CSRD.

Funds and Benchmarks

For fund managers and financial advisers, the EU Sustainable Finance Disclosure Regulation (SFDR) sets out requirements for disclosure of information and investment objectives to investors regarding the promotion of financial products with environmental or social characteristics (Article 8 products) or with sustainable investment as their objective (Article 9 products). The SFDR poses several challenges in its interpretation and application, and also in relation to other ESG rules and regulations. ESMA and the AFM have issued several publications in order to clarify and encourage SFDR compliance and sustainable finance investments. By way of example, ESMA has published guidelines on key sustainability concepts under the SFDR, the EU Benchmarks Regulation and the EU Taxonomy Regulation, on the use of ESG or sustainability-related terms as well as on fund names. The SFDR is subject to review by the EC in 2025–26.

3.2 Sustainable Finance Framework

Sustainable Finance Guidelines and Principles

Businesses wishing to raise financing with green and/or sustainability characteristics should consider not only the rules and regulations set out in **3.1 Progress in Green Financing**, but also the principles and guidelines developed by industry associations – such as the Loan Market Association (LMA) in the EU, its international counterparts the Loan Syndications and Trading Association in the USA and the Asia-Pacific Loan Market Association in Asia-Pacific, and the International Capital Markets Association (ICMA) – on the basis of general market practices. By way of example, the LMA issues principles and guidelines for green, social, sustainability and transition loans and the ICMA issues principles for green, social, sustainability and sustainability-linked bonds, which set expected market standards.

ESG Ratings in the EU: New Supervision

The EU ESG Rating Regulation 2024/3005 was published on 12 December 2024 in the EU Official Journal and will start to apply from 2 July 2026. As a result, ESG rating providers operating in the EU, or issuing, publishing or distributing ESG ratings in the EU, will be subject to strict requirements, mandatory disclosure and supervision as either an EU authorised or non-EU recognised ESG ratings provider by ESMA. The ESG Rating Regulation also amends the SFDR by requiring financial market participants subject to the SFDR to display certain information on their websites if they disclose ESG ratings to third parties as part of their marketing activities.

An ESG rating is defined as an opinion or a score, or a combination of both, regarding a rated item's profile or characteristics with regard to environmental, social and human rights, or governance factors, or regarding a rated item's exposure to risks or impact on environmental, social and human rights, or governance factors, that is based on both an established methodology and a defined ranking system of rating categories, irrespective of whether such ESG rating is labelled an "ESG rating", "ESG opinion" or "ESG score" (Article 3 (1) of the ESG Rating Regulation).

ESG rating providers active in the EU as of 2 January 2025 must notify ESMA by 2 August 2026 of their desire to apply for authorisation or recognition in the EU (for smaller EU ESG rating providers, the deadline is 2 November 2026). If ESG rating providers desire to continue operations in the EU, they must apply for authorisation or recognition by 2 November 2026 or cease operations.

EU Stops the Clock on Corporate Sustainability Reporting

In February 2025, the EC proposed in the EU Omnibus Directive proposals to ease regulatory burdens on corporate sustainability reporting rules under the CSRD. See also elsewhere in **2. Corporate Governance**.

3.3 Access to Green Financing

See elsewhere in **3. Sustainable Finance**.

3.4 Stranded Assets and Non-Bankables

The risk that businesses and assets with a less than favourable ESG footprint may become "stranded" and/or "non-bankable" is a reality in EU financial markets.

Various EU regulations include provisions that act as incentives for financial market participants to orient capital towards green and sustainable finance. Examples are disclosure requirements for financial market participants to publish their Green Asset Ratio and Green Investment Ratio, as well as ESG disclosure under capital requirement regulations for banks. These apply in addition to general sustainability requirements under the CSRD and the CSDDD.

Also, the EC recommends that lenders, fund managers and investors engage with borrowers and investees on how sustainability performance and transition targets and plans of undertakings will be taken into account – including in assessing the risk of stranded assets, and transition risks and physical risks more broadly – when seeking financing.

Development of Transition Finance

The EC sees solutions for businesses and assets in transition finance, which can be understood as the financing of climate and environmental performance improvements to transition towards a sustainable economy, at a pace that is compatible with the EU's climate and environmental objectives and that avoids lock-ins.

Industry associations such as the LMA and the ICMA have developed principles and guidance for transition finance. By way of example, the ICMA published a paper on transition finance in debt capital markets following its Climate Transition Handbook in 2024, and the LMA is developing principles for the loan markets in relation to transition finance. The Transition Finance Council consulted on its draft Transition Finance Guidelines in August 2025.

3.5 Challenges Ahead

Greenwashing in Financial Markets

The EU supervisory authorities for the financial markets – namely, the European Banking Authority, the European Insurance and Occupational Pensions Authority and ESMA – are concerned about financial market participants engaging in "greenwashing". On 4 June 2024, they published their common high-level understanding of "greenwashing" as a practice whereby sustainability-related statements, declarations, actions or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product or financial services. Also in their follow-up reports, in which further greenwashing risks were identified, the European authorities stressed that financial market players have a responsibility to provide sustainability information that is fair, clear and not misleading, and to avoid greenwashing.

Greenwashing and Greenhushing

The risk that financial market participants may not meet expected standards that apply to them or their financial products and disclosures, and that this may qualify as greenwashing under the broad interpretation of that concept by the EU authorities, has led to a retraction of claims and/or promotion of "green" and "sustainability" characteristics by financial market participants. This is a form of "greenhushing" and may also affect the integrity of financial markets and standards of fair disclosure.

Collision of ESG Interests in Financial Markets

EU rules and regulations require the consideration of the interests of multiple and varied stakeholders, and aim to strike a balance between ESG interests. By way of example, the promotion of environmental purposes may "do no significant harm" to other ESG purposes under various regulations addressed in this chapter. Also, in the EU, ESG and climate risks are treated as a form of financial risk, which financial institutions are expected to manage and control under prudential requirements applicable to financial market participants.

Climate and ESG Litigation and Enforcement in Financial Markets

In addition to increased regulation of the financial markets, there is increased monitoring and scrutiny of prospectus and other financial product disclosures by regulators, supervisory authorities and consumer protection authorities. Climate litigation is furthermore a hot topic in the Netherlands and the EU generally, as climate action groups in particular take litigation action against the Dutch government (as in the *Urgenda* case) and large corporates and banks (eg, Milieudefensie against Shell and ING Bank). Those claims are based mostly on human rights and tort law as they apply in relation to climate and environmental interests. However, these interests may conflict with social interests that are promoted by other litigation parties in such cases, for example. For EU and Dutch supervisory authorities, greenwashing risks remain a priority area in terms of policy and enforcement.

4. ESG Due Diligence

4.1 Soft Law Becoming Hard Law

We are seeing an increase of soft law becoming hard law in the Netherlands; however, some specifics of this increase are not yet legally certain. In the first place, there is the decision of the Court of Appeals in The Hague in the case of *Milieudefensie v Shell* issued in November of last year. The Court of Appeals explicitly considered and applied the OECD guidelines and the UN Guiding Principles, and several other soft law instruments, in interpreting an open legal norm in Dutch tort law. However, the case has been referred to the Dutch Supreme Court, and it is not yet certain the Supreme Court will follow the Court of Appeals' reasoning.

Furthermore, there is a very clear echo of the OECD Guidelines, particularly when it comes to due diligence requirements, in several EU legal instruments that are or will become applicable in the Netherlands such as the CSDDD, the EUDR and the Batteries Regulation. However, within the Omnibus process, the CSDDD has been under considerable reconsideration, with all three legislative organs of the EU currently having differing opinions on the scale and intensity of the required due diligence process. For example, the EC has proposed to limit the research requirements for due diligence to only direct business partners (tier 1), and certain parties within the European Parliament have pleaded for the deletion of the obligation to adopt a climate transition plan. For other regulations, the application of due diligence requirements has been postponed – for example, the Batteries Regulation. The current political climate within the EU makes it hard to anticipate to what extent soft law will become hard law within these instruments.

4.2 Towards Vertical Responsibilities

This year, due diligence requirements for companies are increasing in the Netherlands, with the EUDR becoming applicable in late December of this year. More companies will have to satisfy due diligence requirements to guarantee that products are completely deforestation-free. Under the current Timber Regulation, this only applies to wood products and whether they are harvested illegally. Under the EUDR, products that are the results of legal activities leading to deforestation are also excluded, and this applies to more categories of products and their derivatives. In addition to wood, it applies to cattle, cocoa, coffee, oil palm, rubber and soya.

Due to the Omnibus process, both the Dutch implementation act on the CSDDD and the initiative bill on Responsible and Sustainable International Business

Conduct have been put on hold until there is more clarity on the outcomes in Brussels. It is not yet clear at this moment of the process to what extent due diligence requirements for companies will increase in the future.

As mentioned above, though it is not yet judicially final, the Court of Appeals in The Hague has used the OECD guidelines, the UN Guiding Principles on Business and Human Rights, and traditionally vertical human rights, to interpret an open norm in Dutch tort law to come to the conclusion that there can be a due diligence obligation on considerably influential and large companies to make an end to human rights infringements to the extent they reasonably can, and that omitting to do so may lead to the finding of a wrongful act. Though this decision is yet to be considered by the Supreme Court, companies may need to consider potential liability for not adhering to the OECD guidelines in trying to mitigate negative impacts.

4.3 Partner Selection

It is hard to say at the moment what impact the CSDDD and the initiative bill on Responsible and Sustainable International Business Conduct will have on the choices that companies make in working with supply chain partners, given that this regulation is not yet in force. The authors believe it will have an impact in the future, as it is expected that companies will need to have a better understanding of their supply chain first and therefore do the necessary research.

In practice, there are signals that one of the proposed Omnibus amendments may influence partner selection. The EC has proposed that companies that fall under the CSDDD may not require any information from smaller companies other than the information those companies may choose to voluntarily report under the (yet to be determined) VSME (see **2.1 Developments in Corporate Governance**). There have been companies that would fall under the CSDDD that have expressed their concerns about this, stating they do not wish to decrease their due diligence standards.

4.4 ESG in M&A Due Diligence

Companies are focusing more on ESG, and hence it plays a role in M&A. It has an effect on the due diligence investigation and the sale and purchase agreement (eg, covenants between signing and closing, warranties and indemnities). Purchasers seek clarity on whether the target complies with current ESG obligations and whether it is prepared for upcoming requirements under EU law. With the CSRD now in force and the Dutch implementation bill having been submitted in January 2025, purchasers carefully assess the target's sustainability reporting capabilities, governance arrangements and internal controls, particularly in light of the new risk management statement required under the Dutch Corporate Governance Code.

The CSDDD, which entered into force in July 2024 and must be implemented by 2026 (postponed until 2028 under the Omnibus "Stop-the-Clock" Directive), will further increase purchaser scrutiny. Targets are expected to demonstrate robust due diligence policies across their value chains and to show how their business models align with the Paris Agreement's 1.5°C target. Industrial companies in particular will need to present credible transition plans. Purchasers may potentially anticipate the CSDDD ultimately coming into force by requesting more warranties and indemnities to comply with these obligations. ESG litigation risk continues to grow – as illustrated by cases such as *Milieudefensie v Shell* and *Milieudefensie v ING* – so purchasers also evaluate potential exposure to climate and human rights claims.

Beyond compliance, ESG due diligence extends to assessing a target's future resilience, reputation and financing prospects. Financing prospects increasingly depend not only on access to sustainable finance – such as green bonds – but also on the ability of investors to assess whether a company meets applicable sustainability standards. The ESG profile of a target has thus become decisive for valuation, deal viability and long-term value creation.

5. Transparency and Reporting

5.1 Key Requirements

In the Netherlands, companies are subject to several disclosure obligations.

The CSRD

The CSRD when implemented will replace the current requirement for large public interest entities to issue a non-financial information statement. In essence, the CSRD requires companies falling within its scope to prepare and publish a sustainability report as part of the management report. One of the key principles of the CSRD is the principle of double materiality: a company is required to report on sustainability matters that are material from an impact or financial perspective. The CSRD does not require all companies to disclose sustainability information. The requirements apply only to companies of a certain size or of a certain type. All "large" undertakings, all "listed undertakings" (excluding micro-undertakings), and certain credit institutions or insurance undertakings that are "large" and/or "listed" are subject to the CSRD.

Under Dutch law, an undertaking qualifies as "large" if it meets at least two of the three following criteria on its balance sheet date for two consecutive financial years:

- balance sheet total >EUR25 million;
- net turnover >EUR50 million; and/or
- average number of employees during the financial year ≥250.

In addition, the CSRD applies indirectly to non-EU undertakings generating a net turnover of EUR150 million in the EU with at least one subsidiary in the EU that is subject to the CSRD, or a branch in the EU that generated a net turnover of more than EUR40 million in the preceding financial year. The largest subsidiary or branch of these non-EU undertakings must publish a sustainability report covering the whole group of the non-EU parent undertaking.

Please note that these thresholds may change as a result of the Omnibus I package, which includes a proposal for a directive amending the CSRD, including its thresholds.

The SFDR

The SFDR applies to regulated financial undertakings offering or advising on investment-related financial products, such as investment firms or asset managers. The SFDR requires these undertakings to enable investors to consider relevant product-level and entity-level sustainability information in their investment decisions and to monitor the sustainability impact of their investments.

EU Taxonomy Regulation

The Taxonomy Regulation applies to both CSRD-regulated and SFDR-regulated entities and requires disclosing the extent to which the economic activities performed directly by the undertaking or indirectly through an investment product qualify as environmentally sustainable in accordance with, among other things, a detailed set of criteria.

Please note that the EU Taxonomy Regulation requirements may change as a result of the Omnibus I package.

Capital Requirements Regulation (CRR)

The CRR requires large listed banks to annually report on ESG risks and report on elements of the remuneration policy.

Decree on the Content of the Management Report (Besluit inhoud bestuursverslag)

This decree requires large companies to report on diversity and targets for the male-to-female ratio of supervisory board members.

5.2 Transition Plans and ESG Targets

Under the CSRD and the related ESRS, companies must disclose their transition plan for climate change mitigation (ESRS E1-1). If the company does not have a transition plan in place, it must indicate whether and, if so, when it will adopt a transition plan.

The CSRD does not require companies to commit to targets, but merely to disclose the targets related to sustainability matters. If a company is subject to a disclosure requirement that relates to targets but has not set the particular target, it must disclose this to be the case and it may disclose a timeframe in which it aims to have the targets in place.

Furthermore, under the recently adopted CSDDD, companies falling within its scope will need to publish transition plans for climate change mitigation. These plans should include time-bound emission reduction targets for scopes 1, 2 and 3, and an overview of planned actions and investments to reach these targets, among other things. For companies that publish a transition plan in accordance with the CSRD, the obligation to adopt a plan under the CSDDD is considered to be met.

Please note that the requirements relating to transition plans may change as a result of the Omnibus I package, which includes a proposal for a directive amending the CSRD and CSDDD. In addition, as a consequence of the Omnibus I package, the ESRS are being revised, including the disclosure requirement on transition plans (ESRS E1-1). None of these changes are final at the time of writing.

5.3 Regulation of ESG Labels

The following restrictions and conditions apply to making sustainability claims and to legally regulated ESG labels:

- *Dutch consumer protection law:* The ACM is a front-runner in the regulation and supervision of sustainability claims by undertakings providing services to consumers. It has issued guidelines mandating the use of clear and non-misleading sustainability labels. Furthermore, the Dutch Advertisement Code Committee (a self-regulatory organisation) renders authoritative decisions regarding sustainability advertising upon a complaint by individual consumers or, for instance, NGOs. Such decision could also serve as "stepping stone" to civil proceedings.
- *SFDR:* The SFDR requires certain regulated financial undertakings to provide investors with sustainability information on financial products if these financial products claim to have sustainability ambitions. Moreover, EU regulators have adopted guidelines prohibiting the use of sustainability-related terms in the names of financial products without adhering to certain minimum levels of sustainability ambition. A comprehensive review of the SFDR is being performed currently.
- *EU Green Bonds Regulation:* Bond issuers may adopt the voluntary EU Green Bond label when complying with certain reporting standards, using the funds for projects that are aligned with the EU Taxonomy Regulation, and providing pre- and post-issuance transparency on the use of the funds.
- *EU Benchmarks Regulation:* Providers and users of benchmarks in financial instruments or financial contracts, or of benchmarks on the performance of investment funds, are subject to additional requirements if the benchmark is labelled as a Climate Transition Benchmark or as a Paris-Aligned Benchmark. The recently adopted amendment to the EU Benchmarks Regulation will take many "non-significant benchmarks" outside its scope.
- *EU ESG Rating Regulation:* The ESG Rating Regulation starts to apply 2 July 2026. This regulation will require that undertakings providing ESG ratings in a professional capacity obtain a licence from ESMA, are transparent in their ESG rating methodology and avoid conflicts of interest.

5.4 Supervision

The following regulators monitor compliance with ESG disclosure compliance in the Netherlands:

- the AFM, as a supervisory authority on accounting law and financial markets;
- the Dutch Central Bank (*De Nederlandsche Bank*, or DNB); and
- the public prosecutor.

The regulator monitoring the use of sustainability marketing claims is the ACM.

5.5 Enforcement

Compliance with the CSRD is regulated under the Dutch Economic Offences Act (*Wet op de Economische Delicten*) and is overseen by the Public Prosecution Service. Companies that fail to publish their sustainability statements on time may face penalties, which can include:

- up to six months in prison;
- community service; and
- a fine of up to EUR25,750 for directors and EUR103,000 for the company.

The primary authority for enforcing sustainability disclosures for listed companies is the AFM. The AFM is responsible for ensuring that listed companies publish their annual reports, including the required ESG information, in a timely and complete manner. The AFM has certain enforcement powers under the Dutch Financial Reporting Supervision Act (*Wet toezicht financiële verslaggeving*). Additionally, the AFM has the discretion to initiate annual account proceedings (*jaarrekeningprocedure*) with the Enterprise Chamber of the Amsterdam Court of Appeals to evaluate whether a company's financial and sustainability statements included in the annual reporting comply with legal standards. The AFM also oversees compliance with SFDR requirements.

False or misleading sustainability disclosures can lead to administrative penalties and, in some cases, criminal enforcement if certain conditions are met. Additionally, greenwashing may result in civil claims, intervention by the Advertisement Code Committee or penalties from the ACM.

5.6 Expected Progress

On a European level, it is proposed to thoroughly review and amend, among other things, the CSRD, the CSDDD and the Taxonomy Regulation. By way of the Omnibus I package, the EC presented a number of measures to simplify the existing regulations and to reduce administrative burdens. The proposals are currently going through the EU's legislative bodies and are expected to be finalised in the first half of 2026.

Regardless of the Omnibus I package, in the coming years, companies will need to significantly improve their ability to meet their reporting obligations as the volume and complexity of required information increases. While they are likely to become more proficient in handling these disclosures, there is a risk that the process will become a mere "box-ticking" exercise. The new regulations will have a major impact on companies due to the sheer amount of data required, the level of detail involved and the tight timeframes for compliance.

6. Climate and ESG Litigation

6.1 Instruments for ESG Litigation

It is relatively easy to start ESG-related cases in the Netherlands. Dutch civil procedure offers various options to initiate (commercially funded) collective proceedings and claim damages for a "class" of claimants (eg, consumers), which also relate to ESG matters. It is also relatively easy for NGOs advocating for environmental interests or minorities' rights, for example, to bring a public interest collective action. For such public interest collective actions, a "light" regime in terms of admissibility requirements applies, as long as they do not claim damages. Nevertheless, these are often long-running, complex proceedings. Such public interest collective actions have proven to be a powerful tool for NGOs.

In addition, Dutch courts have shown a willingness to take far-reaching decisions regarding jurisdiction and also on substance – for instance, about the role of human rights in climate litigation. A notable example is the initial order from the District Court of The Hague to Royal Dutch Shell as the top holding of the Shell Group worldwide to reduce the Group's carbon dioxide emissions. While the Court of Appeals in The Hague overturned the concrete reduction order, it still ruled that Shell has a legal obligation to reduce its emissions, based on human rights. An appeal to the Dutch Supreme Court is pending. In the case of Urgenda against the Dutch state, the Dutch Supreme Court has already issued a landmark decision that the Dutch state has to reduce greenhouse gas emissions in line with the Paris Agreement.

Specifically for "greenwashing" claims with regard to advertising by companies, an additional "tool" would be filing a complaint with the Advertisement Code Committee. This is a self-regulatory organisation for the advertising sector in the Netherlands, which renders authoritative decisions about alleged misleading statements of a company (including in terms of sustainability). Such a decision could also serve as a "stepping stone" to a collective action in civil proceedings.

6.2 Climate Activism

NGOs and activists are definitively an important party in ESG litigation in the Netherlands. The landmark carbon dioxide reduction orders against the Dutch state and against Royal Dutch Shell mentioned in **6.1 Instruments for ESG Litigation** were obtained by NGOs (Urgenda and Milieudefensie, respectively). Another example is the civil proceedings against the Dutch airline KLM initiated by FossielVrij, an NGO related to ClientEarth, challenging multiple sustainability-related statements by KLM (represented by Stibbe). Other notable cases include Greenpeace holding the Dutch government accountable for failing to protect the island of Bonaire (part of the Kingdom of the Netherlands) from climate threats, and Milieudefensie both demanding that ING halve its emissions and cut ties with fossil fuel companies, and preparing a new lawsuit against Shell to stop new oil and gas extraction projects.

Aside from climate litigation, NGOs have brought proceedings against companies with regard to ESG more broadly. One example is a pending public interest collective action by Bureau Clara Wichmann, a women's rights NGO, against pharmaceutical company AbbVie claiming compensation due to serious health problems encountered by women with textured breast implants. Other high-profile legal actions include a claim by Stichting Recht op Bescherming tegen Vliegtuighinder (RBV) addressing noise pollution from Schiphol Airport, and Greenpeace Netherlands' successful claim forcing the Dutch government to comply with nitrogen targets by 2030. These last two cases are currently under appeal. Unions have been targeting the gig economy in the past few years in ESG collective actions as well. Examples of these are the cases against Temper and Uber.

6.3 Greenwashing

Dutch public authorities – such as the ACM – are actively enforcing (EU) regulation on the provision of information to consumers, including regarding ESG claims. This is enforcement under public law by means of, so far, informal "warnings" that could be followed by a fine.

Dutch public authorities are also involved in the EU-wide enforcement action by the EC and national consumer authorities (the Consumer Protection Cooperation Network) against 20 airlines in relation to (alleged) greenwashing. As far as the authors are aware, the only civil proceedings so far about ESG claims in relation to greenwashing are not by investors (or public authorities) but by an NGO against the Dutch airline KLM (see **6.2 Climate Activism**).

6.4 A Turbulent Future Ahead

The number of ESG-related proceedings in the Netherlands is predicted to increase in the coming years. This is partly because of the success of previous collective actions regarding ESG matters and partly because of the increasing body of ESG rules and regulations, as in other (EU) countries – in particular, rules on reporting on ESG matters by companies. Following EU Directives such as the CSRD, the IED for industrial companies and the CSDDD (even if its scope is expected to be reduced by the Omnibus legislation), large companies will have to perform due diligences and will have to start annual disclosures regarding their performance on various ESG aspects. All this is expected to be closely monitored by NGOs, providing them with information that could be used in possible new ESG cases against those companies.

Other developments show that ESG-related cases against companies and public authorities are already being brought across various areas. These include proceedings relating to the increasing scarcity of (clean) water, for instance a claim against Brabant Water (represented by Stibbe) for agricultural damage due to groundwater extraction. In addition, Stichting Frisse Wind has announced a collective claim against Tata Steel on behalf of residents suffering harm from emissions from Tata Steel's industrial facility. Another example involves a group of residents living near Schiphol Airport who have filed a criminal complaint for assault, arguing that years of excessive noise exposure amount to physical harm. Public authorities also do not shy away from initiating civil proceedings against industrial companies. Examples include a claim for damages by several Dutch municipalities against Chemours, a chemicals manufacturer, in connection with PFAS emissions. One might also view collective actions relating to privacy and data protection as ESG-related, although they are backed by litigation funders seeking a profit. Furthermore, mass damage claims relating to environmental accidents in South America were initiated in the Netherlands.

NEW ZEALAND

Law and Practice

Contributed by:
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Contents

Russell McVeagh is a top-tier law firm in New Zealand with offices in Auckland, Wellington Queenstown and Dunedin. The firm advises on the full spectrum of sustainability and ESG law and policy issues. It brings together market-leading experts from specialist areas to provide tailored, practical advice to help organisations with their governance, risk-management, culture and conduct, and compliance needs. The Russell McVeagh team supports businesses with their ESG transition by drawing on its deep experience navigating change in regulated contexts, and its extensive network of relationships with both private sector and government stakeholders. Russell McVeagh also leads the market in advising on sustainability-linked and green-based borrowing, and advises on climate-related projects, including in relation to solar, wind and hydrogen renewable power.

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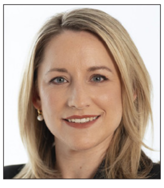

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1. Introduction

1.1 General ESG Trends

New Zealand's legal and regulatory landscape in relation to environmental, social and governance (ESG) matters is continuing to evolve. Regulation of ESG issues has been fragmented, and to date New Zealand has not introduced comprehensive frameworks covering all aspects of corporate ESG. However, New Zealand is an early adopter of mandatory climate-related disclosures and has an established legislative framework in relation to climate change under the Climate Change Response Act 2002 (CCRA).

In 2025, reports under New Zealand's recently introduced mandatory climate-related disclosures regime (the "CRDs regime") continued to be published, marking the second time that most entities have produced annual climate statements under that regime. The CRDs regime was introduced under the Financial Markets Conduct Act 2013 (the "FMC Act") for certain large organisations known as "climate-reporting entities" (CREs). Starting from financial years commencing on or after 1 January 2023, CREs are required to prepare and lodge on a public register climate statements that comply with climate standards issued by the External Reporting Board (XRB). The XRB's Aotearoa New Zealand Climate Standards (NZ CS) follow the four themes originally promulgated by the Taskforce on Climate-Related Financial Disclosures, being climate-related governance, strategy, risk management, and metrics and targets. CREs also have obligations to keep "CRD records". CREs with subsidiaries need to prepare their climate statements on a group basis.

Like many overseas jurisdictions, ESG has arguably played a less prominent role in political discourse in 2025 than it has in previous years, reflecting a shift of focus towards cost-of-living pressures and geopolitical instability. The current government has also shifted away from the previous government's focus on direct policy interventions to support the transition to a low-emissions, climate-resilient future. However, there have been some key political and legal developments in 2025, including the introduction of a less ambitious domestic emissions reduction target for methane alongside other changes to New Zealand's overarching climate architecture, a narrowing of the climate-related disclosures regime, and the introduction of a controversial Members' Bill that endeavours to prevent financial institutions from withdrawing services from customers for "non-commercial" ESG reasons.

Details of other changes in ESG laws and regulations are set out in the sections that follow, including in relation to modern slavery (see **1.3 Social Trends** and **4.1 Soft Law Becoming Hard Law**), directors' duties (see **1.4 Governance Trends** and **2.3 Role of Directors and Officers**) and stock exchange listing rules (see **2.2 Differences Between Listed and Unlisted Entities**).

1.2 Environmental Trends

Under the CCRA, New Zealand has to date enjoyed a relatively stable overarching climate change architecture, including a "net zero by 2050" target (for all gases other than biogenic methane) and a framework for the government to produce emissions budgets and associated emissions reduction plans. The CCRA also provides for the government to produce a rolling series of reports and plans in relation to climate change adaptation. It also establishes an independent Climate Change Commission, responsible for advising the government in relation to climate change mitigation and adaptation.

In October 2025, the government announced that it would weaken New Zealand's 2050 domestic emissions reduction target for methane in the CCRA from a 24–47% reduction against 2017 levels to a 14–34% reduction. This change reflects the outcome of a review of New Zealand's methane target by an independent advisory group, which was tasked with reviewing methane science and the 2050 target for consistency with the concept of "no additional warming" from agricultural methane. This change will be passed into legislation under urgency by the end of 2025.

Most recently, in November 2025 the government announced a suite of other changes to the CCRA, including (but not limited to):

- amending the purpose of the CCRA to refer to "efficient and effective" policies;

- removing the requirement for price and unit settings in the New Zealand Emissions Trading Scheme (NZ ETS) to accord with New Zealand's nationally determined contributions under the Paris Agreement;
- removing the Climate Change Commission's role in routinely advising the government in relation to emissions reduction plans (although it will still advise on emissions budgets); and
- substantially reducing the requirements for public consultation on emissions budgets.

Outside the CCRA, there remain substantial differences between New Zealand's major political parties on the details of how New Zealand should respond to ESG issues. The current government has progressed a number of key changes in relation to climate change and environmental regulation, including:

- producing a draft second emissions reduction plan under the CCRA, which was finalised in December 2024;
- undertaking a cross-party inquiry into climate change adaptation, and publishing a high-level National Adaptation Framework in 2025;
- discontinuing the prior government's review of the New Zealand Emissions Trading Scheme (NZ ETS);
- passing legislation to restrict the extent to which productive farmland can be converted into forestry eligible for registration in the NZ ETS;
- reversing the prior government's ban on offshore oil and gas exploration;
- implementing a public electric vehicle (EV) charger network expansion plan;
- implementing changes to resource management and related laws, with a view to making approvals, permits and consents more efficient for a range of projects (including in relation to renewable energy); and
- announcing that it is working with the private sector on a sustainable finance framework, including the development of a sustainable finance taxonomy.

In 2024 and 2025, there have been a number of significant case law developments in relation to the "E" in ESG. These include the following.

In February 2024, the Supreme Court of New Zealand issued its much-awaited decision in *Smith v Fonterra* [2024] NZSC 5, the first case to be brought in New Zealand seeking to hold private parties liable in tort for damage caused by climate change. The Supreme Court determined that the claim can proceed to trial. The question before the Supreme Court was simply whether the claim ought to be struck out (on the basis that it raised no reasonably arguable cause of action), so the decision does not determine whether the defendants are in fact liable to Mr Smith. However, the case is significant because it leaves open the possibility of corporates facing tort-based liability in New Zealand in respect of greenhouse gas emissions produced by their activities.

In March 2025, the Court of Appeal of New Zealand issued its decision in relation to an appeal against the High Court of New Zealand's decision in *Lawyers for Climate Action New Zealand Incorporated v the Climate Change Commission* [2023] NZCA 443. That case related to the approach adopted by the Climate Change Commission in its May 2021 advice to the government in relation to emissions reduction pathways. The Court of Appeal dismissed the appeal, finding that the Climate Change Commission's advice to the government, together with subsequent Ministerial decisions based on it, was lawful. This case reinforced that the courts will typically be slow to interfere in public decision-making where the decision-maker has a level of discretion as to how to best achieve a policy objective.

Following trends overseas, two significant greenwashing claims have been lodged in the High Court (see **6.3 Greenwashing**), with one of those settling in October 2025.

1.3 Social Trends

New Zealand already has well-developed legal frameworks for certain components of the "S" in ESG, including in relation to health and safety and employment law. However, other aspects of the "S" in ESG are less developed, or are undergoing evolution, as described further below.

In New Zealand, ESG is often considered as encapsulating matters relating to te ao Māori (a holistic world view that emphasises the interconnectedness between people and the environment) and tikanga Māori (customs and protocols), which are unique to New Zealand and reflect the world view, culture and practices of New Zealand's indigenous Māori population. While te ao Māori and tikanga Māori intersect with all aspects of ESG, these concepts are included here as part of the "S" in ESG, given their critical importance to the social fabric of New Zealand life.

While New Zealand law has for some time recognised matters relating to te ao Māori and (in particular) matters relating to the application of Te Tiriti o Waitangi (the Treaty of Waitangi) between Māori and the Crown, the legal recognition of tikanga and te ao Māori is evolving. Two important developments in recent years have particular implications in the ESG space.

- In September 2023, the New Zealand Law Commission released its study paper "He Poutama", which addresses how tikanga and state law might best engage in a way that maintains their individual coherence and integrity. It is an influential report that is likely to shape the way that ESG matters are considered by courts, individuals and businesses in the years to come in New Zealand.
- The Supreme Court's decision in *Smith v Fonterra* [2024] NZSC 5 briefly considered matters relating to tikanga in the context of a climate-related claim. The decision did not set out detailed principles for the implications of tikanga in the climate change context. However, the Supreme Court noted that the trial would need to grapple with the fact that the claimant purports to bring proceedings not only on behalf of himself, but also as kaitiaki (guardian) acting on behalf of the whenua (land), wai (water) and moana (ocean) as entities in their own right.

In July 2023, the prior government announced plans to establish a modern slavery regime, including a public register to require transparency over organisations' supply chains. This proposal would have required organisations with more than NZD20 million in revenue to report on their actions to address the risk of exploitation in their operations and supply chains. Following the 2023 general election, work in relation to the introduction of specific modern slavery legislation in New Zealand stalled; however, in 2025 two members' bills (from a representative of each of New Zealand's two major political parties) were entered into the parliamentary ballot. While these bills appear to have now been withdrawn, it remains possible that specific modern slavery legislation will emerge in New Zealand.

In relation to case law, in 2024 the Court of Appeal issued its decision in *Bank of New Zealand v The Christian Church Community Trust* [2024] NZCA 654. This case followed an earlier decision of the Employment Court, which had found that certain members of the Gloriavale Christian Community were employees from the age of six years old, that ready access to child labour was a significant factor in the success of the Gloriavale Christian Community business model, and that those members were subject to rigorous, and sometimes violent, supervision while working as children. In 2023, the High Court was asked to consider the question of whether BNZ was entitled to stop providing banking services to the commercial and charitable entities associated with the Gloriavale Christian Community, in light of BNZ Group's Human Rights Policy. The High Court found that it was seriously arguable that BNZ had a contractual discretion rather than an absolute right to terminate, and that it was seriously arguable that BNZ had failed to act reasonably in deciding to cease the provision of banking services to the plaintiffs. However, this decision was reversed on appeal, with the Court of Appeal confirming the orthodox common law position that, in the absence of express contrary agreement or statutory impediment, a bank may terminate a banking contract on reasonable notice. This case is significant, as it is the first time the New Zealand courts have been asked to consider the circumstances in which a bank can terminate a banking relationship as a result of human rights concerns.

1.4 Governance Trends

New Zealand has an established framework of governance laws for companies, including (most significantly) through the Companies Act 1993 and, for listed issuers, the NZX Listing Rules. Among other things, the Companies Act sets out in legislation the duties that directors of New Zealand companies owe to companies and their shareholders.

Further details in relation to key recent developments in the regulation of ESG governance are set out in **1.6 Market Participants**.

In addition to those developments, many New Zealand organisations are required to report publicly on matters relevant to the "G" in ESG under the CRDs regime, which requires CREs to report on matters relating to their governance of climate-related risks and opportunities. This has led to many organisations adopting a more sophisticated approach to governance in this area (eg, by establishing sustainability committees as standing committees of the board of directors, maturing risk management systems, embedding regular governance reporting on ESG matters and working towards integration of ESG with core business strategy). This is also contributing to businesses expanding their consideration of ESG matters – for example, nature-related risks have gained more prominence in director and management discussions, in part due to increasing recognition that directors may need to both consider and respond to nature-related risks as part of discharging their directors' duties.

1.5 Government and Supervision

Regulators play an important role in monitoring and enforcing New Zealand ESG laws and regulations. For example, the Financial Markets Authority (FMA) and the New Zealand Commerce Commission are responsible for monitoring and enforcing key ESG laws and regulations (see further at **5.4 Supervision**).

In addition, the Environmental Protection Authority is responsible for enforcement of the NZ ETS and other environmental laws.

From a supervisory perspective, the Reserve Bank of New Zealand (RBNZ) is the prudential regulator and supervisor of the New Zealand banking sector. One of the RBNZ's key statutory objectives is promoting the stability of New Zealand's financial system. The RBNZ considers that this objective requires it to assess the material risks of the entities that it regulates in order to understand the resilience of the financial system to shocks, including risks relating to climate change. Accordingly, the RBNZ has provided guidance to the banking sector about the management of climate-related risks, and undertook a climate stress test in 2023 to assess the resilience of major New Zealand banks to plausible long-term climate-related challenges.

1.6 Market Participants

Most sectors of the New Zealand economy are likely to be affected by ESG laws and regulations in the coming years, with examples below.

The CRDs regime currently applies to most large financial institutions and large listed issuers. However, in October 2025 the government announced changes that will substantially reduce the number of organisations required to prepare climate statements, by lifting the market capitalisation thresholds that trigger reporting requirements for listed issuers and removing fund managers from the regime entirely. Organisations not directly subject to the CRDs regime (including those that the government has announced will be removed from scope) may also be indirectly affected by being in the "value chain" of CREs, as the regime indirectly incentivises CREs to work with their suppliers on initiatives responding to their climate-related risks and opportunities and to enable Scope 3 emissions reporting.

In addition, the NZ ETS prices emissions across all sectors of the economy (other than agriculture). As such, most New Zealand businesses are impacted by emissions pricing, either directly through participation in the NZ ETS, or indirectly through the cost of goods and services. Any future changes to the NZ ETS will therefore impact a wide range of stakeholders.

The financial sector is likely to continue to be affected by ESG laws and regulations, including any sustainable finance taxonomy that emerges. The financial sector is also the focus of a Members' Bill introduced in 2025 that seeks to limit the extent to which financial institutions can consider ESG factors in making decisions about the provision of financial services.

1.7 Geopolitical Developments

Geopolitics and politics are both important determinants of the approach to ESG in New Zealand.

New Zealand is party to a range of international treaties on ESG-related issues, including the United

Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. Under the Paris Agreement, New Zealand is required to prepare, communicate and maintain successive nationally determined contributions (NDCs) towards delivering on the goals of the Paris Agreement. New Zealand's first NDC (as updated in October 2021) equates to a 41% reduction in net emissions by 2030 from gross emissions in 2005. The second NDC was submitted in early 2025 and is a target of reducing net greenhouse gas emissions by 51% to 55% below gross 2005 levels by 2035.

While meeting New Zealand's first and second NDCs is likely to involve a combination of domestic measures and the purchase of offshore mitigation, the government has indicated that it wishes to prioritise domestic reduction initiatives. The recent announcement that NZ ETS price and unit settings will be de-linked from New Zealand's nationally determined contribution is reflective of that focus.

In addition to multilateral treaties, New Zealand is also party to bilateral free trade agreements that impose obligations on it in relation to ESG – for example, as follows.

- A recently concluded free trade agreement between New Zealand and the European Union (EU) includes a number of environmental provisions. It includes an obligation to effectively implement the UNFCCC and the Paris Agreement, including commitments with regards to NDCs.
- The free trade agreement between New Zealand and the United Kingdom, which entered into force in May 2023, also includes sustainability obligations. This agreement requires the parties to encourage private and public sector entities operating in its territory to take appropriate steps to prevent modern slavery in their supply chains.

Exports play an important role in the New Zealand economy and, accordingly, geopolitical factors that affect New Zealand's exports are very significant in relation to progress on ESG. For example, New Zealand exporters may be affected by regulations such as carbon border adjustment mechanisms, and these international dimensions are an increasingly important driver for decarbonisation of New Zealand exports. New Zealand's imports are also impacted by geopolitical developments, although New Zealand's high levels of renewable electricity insulate it to some extent from shocks associated with oil and gas supply.

Domestic politics also influence the direction of travel on ESG. New Zealand has a relatively short (three-year) electoral cycle, which means that achieving certainty in ESG-related policies is particularly challenging. Cross-party consensus-building on key issues is accordingly critical. As noted in **1.2 Environmental Trends**, this cross-party consensus-building means that New Zealand has had a relatively stable climate change legislative architecture to date, although policy priorities differ significantly across the major political parties and recent changes announced by the government to the CCRA are calling into question the extent to which cross-party consensus on the overarching architecture remains.

2. Corporate Governance

2.1 Developments in Corporate Governance

The authors envisage several key areas of development in the next 12 months, as follows.

While there has already been a maturing of approach since the introduction of the CRDs regime, it is expected that the approach to climate-related governance will continue to evolve for those entities that remain in scope following the government's announcement of scope changes. While one noticeable trend in recent years has been the increase in the number of issuers with sustainability committees as standing committees of the board, it remains to be seen whether organisations that will be removed from the scope of the CRDs regime going forward will retain the same approach to climate-related governance or revisit their approaches.

Furthermore, in August 2024 the government announced its intention to progress a package of reforms modernising the Companies Act 1993 and other related corporate governance legislation. As part of these reforms, in August 2025 it was announced that the Law Commission would undertake a review of directors' duties, including liability for breach of those duties and issues of enforcement. This review may also revisit the amendment to Section 131 of the Companies Act, introduced in 2023, which states that directors may have reference to ESG factors when determining the best interests of the company (as discussed further in **2.3 Role of Directors and Officers**).

At the same time as announcing changes to the scope of the CRDs regime, the government announced that it was proposing to change the director liability settings for the regime. While directors currently have automatic liability for non-compliance with climate reporting requirements, this automatic liability will be removed once legislation is passed in 2026, although directors may still have liability as accessories or for false/misleading information. Putting in place appropriate processes to support compliant disclosures accordingly remains important to support directors in complying with their obligations.

2.2 Differences Between Listed and Unlisted Entities

Entities with securities listed on the NZX must comply with the NZX Listing Rules, which set out a range of governance requirements. Among other things, the NZX Listing Rules require issuers to comply with the recommendations in the NZX Corporate Governance Code (the "Code"), on a "comply or explain" basis. This means that issuers of equity securities must provide a corporate governance statement (usually included in the issuer's annual report) on the extent to which it has followed the recommendations of the Code. If an issuer has not followed a Code recommendation, its statement must identify that recommendation and outline the reasons why the recommendation was not followed and what (if any) alternative governance practice was adopted.

In 2023, the Code was amended to include (among other matters) specific recommendations in relation to non-financial reporting, as follows.

ESG Reporting

The Code now recommends that issuers provide annual non-financial reporting disclosures on ESG factors and practices. ESG reporting can be presented as part of an issuer's corporate governance report or in a standalone report. The commentary also encourages issuers to disclose the process by which the issuer has ensured that its non-financial disclosures are accurate, and whether these have been externally audited. Accompanying this change, the NZX also updated its ESG Guidance Note, which is designed to assist issuers in implementing the Code's recommendation. The ESG Guidance Note includes suggestions as to what issuers may want to report on, including the relevance of ESG factors to their business models and strategy, the ESG risks faced by the business and how they can identify, monitor and manage those risks (noting the overlap of these points with the CRDs regime). While the Code and NZX's ESG Guidance Note do not mandate a particular approach to ESG reporting, they note that many New Zealand issuers adopt international frameworks such as Integrated Reporting and the Global Reporting Initiative.

Gender Diversity Goals

S&P/NZX20 Index issuers are now recommended to have a measurable objective on gender diversity for board composition, which cannot be less than a target of 30% female and 30% male, within a specified period, which the issuer may determine. Issuers (particularly S&P/NZX50 issuers with more than 50 employees) are also encouraged to disclose gender pay gap information and to consider diversity beyond gender (eg, ethnicity, cultural background, sexual orientation, age, skills, etc) when designing their diversity policies.

2.3 Role of Directors and Officers

ESG requirements have become an important component of directors' roles and responsibilities in New Zealand, particularly following the introduction of the mandatory CRDs regime and the Companies (Directors Duties) Amendment Act 2023.

The Companies (Directors Duties) Amendment Act 2023 was passed in August 2023 by the departing government. This sought to clarify the director's duty to act in the best interests of the company, in Section 131 of the Companies Act 1993. The amended duty now specifies the following:

"To avoid doubt, in considering the best interests of a company or holding company for the purposes of this section, a director may consider matters other than the maximisation of profit (for example, environmental, social and governance matters)."

The intention of the proposed reform was to make it clear that directors may consider a wide number of factors when making decisions, and are expected to embed ESG factors into their decision-making as part of their duty to act in good faith and in the best interests of the company. However, most commentators consider that the amendment does not impose any additional obligations on directors, as it was already accepted that directors were not limited in their decision-making to considering profit maximisation and already considered ESG factors when exercising their decision-making powers. The reform is likely to have more of a "signalling" rather than substantive effect, and could be repealed as part of the package of reforms referred to in **2.1 Developments in Corporate Governance**.

2.4 Social Enterprises

Unlike other overseas jurisdictions that have specific legal entity structures for social enterprises (eg, the Public Benefit Corporation in the United States and the Community Interest Company in the United Kingdom), there is no specific legal structure for social enterprises in New Zealand.

Instead, social enterprises and not-for-profits can choose from a wide range of entity structures used for business in New Zealand, which may be for-profit or not-for-profit. Common structures include a limited liability company or a trust, with or without "charitable status".

Obtaining "charitable status" requires an entity to have an established "charitable purpose" and to apply for registration on the Charities Register. Once registered, the entity will need to comply with ongoing obligations under the Charities Act 2005, including the requirement to complete an annual return and file financial statements.

2.5 Shareholders

The increasing importance of ESG considerations for shareholders could give rise to future shareholder activism. However, as set out further in **6.2 Climate Activism**, shareholder activism has played a lesser role in New Zealand than it has in some other jurisdictions in relation to bringing ESG-related claims.

One recent example of shareholder activism was a 2023 public campaign by the New Zealand Shareholders Association (NZSA) in relation to shares of its members held in Colonial Motor Company, an NZX listed company. The NZSA indicated that it had planned to vote against all of the company's resolutions at the 2023 annual general meeting to encourage the company to improve its ESG governance disclosures and compliance with the Code. However, over the last 12 months, ESG matters seemed much less of a feature on activist agendas, with a focus on governance and value creation being prevalent.

3. Sustainable Finance

3.1 Progress in Green Financing

While the New Zealand government recognises the role that mobilising finance has in the climate transition, few specific legal steps were taken over the last year to promote sustainable finance in New Zealand.

One key development over the past 12 months has been progress on the development of a sustainable finance taxonomy for New Zealand. In early 2024, the government announced the establishment of an independent technical advisory group (ITAG) led by the Centre for Sustainable Finance, to recommend design principles for a New Zealand taxonomy. The potential development of a taxonomy was signalled in New Zealand's first National Adaptation Plan published in August 2022, which indicated that a taxonomy could help protect against greenwashing and (if aligned with best practice) support greater investment in New Zealand's climate-resilient projects.

If introduced, a sustainable finance taxonomy would classify which economic activities are aligned to a sustainable, low-emissions future, with a view to directing investment to the activities required for the transition.

The ITAG has now published its recommendations for the development of the taxonomy, which includes recommendations relating to the principles, purpose and outcomes of the taxonomy. The recommendations report suggests prioritising five sectors, including agriculture, transport, construction/real estate, energy and industrial manufacturing, and aligning with other benchmark taxonomies such as Australia and the EU.

In 2025, further progress has been made on the development of taxonomy criteria, with the government working in partnership with the Centre for Sustainable Finance on taxonomy development. At this stage, the taxonomy is voluntary and there are no current proposals for this to become mandatory over time.

3.2 Sustainable Finance Framework

New Zealand does not have a specific regulatory framework for raising and providing sustainable finance. Rather, entities looking to raise or provide finance are required to comply with New Zealand's more general laws relating to financial markets. The primary piece of legislation regulating the offering of, and dealing in, financial products in New Zealand is the FMC Act.

The FMC Act defines "financial products" as including an equity security, a debt security, a managed investment product or a derivative. Sustainability-linked, social and green bonds are caught by this definition, as are ESG-related investment funds and superannuation schemes. In relation to offers, an issuer of financial products is required to publish a product disclosure statement (PDS) setting out key details in relation to the offer (unless it is able to rely on an exclusion – for example, for wholesale investors or for quoted financial product (QFP) offers of financial products of the same class as QFPs). For all offers, the FMC Act contains general "fair dealing" prohibitions on false or misleading conduct and the making of unsubstantiated representations, which govern the content of other communications in relation to the offer.

While not mandatory, in practice an important source of guidance for sustainable and green lending in New Zealand are the standards and frameworks published by (among others) the Asia Pacific Loan Market Association (APLMA). For example, the APLMA's sustainability-linked loan principles describe the standards against which key performance indicators and targets in sustainability-linked loans should be set, benchmarked and disclosed. Other relevant guidelines include:

- APLMA principles for green loans and social loans;
- the International Capital Markets Association's principles for green, social, sustainable and sustainability-linked bonds and guidelines for sustainability bonds;
- Climate Bonds Initiative guidance and standards; and
- guidance from the Sustainable Agriculture Finance Initiative.

3.3 Access to Green Financing

At a general level, it remains relatively straightforward for large New Zealand corporates to access the market for sustainable and green finance. Indeed, a large proportion of major corporates in New Zealand now have sustainable or green-borrowing finance frameworks and/or one or more sustainable or green finance products in place, so the focus is now shifting from market establishment to maturing the approach.

Over the past few years, the sustainable finance market in New Zealand has been maturing, with more focus on small and medium enterprises (SMEs). SMEs are an important part of the New Zealand economy, but historically have had less access to sustainable finance products than larger organisations. Several New Zealand banks have also set and publicly disclosed sustainable finance targets, which is further incentivising innovation in the products offered as the banks work towards their goals.

On the investor side, the FMA has said that consumers are increasingly prioritising non-financial characteristics when making investment decisions, which means that there is opportunity to grow the sustainable finance market. However, the lack of a comprehensive framework for the way that sustainable investments ought to be described has contributed to confusion for retail investors, and there is scope to grow understanding through the development of a sustainable finance taxonomy as described in **3.1 Progress in Green Financing**.

Some of the products available in the New Zealand market are as follows.

Green, Social, Sustainable and Sustainability-Linked (GSSS) Bonds

These include both use-of-proceeds bonds, where the proceeds are committed to a project that the issuer considers to have a sustainability benefit, and bonds linked to the issuer's progress as against pre-agreed sustainability performance targets. Private issuance of green bonds over the past few years has been comparatively slow and concentrated in a small pool of issuers, owing in part to regulatory complexity associated with retail issuance of these products. The authors are only aware of one sustainability-linked bond having been issued in-market. In April 2024, the FMA consulted on proposals to reduce the regulatory burden on issuers of green bonds by exempting issuers of certain sustainable bonds from disclosure requirements where the bonds have identical rights, privileges, limitations and conditions to existing quoted bonds (except for a different interest rate, redemption date and GSSS status). The consultation has closed and the FMA has announced an intention to issue a class exemption effecting the change.

Green and Sustainability-Linked Loans

The market for sustainability-linked loans in New Zealand is already mature, and there are challenges with continuing to grow this market as a result of several factors, including establishment costs and challenges meeting audit/assurance requirements. Nevertheless, there remains scope for diversification in the green loan market.

Managed Funds

In line with trends overseas, there has been a proliferation of ESG-related investment funds in recent years, reflecting increased consumer appetite for these sorts of products. There is, however, some confusion in the retail market about ESG-related labels, and the FMA has signalled a regulatory focus on greenwashing in the context of managed funds. This is contributing to fund managers maturing the approach to labelling of their funds. In September 2025, the FMA opened consultation on Ethical Investing Disclosure Guidance, which is intended to set out good practice for disclosure of the ESG characteristics of financial products.

3.4 Stranded Assets and Non-Bankables

Like many international counterparts, New Zealand banks and other financial institutions are focused on portfolio decarbonisation initiatives. The CRDs regime is a key driver in this space, as large New Zealand financial institutions are required to report on their Scope 3 (including financed) emissions and the steps they are taking to respond to their climate-related risks and opportunities.

However, tensions arise between the imperative for decarbonisation and broader impacts on New Zealand's economy and society. For example, a sudden shift away from financing traditional New Zealand industries, including agriculture, would have significant effects on New Zealand's economy, as well as having social impacts for many New Zealanders. As such, the general market approach to date has been for the large banks to set emissions-reduction targets and work directly with their clients on proactive steps that they can take to manage the transition to a low-emissions, climate-resilient future rather than withdrawing banking services (although most major banks do have some exclusions). The authors understand that some lenders also have caps and collars to manage their ongoing exposure to high-emission industries.

One recent development in this space is that a Parliamentary Select Committee recently undertook an inquiry into banking competition in New Zealand, and its terms of reference included considering the effect of any bank lending policies relating to borrowers' emissions that result in additional lending costs and/or lending restrictions. The terms of reference also include ascertaining whether bank environmental and sustainability policies have, or are likely to result in, further increases in lending rates to the agriculture and horticulture sectors. This aspect of the inquiry appeared to respond, at least in part, to concerns raised by some stakeholders that the large banks may be adopting policies that limit access to capital for some sectors. The report of the inquiry, released in August 2025, made a number of recommendations in relation to banking competition more generally; however, it stopped short of finding that banks' environmental and sustainability policies are negatively affecting borrowers or that these should be restricted.

3.5 Challenges Ahead

Key challenges in the sustainable finance market in New Zealand over the coming years include the following:

- litigation and regulatory risks associated with greenwashing, especially in the absence of clear regulatory parameters around when ESG-related labels will be false and/or misleading; and
- likely challenges associated with the implementation of the sustainable finance taxonomy, once developed.

A further challenge in the New Zealand market is one of scale. For example, the small size of New Zealand's investment opportunities creates challenges for the provision of bonds to provide funding to low-carbon projects.

4. ESG Due Diligence

4.1 Soft Law Becoming Hard Law

Soft law instruments are not directly enforceable in New Zealand. However, there has been a recent increase in hard law relating to sustainability following the conclusion of the Paris Agreement, with notable examples including the passage of the Zero Carbon Act in 2019 and the introduction of mandatory climate-related disclosures. In addition to these regulatory developments, soft law has the potential to influence judicial reasoning both in the interpretation of domestic statutes and in the development of the common law, and in that way to contribute to the evolution of hard law. The authors expect soft law to continue to be referred to in this way.

4.2 Towards Vertical Responsibilities

As investing with ESG goals in mind becomes more widespread globally, companies in New Zealand (particularly those that are publicly listed) are coming under increasing pressure to have, and demonstrate that they have, sustainable and ethical value chains.

New Zealand does not have a modern slavery regime that requires upstream due diligence of its supply chain, and it is not clear whether recent proposals for legislative reform will lead to a regime being introduced (see **1.3 Social Trends**). However, it is generally considered that a business must have an understanding of its supply chain and be in a position to substantiate any public claims that it makes about its supply chains. Advisers are encouraging companies in New Zealand to think about how to map human rights and environmental risks and what action they might take if negative impacts were identified as part of a due diligence process.

The CRDs regime also has implications for company value chains. The NZ CS explicitly note that CREs must consider the exposure of their value chains to climate-related risks and opportunities, and CREs are also required to report on their Scope 3 (value-chain) emissions. While this regime does not impose direct due diligence obligations on CREs, in practice it is influencing organisations to take steps to investigate and respond to climate-related issues in their value chains.

4.3 Partner Selection

The factors discussed in the preceding sections are influencing the choices that companies make in working with supply chain partners. For example, many New Zealand organisations are considering modern slavery in their supply chains and managing climate-related risks and opportunities.

As New Zealand companies are dependent on global supply chains (both imports and exports), overseas trends in selecting supply-chain partners tend to be quickly integrated into New Zealand business practice. Accordingly, there is an increasing trend among New Zealand businesses to make decisions on supply chain partners with reference to ESG factors. New Zealand exporters are facing ESG-related regulations in some jurisdictions that they export to, and large international customers are also demanding a greater focus on ESG. In turn, this is influencing the approach that New Zealand businesses are taking to management of their own supply chains.

Increasingly, contracts contain ESG compliance clauses, which require supply chain partners to comply with ESG information disclosure obligations or minimum thresholds, driven by factors such as customer demand and reporting obligations (both the

CRDs regime and the reporting regimes of overseas customers and supply chain partners).

4.4 ESG in M&A Due Diligence

Specific ESG due diligence by purchasers in the mergers and acquisitions context is typically quite limited. Purchasers do not generally conduct specific ESG due diligence over and above general environmental and resource management law due diligence. One major exception to this is forestry transactions, in relation to which NZ ETS obligations are a critical component of due diligence.

While ESG due diligence is not currently a major focus for most New Zealand transactions, it is possible that there will be an increasing focus on ESG due diligence as buyer expectations continue to evolve. Similarly, where a target company is likely to be particularly susceptible to ESG risk (whether due to the industry sector or specific risks within the relevant business), the authors expect that ESG due diligence would play a greater role.

It is possible that, as ESG law and regulation continues to evolve in New Zealand (including as a result of the CRDs regime), the focus on ESG factors in due diligence may increase.

5. Transparency and Reporting

5.1 Key Requirements

New Zealand's mandatory CRDs regime currently applies (broadly) to the following CREs:

- registered banks, credit unions and building societies with total assets of more than NZD1 billion;
- managers of registered investment schemes with greater than NZD1 billion in total assets under management;
- licensed insurers with greater than NZD1 billion in total assets or annual gross premium revenue greater than NZD250 million;
- listed issuers of quoted equity securities where the market price of all of the issuer's equity securities exceeds NZD60 million; and
- listed issuers of quoted debt securities, where the face value of the issuer's quoted debt exceeds NZD60 million.

As noted in **1.6 Market Participants**, the government has recently announced changes to the scope of the CRDs regime, including the raising of the equity and debt thresholds for listed issuers from NZD60 million to NZD100 million and removing fund managers from the regime entirely. These changes have not yet been formally implemented through legislation, although the FMA has announced that it will not take regulatory action against affected entities pending passage of the relevant legislation.

Provided an entity meets the definition of a CRE, the reporting requirements themselves are generally the same for each type of above entity (including groups of entities). One major exception to this is that managers of registered schemes are required to report in respect of each scheme they manage rather than in respect of the manager as an entity. Most scheme managers are required to prepare their scheme-level disclosures on a fund-by-fund basis (although common information may be presented at a scheme level). Importantly, fund managers will not be required to report at all going forwards.

In addition, the NZX Listing Rules require certain listed entities to make ESG disclosures on a "comply or explain" basis (see **2.2 Differences Between Listed and Unlisted Entities**).

5.2 Transition Plans and ESG Targets

Under the CRDs regime, CREs are required to disclose the transition plan aspects of their strategy. The External Reporting Board's (XRB) climate standards define "transition plan" as an aspect of an entity's overall strategy that describes an entity's targets, including any interim targets, and actions for its transition towards a low-emissions, climate-resilient future. In the first year of reporting, CREs have the option of relying on a first-year exemption from the disclosure requirements relating to transition planning, though this adoption relief is no longer available for most entities given that they are now in the second year of reporting.

The XRB has published some high-level guidance to support CREs getting started on transition plans, and it is expected that additional guidance will be released to support disclosure in this area.

There is no direct legal obligation on organisations in New Zealand to commit to targets. However, the CRDs regime requires CREs to disclose the targets they use to manage climate-related risks and opportunities, and their performance against those targets. The CRDs regime is a disclosure regime and does not require organisations to set one or more targets; however, in practice, it is a powerful incentive for organisations to carefully consider their approach to target-setting. The challenge for organisations in this area is ensuring that their climate-related targets are ambitious enough to reflect the scale of the climate crisis, while ensuring that the targets are achievable to minimise the risks of greenwashing allegations being made.

5.3 Regulation of ESG Labels

New Zealand does not have a specific regulatory regime relating to ESG labelling and sustainability claims. However, these matters are covered by New Zealand's suite of general consumer protection and financial markets laws, as set out further below.

The Fair Trading Act 1986

The Fair Trading Act 1986 (FTA) is the primary regulatory framework prohibiting misleading conduct by businesses. The key provision is Section 9 of the FTA, which prohibits any person, in trade, from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive. In addition, the FTA includes a range of more specific prohibitions on certain types of misleading conduct (eg, conduct that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods or services). The FTA also prohibits making unsubstantiated representations in trade that are representations made without reasonable grounds, irrespective of whether they are false or misleading.

While to date there has not been a significant number of ESG-related cases under the FTA, there is an established body of case law under the FTA as to when statements will be considered to be misleading. In particular, whether a statement is false or misleading is a question of fact, considered from the perspective of what a "reasonable person" would understand the claim in question to mean. It is the overall impression that counts, and statements can be misleading either by the express words used or by implication. The use of imagery can contribute to an overall misleading impression if not carefully used.

In 2020, the Commerce Commission (the regulator responsible for enforcement of the FTA) issued "Environmental Claims Guidance" to assist businesses in better understanding their obligations under the FTA when making claims about the environmental impact of a good or service. While relatively high-level, the guidelines cover a range of green claims, including recyclable, "free-of", sustainable, biodegradable, renewable energy, carbon offset/neutral and organic claims. The guidelines also remind businesses that claims must be accurate, up-to-date and based on credible evidence at the time they are made, and that consideration should be given to the entire contents of a product and its life cycle before making an environmental claim.

Fair Dealing

Part 2 of the FMC Act provides for fair dealing in relation to financial products and financial services. The fair dealing provisions of the FMC Act prohibit, in trade:

- engaging in conduct that is misleading or deceptive or likely to mislead or deceive in relation to any dealing in financial products, or the supply or possible supply of a financial service or the promotion by any means of the supply or use of financial services; and
- engaging in conduct that is liable to mislead the public as to the nature, characteristics or suitability for a purpose, or quantity of financial products or services.

The fair dealing provisions also prohibit the making of false, misleading or unsubstantiated representations, in trade, in connection with any dealing in financial products, the supply or possible supply of financial services, or the promotion by any means of the supply or use of financial services.

As a general rule, the principles relevant to misleading statements in the FMC Act context are consistent with those developed under the FTA.

Climate-Related Disclosures

Under the CRDs regime, CREs are required to prepare climate statements that comply with climate standards issued by the XRB. One of the climate standards, NZ CS 3, includes a principle of "accuracy", which provides that "[i]nformation is accurate if it is free from material error or misstatement".

Since the CRDs regime is new, to date the courts have not considered the application of the accuracy principle. However, it is likely to invoke similar principles to the prohibitions against misleading statements and unsubstantiated representations in the FTA and FMC Act more broadly.

5.4 Supervision

The FMA is New Zealand's conduct regulator for financial markets. In relation to ESG, the FMA is responsible for monitoring and enforcement of the FMC Act, including in relation to the CRDs regime and the fair dealing provisions.

In September 2025, the FMA commenced consultation on draft Ethical Investing Disclosure Guidance, which aims to provide guidance on how the disclosure obligations in the FMC Act apply when describing the ethical characteristics of financial products. This draft guidance intends to replace the FMA's Disclosure Framework for Integrated Financial Products issued in 2020.

Outside the financial markets context, the primary regulator of sustainability marketing claims in New Zealand is the Commerce Commission, which is responsible for the enforcement of the FTA (among other things).

In addition, NZX (as the licensed market operator of New Zealand's securities exchange) is responsible for monitoring and enforcing the rules under which the NZX's markets operate. This function is carried out by NZ RegCo, which is an independently governed entity. Part of this function includes enforcing compliance with the NZX Listing Rules and the Code, which requires certain issuers to make non-financial disclosures on a "comply or explain" basis, as set out in **2.2 Differences Between Listed and Unlisted Entities**.

The Advertising Standards Authority is the advertising industry's self-regulator for responsible advertising and enforces the Advertising Standards Code (and relevant sector-specific codes). The Advertising Standards Code includes principles relating to greenwashing, including a general principle that advertisements must not mislead or be likely to mislead, deceive or confuse consumers. If an advertisement is found to be in breach of the Advertising Standards Code, the Advertising Standards Authority can order that it be changed or removed, although compliance is voluntary.

5.5 Enforcement

The penalties for non-compliance with the CRDs regime and for false or misleading ESG disclosures are potentially significant.

In relation to the CRDs regime, the CRE is primarily liable for breaches of the relevant requirements. However, directors have to date also had automatic liability for non-compliant disclosure, and civil liability may also be imposed on any person "involved in a contravention". Certain defences to liability are available under the FMC Act. In 2025, the government announced that it will relax these director liability settings, with the relevant legislation to be passed in 2026.

The principal civil sanctions available under the FMC Act include pecuniary penalty orders and compensatory orders. The maximum pecuniary penalty is NZD1 million in the case of an individual or NZD5 million in any other case. The purpose of compensatory orders is to compensate aggrieved persons (and this could include investors).

The FMA has confirmed that it is taking a "broadly educative and constructive approach" towards compliance with Part 7A of the FMC Act in the first years of the CRDs regime, but misleading disclosures or failure to report are likely to attract enforcement action.

In relation to the fair dealing provisions in the FMC Act, a breach of these provisions may also give rise to civil liability. Again, both compensatory and pecuniary penalty orders are available. The maximum pecuniary penalty is the greatest of:

- the consideration for the relevant transaction;
- three times the amount of the gain made or loss avoided by the person who contravened the provision; and
- NZD1 million (for individuals) or NZD5 million (in any other case).

In some circumstances, criminal liability can also arise under the FMC Act. For example, CREs (and their directors) commit an offence if they knowingly fail to comply with an applicable climate standard. The FMC Act also provides for a general offence of knowingly making false or misleading statements. The FMC Act provides for a range of penalties for the FMC Act offences described, including significant fines (up to NZD500,000 in the case of an individual or up to NZD2.5 million in any other case) and terms of imprisonment (up to five years).

Civil and criminal liability can also arise for breaches of the FTA. In relation to criminal liability, the maximum penalty is NZD200,000 for an individual and NZD600,000 for a business (per offence). In addition, businesses that breach the FTA can be required to pay compensation to affected consumers and certain other enforcement mechanisms (eg, injunctions) are also available.

5.6 Expected Progress

Companies required to report going forward are likely to make substantial progress in meeting their reporting obligations as New Zealand's CRDs regime continues to mature, market practice evolves and expertise continues to improve.

However, substantial challenges remain, including in relation to:

- data availability and quality – for example, with respect to financed emissions;
- resource constraints in implementing the regime;
- assurance of greenhouse gas emissions disclosures;
- quantification of the financial impacts, climate-related risks and opportunities, in circumstances where these impacts are (in many cases) highly uncertain;
- alignment with international reporting frameworks, particularly for organisations with parent companies or other group structures which mean that they are required to report in multiple jurisdictions;
- a wide degree of variation in the approach to compliance across the market; and
- varying degrees of buy-in at the board level for climate-related disclosures.

In light of those challenges, the government and regulators have announced a range of changes to the regime, including:

- narrowing the scope of the regime, by removing the requirement for fund managers to report going forward and raising the debt and equity thresholds for listed issuers from NZD60 million to NZD1 billion;
- easing the director liability settings, by removing automatic liability for non-compliance with the CRDs regime;
- the FMA announcing a "no action" approach for organisations that will be removed from the scope of the regime in future, while legislation is awaited;
- the XRB announcing changes to adoption relief, giving entities that are still captured within the regime an additional two years to report on anticipated financial impacts of climate-related risks and opportunities, Scope 3 emissions and Scope 3 assurance;
- the FMA announcing a two-year extension to a current exemption from the requirement to include the climate statements (or a link to them) in an annual report, giving CREs the benefit of a full four months following balance date to prepare and lodge their climate statements; and
- the FMA issuing an exemption notice releasing Australian domiciled organisations listed on the NZX from the requirement to lodge climate-related disclosures in New Zealand, subject to certain conditions (such as lodging Australian sustainability reports on the New Zealand register).

6. Climate and ESG Litigation

6.1 Instruments for ESG Litigation

It is relatively straightforward to commence ESG-related cases against companies in New Zealand.

One way to attempt to start an ESG-related claim in New Zealand is to make a complaint to one of the regulators responsible for enforcement of a relevant regime, such as the FMA or the Commerce Commission. These complaints could be made by a competitor. However, these regulators have limits on their resources, and there is no guarantee that any individual complaint will be progressed.

Accordingly, it is also possible to take claims directly to the New Zealand courts. One key issue for claimants in considering whether to take such a claim will be whether the claimant has standing to sue the relevant counterparty. Some types of claims, for example, will only be able to be brought by shareholders in a defendant company. However, other avenues (such as claims under the FTA) are more easily brought by other stakeholders.

6.2 Climate Activism

Activists and NGOs are increasingly important in the New Zealand ESG litigation landscape. Over the past couple of years, several significant pieces of litigation have been commenced by activist and NGO groups. This includes several judicial review challenges against government decision-making on climate change issues (see, for example, **1.2 Environment Trends** for discussion of *Lawyers for Climate Action New Zealand Incorporated v Commerce Commission*). Lawyers, acting on a pro bono basis or as part of a climate action collective, have played a significant role in bringing climate-related cases to the New Zealand courts in recent years. While, to date, most of the claims brought by activist groups or NGOs in New Zealand have not succeeded at trial, these pieces of litigation have a wider significance in influencing both public perception and corporate action on climate change and other ESG issues.

One dynamic of the New Zealand market that distinguishes it from some other jurisdictions is that many New Zealand corporates are owned by offshore (especially Australian) parent companies or have other ownership structures that are different from a traditional diversified shareholder model. As such, shareholder activism has played a lesser role in New Zealand than it has in some other jurisdictions in relation to bringing ESG-related claims.

6.3 Greenwashing

Both the FMA and the Commerce Commission have signalled a regulatory focus on greenwashing. To date, formal enforcement action has focused predominantly on product-level claims (such as claims relating to the extent to which products can be recycled or composted) rather than entity-level claims (such as claims relating to the approach that an entity is taking to climate action). However, both regulators have indicated that they are sharpening their focus in this area and have been using a range of regulatory and non-regulatory tools to engage with the market. For example, the FMA undertook a review of integrated financial products relating to managed funds in July 2022 and, while the review fell short of finding instances of greenwashing, the FMA did identify "weaknesses in information disclosure".

In the private litigation sphere, while no greenwashing cases have been brought by investors, two significant cases have recently been lodged, as follows.

- In late 2023, a group of NGOs lodged proceedings in the High Court seeking declarations that Z Energy had breached the FTA by misleading New Zealanders with its public claims on emissions reduction and climate change mitigation. The claim alleged, for example, that claims made that Z was "in the business of getting out of the petrol business" and associated claims about its progress on emissions reductions were false and/or misleading. This claim settled in October 2025, with the defendant publicly apologising for any confusion caused.
- In September 2024, Greenpeace New Zealand lodged proceedings in the High Court against Fonterra (a major dairy co-operative and one of New Zealand's largest companies) in relation to claims made on "grass-fed" claims regarding its butter packaging. The relevant labelling has

subsequently been amended but Greenpeace has indicated that it intends to continue the claim.

6.4 A Turbulent Future Ahead

ESG-related proceedings are likely to grow in New Zealand, in line with developments overseas. Over the past few years, ESG-related cases in New Zealand have gradually proliferated, and several major ESG-related cases are now awaiting hearing or decision in the New Zealand courts. Further, it is possible that developments such as the Supreme Court allowing *Smith v Fonterra* to proceed to trial will increase the attractiveness of New Zealand as a jurisdiction that is potentially open to the development of the law relating to ESG.

PORTUGAL

Law and Practice

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Contents

VdA Vieira de Almeida is a leading international law firm with more than 40 years of history, recognised for its impressive track record and innovative approach. Its comprehensive legal services cover several industries and practice areas, including agribusiness; aviation; banking and finance; competition; corporate and M&A; defence; digital frontiers; energy and natural resources; the environment; governance; healthcare; information, communication and technology; infrastructure and mobility; insurance; investigations and white-collar crime; IP; life sciences; litigation and arbitration; mining; oil and gas; private equity and venture capital; public law and administration; rail infrastructure; real estate and regulatory entities; restructuring and insolvency; social economy and human rights; and tax. VdA offers robust solutions grounded in consistent standards of excellence, ethics and professionalism to help its clients overcome increasingly complex challenges. The high standard of VdA's work is acknowledged by clients and stakeholders, and leading professional associations, legal publications and academic entities, with the firm and its lawyers receiving numerous international accolades and awards.

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1. Introduction

1.1 General ESG Trends

In the last few years, European lawmakers have continued to improve the European Union ESG frameworks by adopting important ESG legal acts that could be considered a roadmap for all stakeholders on ESG issues. Late 2024 and the whole of 2025 represent for the first time a slowdown in the European ESG agenda. It is still too early to decide if this represents a downside, as the legal discussion is ongoing.

Following the Draghi Report, in response to concerns over complexity in sustainability regulation, the European Commission introduced the Omnibus Simplification Package, a proposal aimed at streamlining corporate sustainability reporting while maintaining the EU's sustainability goals. Its first draft was released in February 2025. It brings amendments and clarifications to the Corporate Sustainability Reporting Directive (CSRD), the Corporate Sustainability Due Diligence Directive (CSDDD), the Carbon Border Adjustment Mechanism (CBAM) and the EU Taxonomy Regulations.

The aim is to create conditions for a more competitive economy by reducing the administrative burden on businesses and promoting a more favourable environment for business and investment in Europe. One of the measures involves reducing the levels of information required from smaller companies, such as small and medium-sized enterprises (SMEs) and mid-cap companies, which are part of the value chains of large companies.

The Corporate Sustainable Reporting Directive (CSRD)

One of the most anticipated legal regimes, the CSRD, which replaced the Non-Financial Reporting Directive, was adopted at the end of 2022 and came into effect in January 2023. Mandatory reporting obligations cover approximately 50,000 companies and are applicable to both EU and non-EU companies that meet the target number of employees and annual turnover. The first reporting period started in 2025 with information for the 2024 financial year. This first wave is limited to large public-interest entities with more than 500 employees. The inclusion of other companies was then postponed for two years by the so-called Stop-the-Clock Directive of April 2025. In any case, Portugal has not yet transposed this directive, and it is expected that this will only occur once the new text is approved.

The European Sustainability Reporting Standards (ESRS)

The ESRS regulation was also adopted during 2023 as the unified instrument for CSRD reporting obligations. Unlike the CSRD, which needs transposition into national legislation (which has not yet occurred in Portugal), the ESRS can be applied directly to the member states. Consequently, companies started reporting according to the calendar stated by the CSRD, despite the omission of the national legal transposition act. The reporting standard has set a list of specific information that companies must disclose regarding their material impacts, risks and opportunities in environmental, social and governance matters. The ESRS consists of two cross-cutting matters and ten thematic standards that cover ESG issues. The

European Commission is also preparing a review of the ESRS in the context of the OMNIBUS I simplification package. For now, it has only approved and published the so-called Quick-Fix Directive, which adjusts the calendars on the annexes for the "first-wave companies".

The Corporate Sustainability Due Diligence Directive (CSDDD)

Discussions on the CSDDD started in 2022 and the directive finally came into force in July 2024. The CSDDD represents a major step as it imposes a due diligence obligation on companies, which are obliged to identify, mitigate and report on the impact of their own operations and supply chain on human rights and the environment. This is another directive covered by the OMNIBUS I simplification package. Under the Stop-the-Clock Directive, member states have two extra years for transposition, and several material changes have been proposed by the European Commission. It is still unclear what final version will be approved by the European Commission, Parliament and Council – especially considering doubts about the maintenance of this directive.

The Regulation on European Green Bonds

On the financial side, the Regulation on European Green Bonds, adopted in 2023, aims to address the challenge of increasing financial flows towards green technologies and energy-efficiency projects. This regulation creates an effective financial instrument for investors, thereby contributing to the fight against climate change and having a positive impact on society and the environment. Early market feedback indicates that large issuers, especially in the energy sector, have led the way, but smaller entities face higher compliance costs and capacity constraints. Overall, this regulation has accelerated the growth and credibility of Portugal's green bond market, but full market adaptation is ongoing, with further regulatory guidance and capacity-building expected in the coming years.

The Regulation on the Transparency and Integrity of ESG Rating Activities

The new Regulation on the Transparency and Integrity of ESG Rating Activities was published in December 2024. It recognises a general legal regulatory approach to strengthening the principles of the reliability, transparency and credibility of an ESG rating by setting specific rules of organisation and conduct for ESG rating providers. The regulation will apply from 2 July 2026 and is directly applicable to member states.

1.2 Environmental Trends

The Regulation on Deforestation-Free Products (EUDR) and the Nature Restoration Law

As a member of the EU, Portugal implements all EU legislation. A few examples of the development of EU legal acts in parts of the environment can be highlighted, such as the Regulation on Deforestation-Free products (EUDR) and the Nature Restoration Law which were adopted recently. Both legal regimes aim to protect nature and biodiversity.

The Regulation on Wastewater Management

The EU is taking an important step towards achieving its "Zero Pollution" ambition, with the revised Urban Wastewater Treatment Directive due to come into force on 1 January 2026. The new rules will further protect human health and the environment from harmful discharges of urban wastewater and ensure cleaner rivers, lakes, groundwater and coasts across Europe.

Directive (EU) 2024/3019 Concerning Urban Wastewater Treatment

Adopted on 27 November 2024, this directive introduces stricter rules on micropollutants, aiming to address growing concern about the environmental impact of micropollutants in urban wastewater, with a specific focus on the pollutants generated by the pharmaceutical and cosmetics industries. It complements upstream measures like the environmental risk assessment (ERA) for medicinal products, which focuses on preventing the entry of pharmaceuticals into the environment in the first place. With its entry into force on 1 January 2025, this directive already provides for the simultaneous application of some of its provisions, with several obligations that have to be fulfilled and reported to the European Commission by the end of 2027. The challenge of transposing it into national legislation until 31 July 2027 remains pending.

Decree-Law No 11/2023

At the national level, one of the main environmental legislations recently approved was related to administrative simplification of licensing in the fields of the environment, green public procurement, water resources use and waste management, through the approval of Decree-Law No 11/2023.

Parliament Resolution No 127/2025

Still at the national level, this very recent resolution approved an update to the Portuguese National Energy and Climate Plan 2021–2030. As part of this review, some objectives were updated in the areas of decarbonising the national economy, prioritising energy efficiency, promoting sustainable mobility, strengthening the commitment to renewable energies, and reducing the country's dependencies.

The National Strategy for Public Procurement

The National Strategy for Public Procurement has been updated in line with EU policy in this area and in compliance with the Climate Framework Law (Law No 98/2021), which provides for preference for the contracting of services that comply with the principles of the EU Taxonomy on environmentally sustainable activities.

Decree-Law No 69/2023

Decree-Law No 69/2023 established the legal framework for the quality of water intended for human consumption, in line with European directives.

Management of Waste

Finally, comprehensive amendments to waste management legislation were approved (including the legal regime for the landfilling of waste and the regime for the management of specific waste streams, subject to the principle of extended producer responsibility), as well as the Strategic Plan for Urban Waste 2030 and the Strategic Plan for Non-Urban Waste and the National Waste Management Plan 2030.

1.3 Social Trends

In 2024, Portugal's social ESG landscape shifted from establishing frameworks to emphasising enforcement and transparency. The authorities have intensified inspections and sanctions on key social issues, notably addressing misclassification through mass notifications to regularise economically dependent self-employed workers, ensuring gender pay-gap compliance, and enforcing hiring quotas for persons with disabilities. Employers have also expanded anti-harassment policies and well-being initiatives, reflecting a broader European trend towards comprehensive ESG compliance.

Regulatory Framework

In regard to regulations and legislation, Portugal has continued to advance gender equality and regulations that are non-discriminatory. This includes measures to ensure equal pay, reinforce anti-discrimination laws, and promote female representation in corporate leadership roles. The existing regulatory framework has seen enhanced monitoring and enforcement mechanisms this year.

In turn, Portuguese companies have been making an effort to comply with inclusion regulations, namely, concerning disabled people.

In matters of harassment at work, employers have been putting in place codes of conduct and regulations on the prohibition and prevention of such behaviours, which encompass not only victims, but also witnesses and whistle-blowers.

Measures taken for parenthood protection and work-life balance were mostly in view of employees' mental health and engagement, with the development and enforcement of more regulations on absences from work, flexible schedules, and social benefits, among others.

The Portuguese government has put forward new regulations aimed at improving working conditions. This includes stronger enforcement of labour rights, increased minimum wages, and more stringent rules on temporary and precarious employment.

Finally, Directive (EU) 2023/970 of the European Parliament and the Council of 10 May 2023, to be transposed by 7 June 2026, addresses the subject of equal treatment between men and women in the workplace – a topic that is not new, but which has gained new drive with the publication of this directive. The directive imposes various obligations on companies regarding pay transparency for both employees and job applicants, and is driving companies to improve data collection and transparency on social issues.

It is also worth noting that parental leave and work-life balance are topics the Portuguese government is looking into, notably with studies on extending parental leave and addressing gender discrimination in the labour market, with several legislative initiatives and policy proposals expected to impact employment in the coming year. Proposed amendments to the Labour Code are very extensive and, given the recent combination of parliamentary forces, structural changes to the Portuguese labour framework can be expected.

Inspections and Reporting

Labour authorities intensified inspections on gender pay gaps, quotas for disabled workers, and compliance with anti-discrimination and harassment laws. This trend is expected to continue, with a likely rise in court disputes and enforcement actions.

Gender equality and pay-gap reporting

Portugal continued to strengthen its legal framework for gender equality. In 2024, the Authority for Labour Conditions (*Autoridade para as Condições do Trabalho* – ACT) and the Commission for Equality in Labour and Employment (*Comissão para a Igualdade no Trabalho e no Emprego* – CITE) intensified inspections and enforcement, notifying thousands of companies to address pay disparities and submit evaluation plans.

Misclassification of economically dependent self-employed workers

At the beginning of February 2024, the Labour Authority notified 9,699 employers to regularise the employment status of 17,701 economically dependent self-employed workers (ie, service providers who perform 80% or more of their work for a single entity). By May, the Labour Authority reported that 19% of the hiring entities had regularised approximately 2,400 economically dependent self-employed workers and highlighted the preparation of 130 reports to the Public Prosecutor's Office.

Quotas for people with disabilities

On 22 July 2024, the Labour Authority announced that it would begin a nationwide inspection campaign, starting in September 2024, which would continue until the end of the first quarter of 2025, to verify compliance with the employment quota for people with disabilities as defined in Law No 4/2019, of 10 January. This law establishes an employment quota system for people with disabilities with a degree of disability equal to or greater than 60%.

Case Law Developments

When it comes to case law, several notable cases on labour rights have been brought before the Portuguese courts in relation to unfair labour practices, including unjustified dismissals, workplace harassment, and violations of term contract. Notable cases addressed discrimination based on gender, race, and sexual orientation, reinforcing the importance of inclusive and equitable work environments.

The outcomes of these cases are shaping employer practices and reinforcing the importance of adhering to fair labour standards, with courts upholding the need for robust employer policies and protections for both victims and whistle-blowers.

Portuguese courts have also seen an increase in cases related to employee data privacy, due to the enforcement of the General Data Protection Regulation (GDPR) across the EU. Companies are being held accountable for misuse or mishandling of personal data, emphasising the importance of robust data protection measures in the workplace.

The cases are mostly related to:

- discrimination, with significant cases related to workplace discrimination based on gender, race and sexual orientation – the rulings in these cases are helping to build a more inclusive and equitable work environment in Portugal; and
- worker safety, with occupational health and safety violations being most prominent – companies found negligent in ensuring a safe working environment have faced substantial penalties, underlining the critical importance of health and safety protocols.

1.4 Governance Trends

Despite the uncertainty introduced by the Omnibus 1 package, corporate governance (the G of ESG) continues to gain prominence, extending a trend observed in recent years. Companies increasingly recognise the role of internal policies and systems and are adopting more risk management-oriented approaches.

The essential pillars of Portuguese legislation related to corporate governance, the Companies Code and the Securities Code, have not recently undergone significant changes. The Corporate Governance Code (soft law) by the Portuguese Institute of Corporate Governance (*Instituto Português de Corporate Governance* IPCG) of 2018 was revised in 2023, adding a new, dedicated chapter on sustainability.

The most significant recent developments concern the CSRD. In February 2025, the Omnibus 1 package proposed a reduction of companies covered by this directive, the postponement of the application of reporting requirements for certain undertakings by two years, the revision of the ESRS, and the deletion of the requirement for sector-specific standards. Full application of the CSRD is now expected by 2029 for reporting of FY 2028, although many affected companies had already started preparing for implementation. It is important to note that it remains unclear when the applicable rules will stabilise and what their final terms will be.

The Omnibus 1 package further proposes to postpone the transposition deadline of the CSDDD by one year.

The EU Taxonomy Regulation and Delegated Acts will also undergo substantial changes, namely, a reduction in the number of companies obliged to report their taxonomy alignment, in a step towards closer alignment with the scope of the CSRD.

1.5 Government and Supervision

Currently, in Portugal, there is no single regulatory or supervisory entity that globally assumes responsibility for the ESG transition. In global terms for all economic activity, it is only the Portuguese government that assumes responsibility through policy measures that promote the ESG transition. Specifically, regarding climate, it has since 2021 enacted the Climate Framework Law, which reflects deep concern about the transition and primarily targets public entities, although private companies are also in its scope.

Regulatory and supervisory bodies oversee sets of entities based on their sectors or nature and have ESG impacts within their respective areas. Some specific supervisory bodies stand out.

The Portuguese Securities Market Commission

The Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários* – CMVM) supervises entities with securities admitted to trading on a regulated market. These are mostly companies with extended ESG reporting obligations, whose compliance is subject to oversight and sanction by the regulatory entity. The CMVM has dedicated significant attention to ESG matters and in 2024even published a "Sustainability Guide for Issuers, Asset Managers, and Financial Intermediaries" under its supervision.

The Bank of Portugal

The Bank of Portugal (*Banco de Portugal* – BdP), responsible for supervising credit institutions, also has a supervisory role regarding ESG, shared with the European Central Bank, depending on the characteristics of the credit institutions. Credit institutions have a set of specific ESG disclosure obligations resulting from the Taxonomy Regulation and Pillar III obligations approved by the Commission Implementing Regulation (EU) 2022/2453 of 30 November 2022. These obligations are very broad and are subject to supervision by the regulatory authority.

Other Regulators

There are other regulators of significant activities in the transition process that impact the covered companies, such as the Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões* – ASF) and the National Tourism Authority (Turismo de Portugal).

The future transposition of the CSDDD will bring new developments in this matter, as countries will be required to designate an oversight authority with specific competencies not only in the supervision of due diligence matters but also in climate transition plans.

1.6 Market Participants

Portugal has a strong industrial ecosystem mainly composed of small and medium-sized companies, which act as first or second-tier suppliers to large companies located in other countries (EU and non-EU). The main sectors of activity consist of garment and footwear (textile sector), food and beverages (agricultural and food sector), metalworking, the automotive parts industry and mobility (manufacturing sector), real estate and construction (construction sector), tourism and hospitality (accommodation and travelling sectors), with other fast-growing sectors, such as the aerospace industry, ICT and corporate shared services, such as data centres or centralised operational hubs for back-office activities. Although many ESG laws and regulations will not be directly applicable to the Portuguese industrial sector due to the small size of the companies involved (the application thresholds of those laws and regulations will not be met, as is the case with the CSDDD, which only affects a reduced number of Portuguese companies), the fact that most of the market addressed by Portuguese companies is composed of large companies which are subject to those legal requirements will undoubtedly have an impact. ESG concerns, although not yet fully widespread in the industrial ecosystem, are becoming increasingly inescapable due to the pressure originating from the market. Therefore, it is expected that all sectors and industries with an export component will have to adjust to ESG requirements and reshape their business practices, or otherwise they will be at a competitive disadvantage and may even lose some of their market share. Finally, the attractiveness of foreign investment and access to traditional financing will increasingly be reliant on ESG criteria, which means that those sectors targeted by investment funds (eg, the energy sector, where the role of renewable energies is relevant) or with business models highly dependent on financing (eg, construction and the real estate sector) will have to adapt their operations and strategies to be ESG compliant. The energy, transportation, tourism, agribusiness, and financial services sectors are poised to experience the most immediate impacts, requiring firms to rethink long-term strategies, adopt sustainable practices, and invest in cleaner technologies.

1.7 Geopolitical Developments

Extraordinary events and the increased number of natural disasters of the last few years have been relevant in the ESG-related process.

The invasion of Ukraine by Russia and the subsequent disruption of the global energy market have caused the EU to adopt several measures to cope with this situation. Among these, it has launched a programme under the name "REPowerEU" to promote the phasing out of Russian fossil fuel imports and to overcome EU dependency on them.

Under this programme, several reforms have been made in Portugal, such as:

- the implementation of one-stop shops for energy efficiency and renewables;
- the development of a regulatory framework for renewable hydrogen management; and
- the creation of the National Energy Poverty Observatory.

Amendments were also made to energy efficiency in the residential, service and public buildings sectors; on energy transition to support the development of green industry; and on decarbonisation of public transport.

In turn, the climate policy remains among the priorities of the EU and other countries worldwide, as evidenced by the policy statements of various governments at 2023's UN Climate Change Conference (COP28). These statements, aimed at combating global climate change, can be found in the domestic public policies of central banks, the fiscal system, and the energy-resilience system.

In Portugal, it is worth noting the adoption of the Climate Framework Law, which came into force in January 2022. With widespread scope (covering topics such as green finance, companies' governance, health, security and foreign policy, energy transition, adaptation to climate change, a just transition, sustainable mobility and transport, agriculture and the food chain, international co-operation, etc) it sets ambitious targets and obligations for accomplishing climate neutrality even before the 2050 goal set by the EU. Finally, brief mention needs to be made about the creation in 2021 of a national mechanism of just transition in order to guarantee the maintenance of the wages of workers who lost their jobs due to the closing, in 2021, of the Central do Pego, which used to produce electricity from coal.

2. Corporate Governance

2.1 Developments in Corporate Governance

The main developments expected in Portuguese corporate governance are adaptation to the changing requirements of the CSRD and the EU Taxonomy, as well as the continued implementation of the revised IPCG's Corporate Governance Code. Both initiatives are set to significantly shape the governance frameworks and processes of a broad range of companies.

The IPCG has dignified ESG with a new first chapter in its Corporate Governance Code, dedicated to relationships with shareholders, stakeholders and the wider community, as well as sustainability. This revision represents a notable shift in Portuguese corporate governance, placing sustainability at the forefront and aligning with the 2023 G20/OECD Principles of Corporate Governance. As an OECD member, Portugal is committed to these principles, which emphasise the responsibility to contribute to the UN Sustainable Development Goals, conduct environmental and social impact due diligence, and integrate stakeholders' interests into decision-making. The recommendations are particularly focused on promoting transparency and disclosure.

The sustainability reporting framework may face substantial amendments under the Omnibus 1 package. While the CSRD is primarily focused on imposing ESG reporting obligations, its underlying purpose and implementation strategy are designed to drive substantive change, encouraging companies to actively transition towards more sustainable practices rather than simply disclosing information. This pressure is felt throughout the corporate ecosystem. The need to comply with reporting obligations is prompting many companies to reorganise and change their governance processes. The increased transparency and inevitable benchmarking against other stakeholders are expected to generate significant changes in corporate governance, such as an increase in environmental or social initiatives; the restructuring of boards, committees and overall corporate competencies; and improvement in addressing specific governance issues related to business conduct and ethics.

The value chain implications of the CSRD, combined with the broader diffusion of corporate governance and ESG concerns, have also triggered a clear trend among smaller companies. Even though they are not directly subject to any legal reporting obligations, they are increasingly embarking on their own sustainability journeys, recognising the growing importance of ESG in business.

However, the lack of clarity surrounding the reporting rules applicable to undertakings, stemming from delays in application and changes to the scope of companies covered, has led to the suspension of some ESG-related initiatives. This evolving regulatory environment has had a particular impact on so-called "wave two" companies (all large companies that are not public-interest entities with more than 500 employees), many of which were preparing to implement new compliance measures.

2.2 Differences Between Listed and Unlisted Entities

The fundamental legal framework for corporate governance, applicable to companies (listed and unlisted), is set out in the Portuguese Companies Code (*Código das Sociedades Comerciais*).

Listed companies are required to report on their adherence to a corporate governance code on a "comply or explain" basis and to disclose detailed information about their corporate governance practices. This has generally been done by referring to the IPCG's Corporate Governance Code. These companies are also subject to other specific corporate governance provisions under the Portuguese Securities Code (*Código dos Valores Mobiliários*) and other regulations issued by the CMVM.

Regarding ESG disclosure requirements, the distinction is not limited to whether a company is listed or unlisted, but also considers whether the company qualifies as a large enterprise of public interest with at least 500 employees. Listed companies are, by definition, public interest companies. To those companies, the Portuguese Companies Code imposes specific ESG disclosure requirements, to be included in the management report.

Full implementation of the CSRD will probably shift the relevant distinction from differentiating between listed companies (and other public-interest companies) and other companies, to a system where the main criteria are only dependent on size. The Omnibus 1 package – pending final adoption following ongoing negotiations between co-legislators – proposed a scope that covers large companies with more than 1,000 employees, but only the final legal act will definitively establish the applicable criteria. In the meantime, companies falling within the scope of the CSRD are large public interest companies with more than 500 employees; parent undertakings of large groups that are public-interest companies with more than 500 employees; SMEs listed on the EU-regulated markets, except micro-undertakings; and issuers that belong to these categories of undertakings.

2.3 Role of Directors and Officers

The development of ESG, featuring environmental regulations, significant advancements in employee rights, and strengthened governance duties, such as those related to bribery and corruption or whistleblowing, as well as comprehensive reporting requirements, has resulted in several direct legal obligations for companies.

In the area of climate governance, the Portuguese Climate Framework Law (*Lei de Bases do Clima*) has introduced a governance obligation that requires companies to integrate climate change considerations into their corporate governance regarding investment decisions, and to incorporate climate risk analysis into their decision-making processes.

Fulfilment of all these obligations is the responsibility of the directors, who are bound by duties of care that require availability, technical competence and a thorough understanding of the company's activities, and who must act with the diligence of a prudent and responsible manager.

Where ESG factors do not yet constitute direct legal obligations for acting, directors' liability will generally arise only if duties were not observed in their actions, and it can be concluded that those actions did not meet the standards of business rationality (business judgement rule). Assessing such liability can only be done on a case-by-case basis and involves a degree of subjectivity, as it requires consideration of the specific context of the company's activities, the unique facts of each case, and the identification of relevant stakeholders whose interests directors must take into account in fulfilling their responsibilities.

2.4 Social Enterprises

Portugal does not have specific legal business forms for social enterprises and/or non-profit companies. Social entrepreneurs wishing to incorporate social enterprises or non-profit corporate structures, generally opt to incorporate a regular commercial company, with carefully drafted articles of association that reflect the social venture of the company. These companies frequently have non-profit organisations as founders.

2.5 Shareholders

Shareholders are responsible for overseeing the company's management, including evaluating the performance of directors, and may initiate dismissals and pursue liability claims. Within the ESG framework, there are specific obligations, and the influence of these concerns on all companies is unequivocal. Directors' decisions regarding ESG matters, like all other strategic decisions, are subject to shareholder scrutiny.

In this oversight, the interpretation of Portuguese law regarding stakeholders is relevant, particularly in relation to directors' duties of loyalty and the interests they are required to consider. Duties of loyalty are primarily owed to the company itself. The interests of shareholders and other stakeholders should also be considered, but these are subject to different levels of relevance in this construction. Directors must act in the long-term interests of shareholders, but must also take into account, to a distinct degree, the interests of other stakeholders who are relevant to the company's sustainability, such as employees, clients and creditors.

It is therefore clear that, under Portuguese law, the company and its shareholders are the primary focus. However, complexity arises from the recognition that considering the interests of other stakeholders may ultimately serve the best interests of the company and its shareholders.

3. Sustainable Finance

3.1 Progress in Green Financing

Portuguese supervisors have been making a concerted effort to promote sustainability with local asset managers, investors and stakeholders. This has been achieved primarily through the provision of information to the market, participation in public events, and the organisation of surveys to assess how market operators are incorporating sustainability into their activities.

New IT tools that will simplify the ESG analysis carried out for clients and prospective clients, along with the increased regulatory attention devoted to ESG, should continue to propel the integration of sustainability within the local market.

3.2 Sustainable Finance Framework

Currently, the main guidelines for companies seeking and/or providing finance stem from:

- the EU Green Bonds Regulation;
- internationally recognised standards such as those from the International Capital Market Association; and
- sustainable finance frameworks created by each institution.

These frameworks aim to disclose to the market how they incorporate sustainability demands into their financing activities.

3.3 Access to Green Financing

There are several local institutions and operators making green financing available to borrowers. The offer of green financing is expanding, and this trend is expected to continue in the foreseeable future due to the need for lenders to report their own alignment with the EU Taxonomy.

Regarding green banking loans, several of the major Portuguese banks already offer green options to borrowers under their sustainable finance frameworks. As expected, the financing granted under these options offers special conditions to borrowers; however, it also imposes constraints on their activities and the use of the proceeds.

In terms of sustainability bonds, sustainability-linked bonds, or green bonds, Portuguese entities with a particular focus on the energy sector started successfully resorting to these instruments to finance their activities several years ago.

3.4 Stranded Assets and Non-Bankables

Although the shift of focus towards green financing is becoming clearer each day, it is still possible for companies operating with stranded assets or other non-bankable assets under the ESG landscape to obtain financing for their activities.

Nevertheless, as financing increasingly favours more desirable sectors under the ESG landscape, concerns regarding old-economy borrowers and issuers will likely rise on the list of issues to address in the transition to a greener economy.

In any case, in Portugal, it is noticeable that even companies with a significant business in stranded assets are making an effort to adapt to ESG principles. For example, they are investing in more suitable projects, diversifying their portfolios, and making investments to reduce their carbon footprint.

3.5 Challenges Ahead

With the ever-increasing presence of sustainable finance and ESG at the top of the agenda for public supervisors, lenders, borrowers, investors and stakeholders, the market is now moving from its initial formal approach to the inclusion of ESG in its activities – perceived more as a burden than an opportunity – to truly embodying and adopting ESG principles.

This change in attitude will require a broader and better comprehension of the status of ESG adoption by local companies, and their plans. In this regard, it is already noticeable that local financial institutions, acting in a co-ordinated manner, are taking the first steps to collect and share ESG data from their clients and to facilitate easier access to green financing.

Although anti-ESG movements may be on the rise in some US states, for now, the local market is adopting a positive outlook on ESG, and no significant anti-ESG movement has been perceived.

Finally, after the initial push for the adoption of, and compliance with, the ESG framework by financial institutions, according to public statements from financial sector supervisors, it is expected that regulatory awareness will start focusing more on the materiality of public ESG statements, classification of products and distribution of green products.

4. ESG Due Diligence

4.1 Soft Law Becoming Hard Law

In recent years, there has been a notable global trend of soft-law principles evolving into hard law. Portugal reflects this broader global trend, influenced by its commitment to international and European standards, and the evolving needs of governance and regulatory frameworks. This tendency may be observed in several areas, including environmental law, corporate governance, human rights, and digital regulations. The United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, which have informed recent EU legislation such as the CSDDD and the Forced Labour Regulation, are good examples.

4.2 Towards Vertical Responsibilities

Due diligence requirements for companies operating in Portugal are indeed increasing, especially for those forming part of the chain of activities of large companies. This is a trend emerging from EU legislation, notably the Forced Labour Regulation and the CSDDD relating to due diligence on human rights and the environment in the chain of activities, though the impact of the tripartite discussions resulting from the Omnibus 1 package is not yet known. However, market pressures, consumer expectations and companies' growing awareness of the importance of impacts caused by business activity are factors that are being increasingly considered in decision-making processes by governing bodies, with direct effect on procurement policies and the ethical standards required throughout the chain of activities. Companies are expected to adopt more comprehensive due diligence practices to ensure compliance, assure the traceability of products supplied to the market, manage risks, and meet the demands of various stakeholders. A good example of this is the recent National Action Plan for Responsible Business Conduct and Human Rights (in its final stages of development and pending political approval), which promotes responsible business practices and calls for enhanced due diligence measures to prevent human rights abuses.

4.3 Partner Selection

A noticeable trend that is being observed is that due diligence requirements are reshaping how companies engage with their supply chain partners, with a visible shift towards more responsible and transparent supplier relationships, even though 99% of Portuguese companies are SMEs, which makes it more difficult to implement effective due diligence requirements in supply chains. Market-driven pressure and increasing awareness of the importance of protecting human rights, adopting fair labour practices, and abiding by ethical sourcing of materials, just to mention a few factors, are becoming increasingly widespread as criteria for selecting suppliers, emphasising compliance with ESG standards. Suppliers are increasingly required to demonstrate that they meet these criteria through certifications (where applicable), adhesion to suppliers' codes of conduct and documented practices addressing these matters. Due diligence requirements may reduce the pool of acceptable suppliers, especially in industries or regions where compliance with ethical or environmental standards is less common, but it is becoming an unavoidable business practice. More recent risk management systems emphasise geopolitical instability, labour rights violations, environmental harm, and other unethical practices associated with suppliers, as serious risks with material impacts on reputation and branding. Due diligence requirements, as part of risk management strategies, will allow companies to identify and mitigate risks, potentially leading to the prioritisation of partnerships with suppliers with robust governance systems, documented compliance policies and evidence of risk mitigation processes, avoiding high-risk suppliers which may be avoided or phased out.

4.4 ESG in M&A Due Diligence

ESG considerations are playing an increasingly central role in M&A activities in Portugal. From due diligence and valuation to post-merger integration and regulatory compliance, ESG factors are reshaping how deals are structured and executed. While there are still challenges to overcome, such as reliable and comparable ESG metrics and data availability, the trend is clear: companies and investors are placing growing importance on sustainable and responsible business practices in their M&A strategies, not only from a purely compliance perspective but also as a material consideration in the overall value of the business. Standard M&A due diligence exercises include stringent requirements on social, ethical and environmental practices, with a direct impact on the transaction price and special emphasis on the impact these practices can have on branding and market reputation.

Due Diligence

ESG-related due diligence is now a standard part of the M&A legal due diligence process, which includes examining environmental practices, social policies and governance structures to identify any potential red flags or areas of improvement as part of the overall assessment of the target company. The level of compliance with environmental laws, labour rights and workplace safety, and meeting anti-corruption legal requirements, as well as potential liabilities related to past non-compliance, can impact the valuation and terms of the deal, including determining a go/no-go decision.

Contractual Provisions

M&A agreements increasingly include specific warranties and indemnities related to ESG issues, and in some deals, contingent payments or earn-out clauses are tied to achieving specific ESG targets and milestones post acquisition.

5. Transparency and Reporting

5.1 Key Requirements

The Portuguese Companies Code establishes a legal obligation for all large companies of public interest with more than 500 employees to include non-financial performance indicators, such as information on environmental, social and employee-related matters, in their annual reports, to the extent necessary to understand the development, performance, position and impact of the company's activities. Additionally, there are specific general disclosure requirements related to climate matters resulting from the Climate Framework Law.

Currently, the sustainability reporting requirements of the CSRDapply to ("first wave") companies:

- that are public interest entities, such as certain insurance undertakings, credit institutions and companies whose securities are admitted to trading on a regulated market;
- that are large undertakings, by meeting at least two of the following three criteria:
  - (a) they have a turnover above EUR50 million;
  - (b) the total on their balance sheet exceeds EUR25 million; and
  - (c) they have more than 250 employees during the financial year; or
- that have more than 500 employees.

Although the current version of the CSRD provides for the application of reporting requirements to all large companies ("second wave" companies), the changes introduced by the Omnibus 1 package may alter the scope of companies covered, limiting it to those with more than 1,000 employees.

However, in July, the European Commission adopted a recommendation – pending publication as a delegated act in the Official Journal – on the application of the European Financial Reporting Advisory Group (EFRAG) Voluntary Sustainability Reporting Standard for non-listed SMEs ("VSME") to small and medium-sized undertakings, which need to voluntarily report sustainability information following information requests by large undertakings. Large undertakings that need to comply with ESG disclosure requirements are required to provide information related to their value chain, and this recommendation is now a useful legal tool in that context. Transparency requirements do not, therefore, only impact companies covered by the scope of the CSRD, but also amplify the sustainability-driven pressure upon SMEs to disclose non-financial information, uncovering the ultimate purpose of the European sustainable corporate reporting system.

5.2 Transition Plans and ESG Targets

Despite the National Energy and Climate Plan having been revised and updated in 2025, there is currently no cross-cutting obligation in the Portuguese jurisdiction to publish transition plans or to commit to targets. Even the Climate Framework Law refers to the setting of a "carbon budget" as being optional.

With the transposition of European ESG legislation, this situation is evolving. Although under the CSRD it is not mandatory to have a transition plan, it will be necessary to declare whether one exists and, if it does, to provide information about its content. Companies that fall under the scope of the CSDDD, which will only be very large companies, will be required under the current legal text to adopt and implement a transition plan to mitigate climate change. The companies covered by this obligation and the content of the obligation itself are currently under revision within the referred OMBIBUS 1 package.

5.3 Regulation of ESG Labels

During the past few years, the EU has initiated a revision of consumer law, as announced in the New Consumer Agenda and the Circular Economy Action Plan. This has resulted in the adoption of the Empowering Consumers for Green Transition (ECGT) Directive, the Ecodesign Regulation, the Right to Repair Directive and the issuing of the Proposal of Green Claims Directive, which together will cover the issues of sustainable claims and combat misleading environmental claims known as "greenwashing".

The ECGT Directive and Right to Repair Directive

The ECGT Directive amends the Unfair Commercial Practice Directive (2005/29/EC) and Consumer Rights Directive (2011/83/EU) and will be implemented in Portuguese legal regimes Decree-Law 57/2008 and Law 47/2014 respectively within two years. Protection of consumers from unfair commercial practices, non-transparent sustainability labels, and untruthful advertising, and the mandatory inclusion of information on the durability and repairability of a product will ensure consumers are better informed and help them decide in favour of truly sustainable products.

The Ecodesign Regulation

The Ecodesign Regulation aims to ensure that the products or services placed on the EU market meet the requirements that cover the entire cycle of the products. The development of a digital product passport, providing information about a product from its origin, materials used, its environmental impact, and disposal recommendations, will be mandatory for all producers in the EU and outside the EU before placing a product on the EU market.

The EC's Proposal for Green Claims Directive

The European Commission's Proposal for a Green Claims Directive has been under legislative procedure since 2023, when it was initially proposed. The directive proposed to set a number of requirements for the substantiation of explicit environmental claims and environmental labels, ensuring their reliability, comparability and verification.

Legislative procedures are still not complete, however, and the Green Claims Directive is likely to face major changes, with the possibility of non-approval.

In June 2025, the European Commission announced its intention to withdraw this proposal, which faced support and criticism at the political level. Although political uncertainty persists, the European Commission has reiterated its commitment to the EU's sustainability and consumer protection agenda.

5.4 Supervision

In Portugal, regulators monitoring corporate sustainability reporting include the CMVM for entities with securities admitted to trading on a regulated market and certain investment funds, the BdP and the European Central Bank for credit institutions, and the ASF for insurance and pension fund activities.

With the coming into force of national legislation transposing the CSDDD, Portugal will designate an authority to supervise and enforce the rules relating to certain ESG matters covered by the directive, particularly regarding due diligence processes and climate transition plans. This will occur in parallel with the setting up of the European Network of Supervisory Authorities at the European level.

In Portugal, "sustainability marketing claims" involve direct communication with consumers, and are therefore subject to various supervisory entities.

Unfair commercial practices are dealt with by the Directorate-General for Consumers (*Direção-Geral do Consumidor* – DGC), as well as the BdP, the CMVM, and the ASF, which are considered competent administrative authorities within the financial sector.

5.5 Enforcement

Failure to comply with reporting obligations primarily triggers general liability under the general rules applicable to companies and their management, making them responsible for any damages resulting from a breach of legal provisions.

Beyond these general liability rules, regulated entities may face additional consequences, including ancillary sanctions and administrative fines. For example, for listed companies, a breach of information-disclosure duties can be classified as a very serious offence, subject to fines ranging from EUR25,000 to EUR5 million.

Under the CSDDD, the specific sanctioning regime applies to certain matters, with pecuniary penalties that currently may not be less than 5% of the net worldwide turnover of the company. The Omnibus 1 proposal previews the issuance of guidance to assist supervisory authorities in determining the level of penalties rather than having a maximum limit of pecuniary penalties. It is still unclear what final sanctioning regime will apply to companies in the scope of the CSDDD.

As there is no dedicated sanctioning regime for the specific reporting failures of banks, the general regime for credit institutions and financial companies applies. This regime provides sanctions for violations of the mandatory legal requirements (including those arising from EU legislation) governing the activities of credit institutions, financial companies and mixed financial holding companies.

5.6 Expected Progress

The reporting timelines for sustainability disclosures under the CSRD, which were originally set for 2026, have been postponed under the Omnibus 1 package for two additional years for "second-wave" and "third-wave" (listed SMEs) companies. In addition, it is proposed that large companies covered by this obligation should be limited to those that have more than 1,000 employees. However, considering that sustainability reporting often requires a value chain perspective, the impact of these obligations will extend beyond the directly affected companies.

Some companies that fall under the new requirements have already begun preparing for compliance. The main challenges identified by companies relate to data access and the necessary adaptations of processes and governance models not only to satisfy reporting requirements, but also to ensure that the company's actual practices are aligned with the more robust and comprehensive content demanded by the CSRD and ESRS.

There is broad recognition that companies cannot transition instantly from almost non-existent ESG disclosure to the sophisticated and detailed reporting required by the CSRD. However, companies that have started this process are finding motivation in the progress they are making and the benefits of early adaptation.

The final adoption of the proposals included in the Omnibus 1 package is expected to be revealed this year. The stabilisation and consolidation of the European ESG reporting framework are long awaited, for the benefit of the whole ecosystem. Although it is expected that dramatic simplification efforts will make the legal regime less complex, it is not possible to anticipate the impact the rest of the new rules will have on companies covered by the CSRD.

The impending implementation of the CSDDD, with its distinct set of obligations, is prompting some companies to adopt a combined approach to addressing the ESG implications arising from both regulations.

6. Climate and ESG Litigation

6.1 Instruments for ESG Litigation

The Portuguese Constitution consecrates the right to intervene and participate in administrative procedures, and the full and effective protection of legally protected rights and interests is recognised, including the right to popular action and the right to promote the prevention, cessation and remediation of offences against public health, consumers' rights, quality of life, the environment and cultural heritage.

The Climate Framework Law (Law No 98/2021) has been in force since 1 February 2022, recognising the right of all citizens to climate balance, which consists of the right to demand that public and private entities comply with their duties and obligations regarding climate change, including the right to request the immediate cessation of any activity threatening or causing damage to climate balance.

The effectiveness of the law will greatly depend on the use that citizens and collective organisations (associations, foundations and even private companies) make of it, as well as the position the national courts take when asked to apply the relevant law.

6.2 Climate Activism

The environmental non-government organisations (ENGOs) in Portugal have benefited since 1998 from a special legal status and, among other rights, have the right to consult or be informed by administrative authorities on documents and administrative decisions affecting the environment. ENGOs are also recognised as having legitimacy to initiate legal actions related to acts performed by public or private entities and to constitute themselves as assistants in proceedings for crimes against the environment.

Although Portugal has already woken up to climate litigation, its civil society is not very litigious in matters of public interest. Despite this, a group of environmental associations recently appealed to the Supreme Court of Justice in a lawsuit against the Portuguese State for non-compliance with the Climate Framework Law, after the Civil Court of Lisbon rejected the initial petition delivered in November 2023. On 19 September 2024, the Supreme Court of Justice overturned the first-instance decision and proposed that the associations concretise their claims. This is the first lawsuit against the Portuguese State targeting measures to protect from climate change.

In turn, the case of *Duarte Agostinho and Others v Portugal and 32 Other States* is a clear example of Portuguese activists' actions. In 2020, six Portuguese youngsters filed a complaint with the European Court of Human Rights (ECHR) against 33 countries. The applicants' main claim concerned human rights violations resulting from the failure to take sufficient measures to combat climate change, and to demand more ambitious measures to reduce GHG emissions and fulfil commitments under the Paris Agreement to combat rising global temperatures. The ECHR decided, however, that the complaint should not be upheld because the applicants had failed to exhaust the remedies offered by the Portuguese legal system.

6.3 Greenwashing

The DGC is the competent national authority responsible for consumer protection and advertising supervision. The DGC has, among other duties, the competence to deal with misleading or false claims and has the power to impose fines on non-compliant companies. Several administrative procedures have been opened against companies accused of misleading advertising of their products.

So far, no lawsuit had been filed by investors or by a regulator in Portugal in relation to greenwashing. In 2022, a judgment was handed down by the Court of Appeal of Lisbon in a case against two companies engaged in the manufacture of cars and two companies engaged in the importation and sale of cars in Portugal, filed by a civil society organisation for false and misleading environmental claims.

It is expected that there will be an increase in the number of cases dealing with greenwashing claims and it is possible that such lawsuits will represent the majority of ESG-related litigation in the near future. Some recent findings at the national level suggest that most

Portuguese consumers abandon brands that promote false environmental practices. Whether this will have any impact on consumers' willingness to take judicial action, however, is still unclear.

6.4 A Turbulent Future Ahead

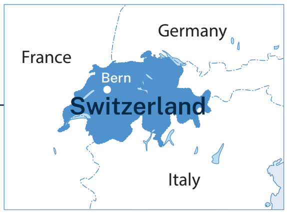
In Portugal, the ESG framework is based mainly on EU legislation. It is therefore expected that the development of ESG-related proceedings in Portugal will follow the full implementation of EU legislation and its transposition into national law that is still to be fulfilled.

Although Portugal is lagging behind other European countries, such as Spain and Italy, according to recently published data, 58% of Portuguese companies already have a formal ESG strategy.

In fact, major changes in European legislation directly related to corporate reporting suggest that the number of ESG-related claims will increase, especially as the deadline for transposition into national jurisdictions is reached and all the due information is disclosed by the companies.

The evolution of greenwashing legislation in Europe and the future adoption of the Green Claims Directive, establishing clear rules for all participants, will also influence the number of climate greenwashing cases.

SWITZERLAND



Trends and Developments

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Overview

In 2025, ESG topics faced a notable backlash, particularly in the United States and the European Union, leading to a recalibration of sustainability-related regulatory agendas. The EU, in particular, slowed or scaled back several components of its ESG framework, a shift that has direct implications for the Swiss legal landscape and Swiss companies operating across borders.

On 26 February 2025, the European Commission introduced the Omnibus 1 package, aimed at streamlining the EU's sustainability framework and resolving overlaps in reporting and due diligence requirements. This package comprises two key components:

- The "stop-the-clock" proposal – this initiative adjusts the phase-in timelines for obligations under the Corporate Sustainability Reporting Directive (CSRD), the Corporate Sustainability Due Diligence Directive (CSDDD), and the EU Taxonomy Regulation. The directive officially came into force on 17 April 2025, granting companies additional time to comply with these complex requirements.
- The "content" proposal – this component revises the scope and substantive provisions of the CSRD, CSDDD and EU Taxonomy. On 23 June 2025, the Council of the European Union adopted its final position on the proposal, which is currently under review and negotiation by the European Parliament.

In response to these developments, the Swiss Federal Council has suspended ongoing legislative amendments relating to ESG reporting obligations, in order to align with the EU's evolving framework. This strategic pause reflects Switzerland's recognition of the broader recalibration currently taking place within the EU.

Even though certain initiatives have been temporarily put "on hold" pending further clarity from the EU, the Swiss ESG framework is still evolving. Several key legislative instruments came into force in Switzerland on 1 January 2025:

- the Act on Climate Protection Targets, Innovation and Strengthening Energy Security (the"Climate and Innovation Act") and its corresponding ordinance of 27 November 2024;
- amendments to the CO_2 Act; and
- a new provision in the Unfair Competition Act (Article 3 paragraph 1 letter x of the UCA), specifically targeting climate claims.

Additionally, on 17 December 2024, the Swiss Financial Market Supervisory Authority (FINMA) published the circular "Nature-related financial risks" (Circular 2026/1), which outlines expectations for banks and insurers to identify, assess and manage climate- and nature-related financial risks. Implementation will begin in stages, starting 1 January 2026.

Climate and Innovation Act, Net-Zero Target and Roadmaps for Companies

Switzerland is a party to the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement. Switzerland's international obligations under these treaties are implemented at the national level in various laws, mainly through the CO_2 Act and the Climate and Innovation Act.

The Climate and Innovation Act, which came into force on 1 January 2025, formally anchors the goal of achieving net-zero emissions by 2050 in Swiss legislation for the first time. It also sets out intermediate targets for key sectors, such as the building, transport and industry sectors, to ensure steady progress towards this goal.

All companies are expected to reduce their emissions to net zero by 2050 at the latest. The Confederation and the cantons must lead by example in achieving the net-zero target and adapting to the effects of climate change. The central federal administration must reach net-zero emissions by 2040. The law also establishes sector-specific reduction pathways to support this transition.

To achieve net zero, GHG emissions must be reduced as much as possible, with any remaining emissions being offset through negative-emission technologies. These technologies involve biological and technical processes that remove CO_2 from the atmosphere and store it permanently in forests, soils, wood products or other carbon sinks.

By 2050 at the latest, the Confederation and the cantons must ensure that sufficient carbon sinks are available in Switzerland and abroad to meet the net-zero target. Switzerland was the first country to sign a bilateral agreement under Article 6.2 of the Paris Agreement, enabling international co-operation through the exchange of carbon credits known as Internationally Transferred Mitigation Outcomes (ITMOs).

The Climate and Innovation Act encourages companies to develop voluntary decarbonisation roadmaps as part of their efforts to achieve net-zero emissions. While these roadmaps are not mandatory, they are required for companies seeking federal financial support for innovative technologies and processes. A typical roadmap includes a carbon footprint assessment, a reduction target and a concrete action plan.

The act also contains provisions for climate change adaptation, and aims to align financial flows with climate objectives.

For the period from 2025 to 2030, the implementation of emission reduction targets is governed by the revised CO_2 Act and the revised CO_2 Ordinance.

Interdiction of unfair climate claims (Article 3 paragraph 1 letter x in the Unfair Competition Act)

As part of the post-2024 revision of the CO_2 Act, parliament amended the Unfair Competition Act ("LCD/UWG") by adding a new provision. It is now considered unfair to make climate-related claims about products, services or companies without objective, verifiable evidence to substantiate them. At the same time, the CO_2 Act was amended to enable the Federal Office for the Environment (FOEN) to establish standards and methodologies for evaluating the climate impact of companies and products. These provisions came into force on 1 January 2025. Climate-related claims must be clear, truthful and evidence-based. The FOEN is preparing an implementation guide to clarify key terms related to climate claims, such as "CO_2-neutral" or "climate-neutral", and to outline the criteria by which their accuracy will be verified.

The prohibition of climate-washing applies to all corporate communications, and information published in non-financial reports and advertisements. Non-compliance may result in civil or criminal penalties as set out in the Unfair Competition Act.

Sustainability Disclosure Requirements

Swiss companies are subject to a number of ESG reporting obligations that have gradually become more stringent in recent years.

Under Articles 964a et seq of the Swiss Code of Obligations (CO), large companies (ie, public companies, banks and insurance companies with at least 500 employees and either CHF20 million in total assets or CHF40 million in turnover) must publish an annual non-financial report covering:

- environmental matters, including a transition plan;
- social and employee-related issues;
- human rights; and

- anti-corruption efforts.

Furthermore, companies operating in sectors sensitive to child labour, or sourcing minerals and metals from conflict zones, must comply with specific due diligence and transparency obligations, including risk assessments and reporting.

The wilful provision of false information in reports, according to Articles 964a, 964b and 964l of the CO; wilful failure to establish the required reports; and failure to comply with the statutory obligation to retain and document the reports are subject to criminal prosecution, with a fine of up to CHF100,000. In the event of negligence, a fine of up to CHF50,000 can be imposed (Article 325ter of the Swiss Criminal Code or SCC).

In 2024, the Federal Council launched a consultation on amending Article 964a et seq CO. The aim was to increase the obligations imposed on companies regarding sustainability disclosure requirements, thereby aligning Swiss law with the CSRD and CSDDD.

Key proposed amendments to the CO include the following:

- Disclosure obligations would extend to companies with at least 250 employees (rather than 500, under current legislation). Additionally, companies would only need to meet two out of three criteria (number of employees, turnover, balance-sheet total) for two consecutive years to fall within the scope.
- Companies would be required to report based on the principle of double materiality.
- The draft amendment would allow companies to report in accordance with the European Sustainability Reporting Standards (ESRS) or other standards deemed equivalent by the Federal Council, such as the International Financial Reporting Standards (IFRS) on sustainability disclosure and the Global Reporting Initiative (GRI) Standards.
- Sustainability information would have to be assessed by an auditor or an accredited conformity assessment body, in line with the requirements provided under European law.
- The “comply or explain” principle would be abolished.

Responses to the consultation revealed mixed views, with many stakeholders calling for simplified administrative processes. In March 2025, the Federal Council instructed the Federal Department of Justice and Police (EJPD) to draft pragmatic amendments to the current legislation. The aim of these changes is to ensure that Swiss companies uphold human rights and environmental standards while remaining competitive in Switzerland and internationally.

The Federal Council will decide on the next steps once the EU has finalised its proposed simplifications, or by spring 2026 at the latest.

Climate Reporting Ordinance

The Climate Reporting Ordinance, which came into force on 1 January 2024, sets out the requirements for climate-related disclosures by companies that are subject to Article 964a CO. These disclosures are an integral part of the environmental aspects covered by the non-financial reporting obligations set out in Article 964b CO. The ordinance is based on the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD) of June 2017.

Climate-related matters include both the impact of climate change on companies and the impact of companies’ activities on the climate. Implementation of the recommendations includes, in particular, the preparation of a transition plan aligned with Switzerland’s climate targets.

In January 2024, the Federal Council decided to revise the ordinance to take into account international developments, particularly by aligning it with the latest ESRS and ISSB (International Sustainability Standards Board) standards while adhering to the principle of proportionality. This will give companies that must apply the ESRS, due to its extraterritorial effect, legal certainty that they will also fulfil Swiss requirements. Other companies may use the more pragmatic ISSB standard as an alternative.

The revision also aims to align terminology with that of the Climate Protection Ordinance, as well as including minimum requirements for financial institutions' transition plans.

The majority of participants in the consultation process welcomed the content of the draft revision. However, many also requested that it should not be implemented until the Federal Council had made a decision on the current revision of the higher-level provisions of the CO relating to sustainability reports. At its meeting on 25 June 2025, the Federal Council decided to temporarily suspend the revision of the Climate Reporting Ordinance until a decision had been made on the CO amendment or, failing that, until 1 January 2027 at the latest.

The Swiss legislative process is therefore on hold, pending final developments within the EU, particularly the Omnibus 1 package. To maintain competitiveness and ensure legal alignment with international standards, Switzerland intends to adapt its framework once the European rules are finalised, while avoiding premature regulatory divergence.

Trends in Sustainable Finance

Alignment with the net-zero target

Article 9 of the Climate and Innovation Act calls on the financial sector to contribute to climate goals by making financial flows compatible with the net-zero target. Implementation is currently based on a voluntary approach, supported by recommendations from the Federal Council. The Climate Protection Ordinance requires the Confederation to regularly assess the climate compatibility of investments in the Swiss financial market and evaluate the efforts of financial institutions.

The Swiss Climate Scores, launched in 2022, make up a voluntary framework that enables financial institutions in Switzerland to report on the climate compatibility of their investments. Using a set of standardised indicators, the scores provide investors with transparent, comparable information on how investments align with the Paris Agreement and the goal of achieving net-zero emissions by 2050.

Furthermore, every two years, the FOEN and the State Secretariat for International Financial Matters (SIF) carry out the Climate Test using the internationally recognised PACTA ((Paris Agreement Capital Transition Assessment) method. The aim is to determine the progress being made by the Swiss financial market towards achieving climate protection targets. The PACTA Climate Test assists the financial sector in working towards the binding net-zero target by 2050. The results of the 2024 test reveal that the majority of financial institutions have already incorporated the net-zero target into their internal corporate strategy. However, many of the measures taken by financial institutions are not yet consistent with this target.

Climate- and nature-related risks

In addition to the disclosure requirements imposed on large banks and insurance companies by Article 964a CO, banks and insurers subject to supervision by FINMA are required by prudential regulations to disclose specific information on climate-related financial risks.

Since 2021, FINMA has required large banks and insurance companies to systematically disclose climate-related financial risks. Furthermore, FINMA has published a new "Nature-related financial risks" circular, which will come into effect in stages from 1 January 2026. The circular, which applies to banks and insurers, clarifies FINMA's supervisory practice with regard to the management of climate- and other nature-related financial risks.

In the circular, FINMA communicates its expectations of banks and insurers regarding the management of these risks. The circular aims to strengthen the resilience of supervised institutions to these risks, thereby protecting their clients and the Swiss financial centre. FINMA takes a broad approach to the covered risks, encompassing not only climate change, but also other potentially relevant nature risks. FINMA is guided by international frameworks and standards, applying the principle of proportionality to set higher expectations for larger, more complex institutions.

This circular explicitly requires the integration of nature-related risks into governance processes and structures. FINMA refers to these nature-related risks as "risk drivers" that affect traditional risk categories, including credit risks, market risks, liquidity risks, operational risks, and reputational risks.

Banks and insurance companies must integrate nature-related financial risks into their governance and risk management frameworks. This includes clearly defining responsibilities at board and management levels and ensuring that decision-makers have the necessary expertise.

They are expected to identify nature-related risks and assess their financial relevance. The process and findings must be documented.

If these risks are deemed material, they must be incorporated into the institution's overall risk management and internal control systems, considering the long-term nature of such risks.

Larger banks (categories 1 and 2) must gradually include these risks in their stress-testing and capital-adequacy assessments. Insurers must reflect them in their Own Risk and Solvency Assessments (ORSAs).

Self-regulation

The regulatory approach to sustainable finance is based on principles such as the primacy of market-based solutions and the subsidiarity of government action. However, due to the growing demand for ESG investments and transparency, coupled with developments in the EU, specific rules are becoming increasingly necessary. In 2022, the Swiss Federal Council published its position on the prevention of greenwashing in the financial sector and outlined the key points that it expected the financial sector to implement through self-regulation.

On this basis, the Asset Management Association Switzerland (AMAS), the Swiss Bankers Association (SBA) and the Swiss Insurance Association (SIA) adopted self-regulatory provisions to establish, among other things, uniform standards for labelling sustainable investment products. These self-regulations establish binding rules for the members of the respective organisations. While AMAS and SBA provisions came into force in 2024, the SIA provisions only came into force on 1 January 2025, with a transitional period up to 1 January 2027 in some areas.

The three self-regulations are designed to have consistent core definitions and principles, particularly regarding "sustainability" (alignment/contribution), transparency, accountability, and external assurance. However, certain open questions remain unanswered, such as how Swiss self-regulation will align or adapt in response to evolving EU regulation (particularly revisions to the EU Sustainable Finance Disclosure Regulation or SFDR).

The Federal Council has instructed the Federal Department of Finance (FDF) to re-evaluate the need for action, once the EU publishes amendments to the SFDR, or by the end of 2027 at the latest.

ESG Litigation and Enforcement

ESG litigation is expected to rise in Switzerland as regulatory expectations grow and public awareness of corporate responsibility intensifies. Two landmark cases illustrate this trend.

Association KlimaSeniorinnen Schweiz v Switzerland

On 9 April 2024, the Grand Chamber of the European Court of Human Rights (ECtHR) delivered its first-ever judgment on climate change, ruling in favour of the Swiss association KlimaSeniorinnen Schweiz. The court found that climate change can interfere with rights protected by the European Convention on Human Rights, particularly the right to respect for private and family life (Article 8), and potentially the right to life (Article 2). It concluded that Switzerland had violated Article 8 by failing to take sufficient measures to address climate change.

The *KlimaSeniorinnen v Switzerland* judgment by the ECtHR clarified important points about the right of associations to bring climate-related cases.

The court rejected the individual complaints of the four women involved, finding that they did not meet the criteria to be considered direct victims under Article 34 of the European Convention on Human Rights. However, it accepted the standing of the association KlimaSeniorinnen Schweiz. The court found that the association could represent the interests of a group particularly affected by climate change, especially older women, and that it had a legitimate interest in bringing the case.

This is significant because it confirms that associations can, under certain circumstances, bring cases before the court on behalf of affected groups, even if individual members do not meet the strict admissibility criteria. The court also found that the Swiss courts had not given the association a fair opportunity to have its case heard, which constituted a violation of the right of access to a court under Article 6 § 1 of the European Convention on Human Rights.

On 28 August 2024, the Swiss Federal Council stated that it considered Switzerland to be in compliance with the ruling. It referred to the revised CO_2 Act of 15 March 2024, which sets out measures to meet the country's 2030 climate targets. However, the ECtHR had not taken this revision into account in its judgment, nor the new Federal Act on a Secure Electricity Supply from Renewable Energy Sources, adopted on 9 June 2024. In October 2024, Switzerland submitted an action report to the Council of Europe, asserting that it had taken appropriate steps to comply with the judgment.

In March 2025, the Committee of Ministers of the Council of Europe, which monitors the implementation of ECtHR judgments, concluded that Switzerland had not yet complied with the *KlimaSeniorinnen* ruling. It stressed the need for Switzerland to adopt a quantified framework – such as a carbon budget or a similar mechanism – for reducing GHG emissions. While acknowledging some legislative progress, the committee requested further information demonstrating how Swiss climate policy aligns with the court's reasoning, particularly regarding national emissions limits.

In September 2025, the committee reaffirmed that Switzerland had not yet effectively implemented the judgment. It welcomed the adoption of a comprehensive legal and regulatory framework at the federal level, along with relevant measures at the cantonal level, but found these efforts insufficient. The committee invited Switzerland to consider establishing an independent national body, adapted to its political system, to monitor climate policy and provide recommendations to political authorities. It also reiterated its request for updates on domestic case law, particularly regarding the standing of associations in climate litigation and how courts assess the substance of such cases.

Asmania et al v Holcim

In July 2022, four residents of Pari Island in Indonesia sued the Swiss cement company Holcim, which is based in Zug, Switzerland. They requested proportional compensation for climate-induced damage, as well as a contribution towards climate change adaptation measures on Pari Island. The plaintiffs also requested that Holcim reduce its CO_2 emissions by 43% by 2030 and by 69% by 2040. This legal action is based on Articles 28 et seq of the SCC (violation of personality rights) and Articles 41 and 49 of the CO (tort). This is the first climate change lawsuit of its kind to be filed against a major carbon emitter in Switzerland, following similar lawsuits against companies such as RWE in Germany and Royal Dutch Shell in the Netherlands, UK and Canada.

A hearing took place at the Zug cantonal court in September 2025 and the court is deliberating on whether the case is admissible to proceed to a full hearing on its merits. The decision is expected at a later stage.

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