MAYER | BROWN

GLOBAL CLIMATE CHANGE

Disclosure Initiatives and Board Corporate Governance Considerations

WHITE PAPER

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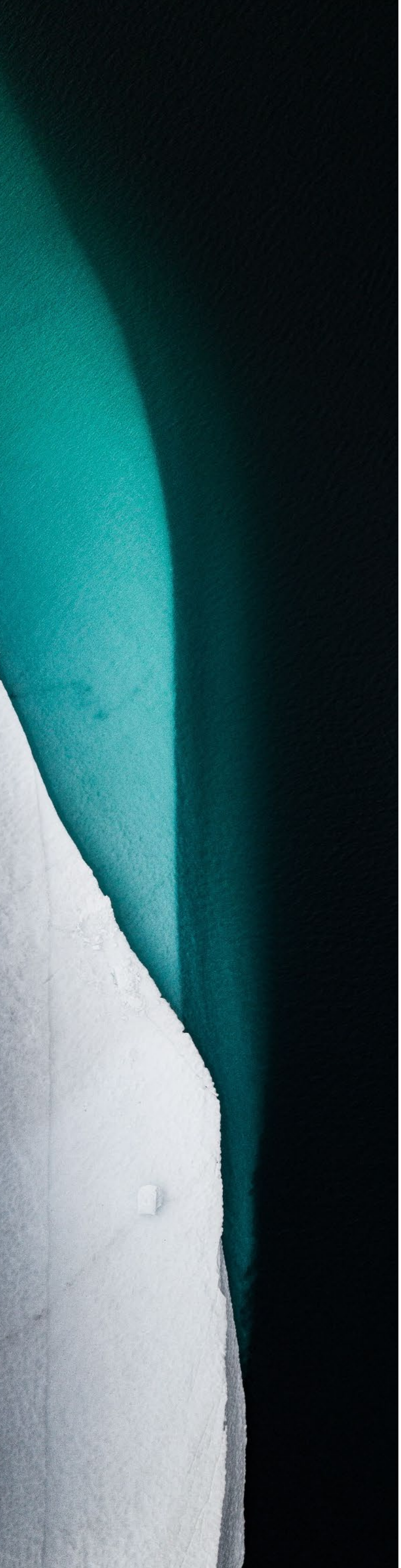

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Executive Summary

Climate disclosure regulations are among the most significant and complex challenges faced by companies and boards, with a variety of requirements emanating from numerous governmental authorities and non-governmental organizations (NGOs) in recent years.

This white paper offers a thumbnail sketch of key features and differences of a dozen authorities, followed by considerations for boards concerning disclosure practices, as well as governance and risk management. We also suggest some practical steps that might be taken in order to prepare for whatever the future holds.

Introduction

The global regulatory landscape for climate-related disclosure is coming into focus, as rules are finalized in numerous jurisdictions, from the European Union (EU)—and, separately, some Member States, such as Germany—and stretching from Brazil to Hong Kong to the United Kingdom (UK). Alongside all this, global reporting protocols—including the International Financial Reporting Standards (IFRS)—present climate-related reporting frameworks.

While the various rules align in their ultimate objectives, such as quantification and transparency, they differ in their details. Companies and boards subject to regulations in multiple jurisdictions must grasp the specifics of the primary rules that apply to them, but the best-prepared may benefit from a broader view of the overall global landscape and its interplay, as these pose implications for securities law claims, disclosure controls, director duties, corporate governance, and enterprise risk management.

Thumbnail Sketches

SHARED ROOTS: GHG PROTOCOL, TCFD, ISSB, IFRS

While recent and forthcoming climate-disclosure regulations are issued by numerous authorities, including governments, regional blocs, and NGOs, all are anchored in just a few foundational protocols and frameworks that tie much of them together.

First, all draw upon the three-part scope classification system published in 1998 as the Greenhouse Gas (GHG) Protocol by the World Resources Institute and World Business Council for Sustainable Development. These are: *scope 1* – an entity's direct GHG emissions from operating its assets, *scope 2* – its indirect upstream emissions (from inputs such as energy suppliers), and *scope 3* – its indirect downstream emissions (from outputs such as customers' use of products).

Second, all the authorities build on the voluntary financial disclosure regime promulgated in 2015 by the Task Force on Climate-Related Financial Disclosures (TCFD), which calls for the disclosure of emissions under the GHG's three scopes and an explanation of how a company identifies and assesses climate-related risks.

Third, in the past few years, the environmental NGO community has consolidated from a diffuse group of promulgators to a single authority, the International Sustainability Standards Board (ISSB). Forged by the body that produced the IFRS in previous decades, the ISSB absorbed numerous standard-setters, including the Global Reporting Initiative the Climate Disclosure Standards Board and the Sustainability Accounting Standards Board. In turn, as the ISSB developed a complete set of emissions-reporting standards, many of these have been incorporated into IFRS as accounting principles and been endorsed by other bodies, including the International Organization of Securities Commissions (IOSCO).

Below we provide an overview of the regional regulations, which are explained in further detail in **Appendix 1**.

UNITED STATES

The SEC adopted new rules in March 2024, after a two-year rulemaking process that involved extensive public comments and modifications from the proposed rules. The rules require companies to disclose information about the material impacts of climate-related risks on their business, financial condition, and governance, as well as their activities, plans, or processes to mitigate, adapt to, or manage such risks. The rules also require certain larger registrants to disclose their Scope 1 and/or Scope 2 greenhouse gas emissions when material, with a phased-in basis and attestation report requirement. The rules aim to standardize and enhance the information available to investors, while limiting the scope and cost of compliance.

The SEC's rules are unlikely to replace or supersede other global climate initiatives, as they differ in details and objectives. The SEC's objective is limited to investor protection, market efficiency, and capital formation, not addressing climate-related issues more broadly. The SEC's rules are based on materiality, which may vary depending on the facts and circumstances of each company and industry. The SEC's rules do not require disclosure of Scope 3 emissions, which are often the most significant source of emissions for many companies. The SEC's rules also do not incorporate or endorse any specific reporting framework or standard, such as the TCFD or the ISSB, although they may be used as a reference or supplement. The SEC's rules are subject to potential lawsuits and legislative changes, which may affect their implementation and enforcement.

The SEC's rules will require attention from US public companies and boards, as well as from foreign private issuers that are subject to SEC reporting requirements (though the rules do not apply to Canadian issuers filing under the multi-jurisdictional disclosure system). The rules will have different effective dates depending on the type and size of the registrant, the nature and materiality of the disclosure, and the availability of the attestation report. The rules will also require electronic tagging of narrative and quantitative climate-related disclosures in Inline XBRL, which may pose technical and operational challenges. The rules will increase the scrutiny and expectations of investors, analysts, regulators, and other stakeholders on the quality and reliability of climate-related disclosures. The rules will also create potential legal and reputational risks for companies and boards that fail to comply or provide inaccurate or misleading information.

CALIFORNIA

In October 2023, California passed several climate-related laws. Two of these will require large US-based companies doing business in the state to begin making disclosures in 2026 regarding GHG emissions (in accordance with the GHG Protocol), and climate-related financial risks as well as measures taken to reduce and adapt to such risk (in accordance with TCFD). Both of these laws are currently facing a legal challenge from a coalition of business organizations, including the U.S. Chamber of Commerce and the California Chamber of Commerce.

The other law, which seeks to address "greenwashing," will require US and non-US companies operating in California (and without regard to their size or whether public or private) to make detailed and publicly available disclosures when they make certain climate-related claims or use, purchase, market, or sell voluntary carbon offsets (VCOs) in California.

The laws do not explicitly address the board's role, nor do they address corporate governance of covered companies in relation to disclosure. However, the board's role in helping oversee—and ensure the accuracy and completeness of—the information reported would be expected as part of the general focus on compliance, internal controls and risk management, especially given potential penalties and adverse publicity that can be associated with non-compliance with these and other ESG laws.

EUROPEAN UNION

In late 2022, the EU adopted its Corporate Sustainability Reporting Directive (CSRD) on corporate reporting and governance about climate and other sustainability topics, which entered into force in early 2023 and will become effective in phases beginning in 2024. The CSRD requires covered companies to report sustainability-related information in management reports, using the European Sustainability Reporting Standards (ESRS) recently developed by the European Financial Reporting Advisory Group and adopted by the European Commission. These and related standards together require a broad range of climate disclosures, including governance arrangements, transition plans, climate targets, and an assessment of the risk and opportunities posed by climate change. The CSRD requires covered companies to obtain limited assurance, with the aim of moving subsequently to reasonable assurance, over the compliance of the sustainability reporting with the ESRS, and of the process carried out to identify the information reported pursuant to the ESRS. This assurance may be provided by companies' statutory auditors, audit firms or – if allowed by Member States – independent assurance services providers.

Following a political agreement reached on December 14, 2023 between the EU Council and the EU Parliament, the EU Council adopted— with some additional compromises—the Corporate Sustainability Due Diligence Directive (CS3D). Once the CS3D is formally adopted by the EU Parliament and enters into force, large EU and non-EU companies will have to adopt and effectively implement due diligence obligations regarding actual and potential human rights and environmental adverse impacts, as well as a climate change mitigation transition plan setting out how companies will reduce emissions in line with the Paris Agreement temperature goals and climate neutrality objectives. Unless they are already reporting or exempted under CSRD, in-scope companies will also be required to communicate publicly on steps taken to comply with CS3D, based on standards to be adopted by the European Commission, It is expected that the CS3D enters into force in 2024. EU Member States will thereafter have two years to transpose CS3D into national laws.

GERMANY

Since the start of 2023, Germany has a law aimed at preventing environment-related risks and violations (as well as other matters) in the supply chains of enterprises operating in Germany or having a domestic branch office and employing 3,000 people—a threshold which dropped to 1,000 at the start of 2024. The German law imposes a wide range of environment-related due diligence and requires senior management of covered companies to adopt a policy statement and seek information on a regular basis, at least once a year, about the work of responsible persons. However, the German law on supply chain due diligence does not include specific climate-related requirements. This will change once

Germany has to amend the law pursuant to the EU CS3D, including the requirement to set out a climate transition plan (see above for European Union).

FRANCE

France requires companies with more than 500 employees to make available on a publicly accessible medium—managed by the French government—an assessment of GHG emissions of their organization, and to disclose a transition plan to reduce GHG emissions. This obligation applies since 2012, as a result of the adoption of article 75 of the Law 2010-788, *establishing a national commitment for the environment*.

Furthermore, in March 2017, France adopted Law n° 2017-399 on the corporate duty of vigilance, which requires certain companies incorporated in France with more than 5,000 employees in France or 10,000 employees globally to adopt a vigilance plan to identify risks and prevent serious harm towards human rights and fundamental freedoms, health and safety of people and the environment arising from the activities of the company, the companies it controls and sub-contractors and suppliers with which an established commercial relationship exists, when their activities are related to this relationship. Information on this vigilance plan and its effective implementation must be made public in the annual reports of in-scope companies.

In December 2023, France implemented the CSRD with the Ordinance 2023-1142 and Decree n° 2023-1394, thereby extending the existing non-financial disclosure requirements into sustainability reporting requirements, taking effect, for certain companies and in accordance with CSRD, as early as the 2024 financial year, with the first reports to be published in 2025.

UNITED KINGDOM

Under the Streamlined Energy and Carbon Reporting (SECR) framework, which came into force in April 2019, different types of UK entities must make climate-related disclosures—including UK quoted companies, which must disclose annual GHG emissions and intensity ratio in their Directors' Report, as well as their global and UK energy use, along with energy efficiency actions taken, and the methodology used. Under separate legislation, certain issuers must include a statement in annual financial reports stating whether disclosures meet the TCFD recommendations or, if not, an explanation of why they do not ("comply-or-explain" provisions). Larger firms (e.g., employing more than 500 people) must also comply with climate-related financial disclosure requirements, which implement the recommendations of the TCFD. Although the EU's CSRD does not apply directly to UK entities, EU-based subsidiaries of UK entities may be covered, as will UK companies with significant sales in the EU. The UK government has proposed to create UK Sustainability Disclosure Standards by assessing and endorsing the IFRS/SASB global corporate reporting baselines.

HONG KONG

In 2013, the Stock Exchange of Hong Kong (HKEX) first introduced an ESG reporting guide to listed issuers. The ESG reporting guide has been updated over time, and the existing disclosure requirements have two levels of annual disclosure: mandatory requirements and comply-or-explain provisions. The mandatory requirements cover governance structure, reporting principles, and reporting boundary of the ESG report. The comply-or-explain provisions cover general environmental disclosures and key performance indicators. In addition, HKEX rules require each annual company's directors' report to contain a business review discussing a company's environmental policies and performance as necessary for an understanding of the development, performance, or position of the company's business.

In April 2023, HKEX proposed enhanced, mandatory carbon-related disclosure requirements for its listed companies covering financial years starting on or after January 1, 2024. On November 3, 2023, the HKEX postponed the planned implementation date for the proposed enhanced requirements by one year. HKEX aims to move to mandatory climate-related disclosures in line with evolving international standards covering: (1) governance, (2) strategy, (3) risk management, and (4) metrics and targets. Examples of governance-related disclosure included disclosures related to the identity of directors responsible for overseeing climate-related issues; how the board ensures climate competencies and is informed about climate risks; how the board considers climate risks in overseeing strategy and risk management; how the board oversees climate-related targets and links them to remuneration; and management's role in assessing and managing climate-related risks.

SINGAPORE

In 2021, the Singapore Exchange (SGX) announced its plan for issuers to incorporate climate-related disclosures based on the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) in 2021. The TCFD recommendations are structured around the four core thematic areas of governance, strategy, risk management, and metrics and targets. The four overarching recommendations are supported by key climate-related financial disclosures — referred to as recommended disclosures — that build out the framework with information that will help investors and others understand how reporting organizations assess climate-related issues.

From FY 2022, all issuers are required to include climate reporting in their sustainability report on a comply-or-explain basis. Thereafter, commencing from FY 2023, climate reporting will be mandatory for issuers in the financial; agriculture, food and forest products; and energy industries. Issuers in the transportation as well as materials and buildings industries will be required to do the same starting from FY 2024.

It is noteworthy that issuers mandated to do climate reporting in FY 2023 are required to fully comply with the TCFD recommendations in their FY 2023 sustainability report to be published in 2024. Likewise, issuers mandated to do climate reporting in FY 2024 are required to achieve full compliance with the TCFD recommendations by 2025 when their FY 2024 sustainability reports are to be published.

BRAZIL

In October 2023, the Brazilian Securities Commission (CVM) adopted a rule providing comprehensive guidance on the creation and dissemination of sustainability information reports, specifically IFRS S1 and IFRS S2 and related criteria set by the ISSB—mandatory reporting for public companies will take effect for fiscal years commencing on or after January 1, 2026. In addition, the Federal Accounting Council indicated its intention to soon approve a resolution mandating compliance with ISSB standards for limited liability companies as well.

MEXICO

Under general Mexican law, there are no specific corporate disclosure obligations. However, under the country's 1998 Ecological Equilibrium and Environmental Protection law and its 2012 General Law of Climate Change, a system called the National Emissions Registry exists. Under this system, certain companies must submit a Yearly Operation Certificate to the Environmental Ministry. These are companies that (i) generate substantial hazardous waste; (ii) manages hazardous waste; (iii) holds an environmental license (i.e., those in such industries as oil, chemicals, automotive, paints/inks, metallurgical, cement, glass, and paper); or (iv) produce substantial carbon emissions.

The Mexican Stock Exchange (*Bolsa Mexicana de Valores*, BMV) seeks to align with international ESG standards and best corporate governance practices, implementing ESG self-evaluation guides, and sustainability policies. In June 2022, the BMV issued NetZero Guide in order to develop a framework for the analysis, implementation and dissemination of a NetZero process for its listed companies. As a result of these efforts, the BMV reports that the vast majority of its listed companies disclose ESG reports.

IFRS/ISSB

Besides such regional and governmental regulations, a final important source of compliance requirements arises under IFRS, which is widely adopted by countries worldwide. IFRS contains two reporting standards (S1 and S2), which took effect June 2023, requiring IFRS-reporting companies to disclose material climate-related information, including GHG emissions and climate-related targets. IFRS standards further require companies to consider other recognized international standards, including those promulgated by the ISSB, which promulgates industry-specific standards for disclosing environmental issues. The standards require companies to disclose both qualitative and quantitative information on environmental performance, risks, and opportunities, using metrics, targets, and policies. The standards also require disclosure of governance processes for monitoring and managing climate-related risks and opportunities. For example, companies must disclose how their boards oversee strategy for climate-related matters and assesses the effectiveness of a company's processes for identifying, assessing, prioritizing, and monitoring them.

SYNTHESIS

These thumbnail sketches reveal both similarities and differences across these and other jurisdictions around the world as they promulgate regulations addressing climate-related disclosure. As for differences:

- Some authorities, such as California and the European Union, impose mandatory disclosures that apply to a wide range of companies, including public companies, financial institutions, and large private companies while others, such as those in Hong Kong and to a certain degree, the UK, have adopted disclosure regulations that are voluntary or "comply or explain" and apply mainly to listed companies.
- The content of disclosures differs, with some authorities requiring more detailed and granular information on metrics and targets, governance, strategy, and risk management, while others accept more general and qualitative information on environmental policies, performance, and impacts.
- Assurance and verification requirements also vary, with some authorities requiring independent third-party attestation or audit of disclosures, while others rely on self-reporting or internal controls.
- Enforcement and penalties for non-compliance or misstatements also differ, some imposing administrative fines, exclusion from public procurement, or civil liability (especially in the US), while others rely on market discipline or reputational incentives (perhaps most clearly in Hong Kong).

Despite differences, regulatory authorities have generally leaned towards requiring disclosure rather than prescribing substantive conduct. However, in approaching climate-related regulations—of any type and from any source—it is important to appreciate the power of disclosure because required disclosures can often entail substantive conduct.

Considerations for Boards

One purpose of disclosure is to promote transparency across the industry to induce specific behavior. As US jurist Louis Brandeis famously put it over a century ago, before adoption of the world's securities laws, "*sunlight is said to be the best of disinfectants*," with transparency deterring misconduct. But all mandatory disclosure regimes pose traps for the unwary—including challenges to the adequacy of disclosure and related oversight—worth consideration by corporate boards everywhere.

DISCLOSURE APPROACHES

To date, most companies that issue reports or disclosures about climate-related topics have presented them in brochures, studies, websites, or reports separate from their formal legal or official regulatory filings. Companies have sometimes reported selected historical climate-related data about the company and generally presented the company's climate-related beliefs and aspirations, without stating specific or numerical climate-related targets or projections.

In refraining from providing specifics, companies manage the inherent uncertainty about the future, as well as the possibility that such specificity could provide the basis of greenwashing or other securities fraud complaints if the company falls short of specific targets. Presenting climate plans in generalities, without forecasts, may also provide the foundation for companies to defeat securities fraud lawsuits as mere "puffery," which has been successfully used by some US companies in recent years as a basis on which to dismiss those claims.

Under many of the regulations summarized above, however, companies and their boards will be required to be far more specific, granular, and thorough in climate-related disclosures. In response to the array of climate-related regulations surveyed above, companies and their boards will need to reassess reporting and oversight practices on climate-related metrics and other disclosures. Impacted companies and their boards will need to assess whether these required climate-related disclosures will be adequately monitored, assessed, and confirmed by the disclosure controls and procedures such companies have put in place already or if enhancements are required. To the extent that climate disclosures require third-party attestation or audit, those professionals will likely seek formal verification of board monitoring as support for their reports.

GENERAL DISCLOSURE PRINCIPLES. Concerning disclosure, we have some advice we consider to be generally applicable, across jurisdictions and under various authorities.[1]

- *Clarity and accuracy*: Disclosures should be accurate, clear and comprehensible, avoiding jargon. If "broad terms" are used, such as "green" or "sustainable," they need to be explained, evidence-based and verifiable. Information should not be cherry-picked to highlight only positive climate information, ignoring the negative.
- *No discrepancies*: Identify and cure discrepancies between what is "said" or publicly disclosed and what is "done" in any claim: This difference has been the basis of a number of regulatory enforcement actions so must be addressed.
- *Disclaimers*: Wherever possible, organizations should use risk factors, qualifications and/or disclaimers to alert investors as to the risks related to a particular company, business or industry, in order to reduce the risk of disclosures being deemed inaccurate and/or misleading. Many climate-related disclosures will be "forward looking statements" and should be treated with the same care and disclaimer language as other statements concerning future expectations.
    - *Don't overstate, do explain*: Ensure that climate-related claims are verifiable and do not overstate. Where possible, the conditions, assumptions and any required calculation behind a climate-related claim should be clearly stated.
    - *Third-party verification*: Assessment of claims by third-party consultants can be useful to provide back-up and confidence to climate-related claims.
    - *Legal review/audit*: As with any public disclosure, climate-related disclosure should be reviewed by legal counsel and/or internal or external audit teams. Having appropriate disclosure procedures will help to reduce the risk of disclosures lacking balance.

BOARD MONITORING

To the extent that boards and their committees are required to monitor or make findings under the developing array of climate-related disclosures (not least with respect to requirements around governance), they will need to consider the detailed processes and tasks necessary to prudently discharge — and document the discharge of — their responsibilities under applicable legal standards.

In the US, determinations of breaches under these standards can expose directors to personal liability, including monetary damages that are not covered by insurance or indemnification or excused by otherwise valid limitations of liability. As companies will increasingly provide climate-related disclosures in response to prescriptive, detailed laws, rules and regulations, instead of the prior practices associated with their voluntary ESG brochures, and subject to third-party verification, boards will need to consider whether this compels them to have a formal — and demonstrably functioning — set of procedures, processes and reporting controls in order to ensure that they are adequately monitoring company disclosures, especially with the prevalence and publicity surrounding greenwashing claims.

Application of these board oversight duties tends to evolve over time in accordance with developments in other areas and can be expected to adapt as climate-related disclosure rules come into place and relevant case law is developed. Compliance with climate-related laws, rules and regulations can be expected to fall within these requirements such that failure to attempt in good faith to maintain related systems and controls may expose directors to claims of failure to monitor.

As boards develop oversight systems for climate-related disclosure, many will consider enlisting the resources of a board committee to support the board's efforts concerning climate-related disclosure and associated administration. Whether it is appropriate to include this topic in the charter of a board committee will vary for different companies and boards, according to such unique features as industry and company carbon footprint, company size and reach, board size and composition as well as the number and composition of other committees.

GENERAL GOVERNANCE PRINCIPLES. Concerning governance, we have come up with advice we consider to be generally applicable across jurisdictions under the various authorities.[2]

- *Policies*: Boards should seek to have management develop internal policies in collaboration with compliance, risk, sustainability, and internal audit teams as well as general counsel and outside counsel. Such policies should provide clear guidance on potential greenwashing risks facing the organization and how such risks can be mitigated.
- *Procedures*: Boards should seek to have management develop procedures to monitor and record relevant information to ensure that there is evidence the organization's policy was followed.
- *Compliance*: Boards should seek to have management update its policies and procedures to meet current, and likely future, regulations governing climate-related disclosure.
- *Training*: Boards should encourage management to enhance awareness of greenwashing risks among employees through suitable training programs.
- *Market practices*: Boards should stay abreast of developments in climate-related disclosure and issues such as greenwashing to promote awareness of evolving expectations and lessons learned.
- *Documentation*. Boards are well advised to promote accurate and complete documentation of their oversight performance in all areas, including climate-related disclosure, through appropriate agendas, board books, minutes, resolutions, and otherwise.

ENTERPRISE RISK MANAGEMENT SYSTEMS

Boards will likewise do well to include climate-related disclosure and governance in their oversight of a company's broader enterprise risk management (ERM) system. Of course, a company's officers remain as a practical matter responsible – under ultimate board supervision – for developing and maintaining ERM systems, including concerning matters of climate, risk, and opportunity. Yet for many boards, overseeing ERM systems is a valuable and important board function and, for them, understanding how management incorporates climate-related risk management into the broader ERM will be useful.

The climate-related risk landscape is a critical aspect of ERM necessitating companies to operate within a framework of threat management that is proactive, predictive, preventive and less reactive and overseen by the board. Companies across the spectrum will face increased demands to establish and prioritize reliable and achievable climate-related targets, and to demonstrate measurable progress, as reflected by their particular industry, evolving climate science, benchmarking, emerging technologies, regulatory demands, and the expectations of a variety of stakeholders, including consumers, shareholders, employees, asset managers, the stock exchange, investors, activist groups, and the communities where they own assets.

GENERAL ERM BOARD PRINCIPLES. Concerning ERM, we consider certain ERM board principles to be generally applicable across jurisdictions under the various authorities.

- *Climate as Integral*: Boards should consider climate-related topics and disclosure to be a critical aspect of ERM within a framework that is more proactive, predictive, and preventative and less reactive.
- *Interdisciplinary*: Boards should appreciate that climate-related topics and disclosure are interdisciplinary, and include operational, competitive, reputational, financial, legal, and other factors.
- *Dynamic*: Boards should recognize that climate-related topics and disclosure are dynamic, and entail unavoidable uncertainty, volatility and inherent risk—and will likely be heavily scrutinized and second-guessed.

Practical Steps for Boards to Consider Looking into 2024

In light of these complex and often competing considerations, we recommend that companies, and in particular companies that are facing the challenge of reporting under multiple standards, adopt the following actions:

- Determine which of the multiple standards have jurisdiction and regulatory reach such that they are applicable to the company, and address inconsistencies and overlaps among the applicable standards.
- Once applicability is established, monitor carefully the ongoing expansions and refinements of the global climate disclosure and governance regulations.
- From a climate-disclosure perspective, confirm the company has appropriate processes for collecting, reporting and monitoring climate disclosures, and whether these disclosures should be subject to internal or external disclosure controls and monitoring, perhaps in coordination with the company financial and accounting internal controls and monitoring.
- From a board governance perspective, determine whether board and committee guidelines, charters, policies and expectations should be expanded or clarified to address responsibility for climate disclosures, compliance and monitoring, and once determined, consider appropriate internal reporting to the board about climate disclosures and compliance and address whether third-party monitoring or verification in support of the board responsibilities would be advisable.
- Assess the public aspects and formal requirements of reporting climate disclosures, and whether they must be part of or can be separate from traditional public company reporting and related board and company responsibility for their traditional public reporting.

Conclusion

As new climate-related disclosure rules become effective and existing rules evolve, companies and boards will need to address compliance with complex requirements and simultaneously grapple with the interplay among these regimes. While there may be traps for the unwary, boards considering general principles relating to disclosure, governance and enterprise risk management will be empowered to support company management in meeting these requirements as they discharge their own duties.

Appendix 1: Narrative Detail on Regional Laws, Rules and Regulations

UNITED STATES

Under SEC rules adopted in March 2024 (the "SEC Rules"), climate-related disclosures must be included by domestic registrants and foreign private issuers in registration statements, as well as in periodic filings made under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The SEC Rules do not apply to Canadian issuers filing under the SEC's Multi-Jurisdictional Disclosure System ("MJDS"). Consistent with the Proposed Rules, the SEC Rules do not apply to asset-backed issuers.

The adopting release notes that climate-related risks may be relevant for some of the pooled assets comprising asset-backed securities; however, the SEC points out that "adoption of climate-related disclosure requirements for certain types of securities, such as asset-backed securities, should consider the unique structure and characteristics of those securities." The adopting release notes that the SEC may consider climate-related disclosure requirements for asset-backed securities issuers in the future.

The Regulation S-K climate-related disclosures (other than Scope 1 and/or Scope 2 emissions disclosures) are required to be included in a separate, appropriately captioned section of a registrant's filing, or in another appropriate section, such as Risk Factors, Description of Business, or Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") (or the disclosures can be incorporated by reference as long as the disclosures meet the electronic tagging requirements). Otherwise, the SEC Rules leave the placement of the climate-related disclosures, other than the financial statement disclosures, largely up to each registrant.

A registrant must provide the financial statement disclosures required under Regulation S-X for the registrant's most recently completed fiscal year—and, to the extent previously disclosed or required to be disclosed, for the previous fiscal year(s) included in the filing—in a note to the registrant's audited financial statements. The registrant must electronically tag narrative and quantitative climate-related disclosures in Inline eXtensible Business Reporting Language ("Inline XBRL").

If the registrant is required to disclose Scope 1 and Scope 2 emissions, then these should be presented:

- For a domestic filer, in its annual report on Form 10-K, in its quarterly report on Form 10-Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions metrics disclosure relates (with the disclosure being incorporated by reference into the previously filed Form 10-K), or in an amendment to its Form 10-K filed no later than the due date for the Form 20-F, or in an amendment to its annual report on Form 20-F, due no later than 225 days after the end of the fiscal year to which the GHG emissions metrics disclosure relates.
- If filing a registration statement under the Securities Act of 1933, as amended (the "Securities Act") or the Exchange Act, as of the most recently completed fiscal year that is at least 225 days prior to the date of effectiveness of the registration statement.

- Such disclosure should be provided for the registrant's most recently completed fiscal year end and, to the extent previously disclosed, for the previous fiscal year(s) included in the filing.
- If required to provide an attestation report over Scope 1 and Scope 2 emissions, the registrant should provide that attestation report, and any related disclosures, in the filing that contains the GHG emissions disclosures to which the attestation report relates.

The SEC Rules require companies to disclose extensive information about their governance, strategy, risk management, targets and goals, and GHG emissions related to climate change, as well as attestation and interactive data requirements for some of the disclosures. To summarize the extensive kinds of disclosure required briefly, the SEC Rules contemplate disclosure of:

- board oversight for companies that have board oversight or targets or goals related to climate change;
- the material impacts and management of climate-related risks on their business, results of operations, or financial condition, as well as any transition plans, scenario analysis, or internal carbon pricing they use;
- any processes for identifying, assessing, and managing material climate-related risks, and how they are integrated into their overall risk management system or processes; and
- any climate-related targets or goals that have materially affected, or are reasonably likely to materially affect their business, results of operations, or financial condition, and their progress toward meeting them, as well as the role of carbon offsets or RECs in their strategy.

Certain companies—large accelerated filers and accelerated filers that are not smaller reporting companies or emerging growth companies—must disclose their Scope 1 and/or Scope 2 emissions metrics, if material, on a phased-in basis, and to obtain attestation reports from qualified providers. Such disclosures must include an attestation report from an expert and independent provider that meets certain criteria and standards, and make certain additional disclosures about the attestation engagement and provider.

Safe harbor provisions apply to certain forward-looking statements related to transition plans, scenario analysis, internal carbon pricing, and targets and goals, and treats them as covered by the PSLRA safe harbors for forward-looking statements. Subject to a phase-in period, the disclosures will be required to be in XBRL.

The SEC Rules make changes to Regulation S-X to require companies to include certain climate-related financial statement metrics and related disclosures in a note to their audited financial statements, such as expenditures and losses related to severe weather events and other natural conditions, carbon offsets and RECs, and financial estimates and assumptions impacted by climate-related risks or transition plans, as well as contextual information to explain the financial statement effects. View the new SEC climate disclosure here.

CALIFORNIA

Three recent California climate-related laws are worth noting. The first two, enacted as part of a "Climate Accountability Package" — Climate Corporate Data Accountability Act (SB253) and Climate-Related Financial Risk Act (SB261) –— require US-based companies doing business in California to make disclosures about their GHG emissions and climate-related financial risks. The third law — the Voluntary Carbon Market Disclosures Act (VCMDA, or AB1305) — addresses the problem of "greenwashing" through increased public disclosure.

The first two California laws—on emissions and climate-related financial risks—are generally broader than the proposed comparable SEC rules and apply to large public and private companies (e.g., global annual revenues exceeding $500 million for climate-related financial risk and $1 billion for emissions disclosures) that are "doing business" in California, regardless of where they are headquartered in the US. (Insurance companies are generally exempt from the climate-related financial risks disclosures.)

The emissions disclosure law imposes specific requirements on covered companies, such as disclosing GHG emissions from Scope 1, 2, and 3 sources in accordance with the widely recognized GHG Protocol standard. It also requires companies to obtain an assurance from an independent third party for GHG emissions. The climate-related financial risks law requires companies to disclose not just climate-related financial risk, but also measures taken to reduce and adapt to the risk in accordance with the TFCD or similar reporting standard. Reporting is required to begin in 2026 or 2027, depending on the type of disclosure.

The disclosures required for both emissions and climate-related financial risks are to be made publicly available — either on the covered company's website or through a reporting agency, as applicable — and accompanied by an annual fee to a designated fund. Administrative penalties for non-compliance or late filing vary from up to $50,000 (for the climate-related financial risk law) to up to $500,000 (for the GHG emissions law) per report year.

SB253 and SB261 are currently the subject of a legal challenge filed by a coalition of business organizations, including the US Chamber of Commerce and the California Chamber of Commerce. (This lawsuit does not address the VCMDA.) The plaintiffs allege that SB253 and SB261(a) violate the First Amendment by unconstitutionally compelling speech and "forc[ing] thousands of companies to engage in controversial speech that they do not wish to make, untethered to any commercial purpose or transaction", (b) are "precluded by the [federal] Clean Air Act" under the Supremacy Clause (i.e., where regulation of a particular matter is exclusively in the federal government's domain), given that SB253 and SB261 do not limit their scope to "intrastate" matters (i.e., disclosures relating only to "emissions produced in California or to companies' expected climate change financial risks in California") but, instead, potentially extend to emissions produced, or climate-related risks expected, anywhere in the world; and (c) "are invalid under the [US] Constitution's limitations on extraterritorial regulation, including the Dorman Commerce Clause" (i.e., that prohibits US States from passing laws that discriminate against or excessively burden interstate commerce) on the basis that the disclosure requirements are not limited to emissions produced, or climate-related financial risks expected, in California. Ultimately, the plaintiffs are seeking a ruling that would block and overturn SB 253 and SB261.

The third law—the VCMDA—arguably received less publicity than the other laws on emissions and climate-related financial risk, but that should not detract from its importance and reach as one of the first US laws to regulate the voluntary carbon market and reduce the risk of greenwashing. The law requires US and non-US companies — regardless of size and whether public or private — that make certain climate-related claims (e.g., achievement of "net zero" emissions or significant reductions in GHG emissions) and operate, or purchase or use VCOs, in California, or that market or sell VCOs in California to make certain disclosures. Third-party verification or assurance is not required under the VCMDA, but companies are required to say whether one was relied upon or not.

The anti-greenwashing law takes effect on January 1, 2024 , although there is some ambiguity regarding when companies must begin making disclosure following recent comments after the law from the author of the VCMDA suggesting his intent for disclosures to be made on or before January 1, 2025 (i.e., within a year of the effective date of the law).

In addition to the ambiguity around the date for initial disclosures, there remains some other ambiguity as to the scope of the VCMDA. For example, it is not clear what it means to "operate" or to "make claims" in California. Further, unlike the other two California laws on emissions and climate-related financial risk, the VCMDA does not reference any existing third-party standard in connection with making the required disclosures.

The disclosures under the VCDMA are to be made publicly available on the company's websites and must be updated at least annually. Civil penalties for non-compliance or inaccurate information may be imposed, up to $2,500 each day, and up to a maximum of $500,000 per violation.

None of the new California laws explicitly address the role of the board of directors or corporate governance of the covered companies in relation to the disclosure. However, the role of the board in ensuring compliance and preparation for these new requirements would be expected as part of the general focus on compliance, internal controls and risk management, especially given potential penalties and adverse publicity that can be associated with non-compliance with ESG laws.

EUROPEAN UNION

CSRD

The Corporate Sustainability Reporting Directive (CSRD) is an EU directive that amends existing EU legislation on corporate reporting and governance as regards corporate sustainability reporting. The CSRD, which entered into force on January 5, 2023, modernizes and strengthens the rules concerning the social and environmental information that companies are required to report. The provisions on sustainability reporting will apply to a number of EU and non-EU companies and will be phased-in over time. For instance, from January 1, 2024, (a) large EU "public interest entities" that are already subject to the Non-Financial Reporting Directive (NFRD) and (b) large non-EU companies with securities listed on a regulated market in the EU and with more than 500 employees will have to make disclosures in accordance with the CSRD for reports to be published in 2025. Whilst from January 1, 2025, (a) large non-EU companies listed on a regulated market in the EU and (b) large EU companies that are not currently subject to the NFRD will have to make disclosures in accordance with the CSRD for reports to be published in 2026.

The CSRD requires in-scope companies to report a wide range of sustainability-related measures, using new sustainability reporting standards, known as the European Sustainability Reporting Standards (ESRS). They are very broad in scope and climate-related disclosures are only part of their remit.

The ESRS, which were developed by the European Financial Reporting Advisory Group (EFRAG) and formally adopted by the European Commission, include 12 standards: two cross-cutting standards (ESRS 1 and ESRS 2) that provide general reporting concepts (including double materiality and reporting boundaries) and overarching disclosure requirements; and ten topical standards with specific disclosure requirements for ESG matters. One of these topical standards, ESRS E1 (climate change), requires a broad range of climate disclosures to be made, including (but not limited to): (a) the company's transition plan for climate change mitigation; (b) the material climate change-related impacts, risks and opportunities facing the company and their interaction with the company's strategy and business model; (c) the company's Scope 1, 2 and 3 GHG emissions; and (d) the potential financial effects from material physical and transition risks and potential climate-related opportunities.

Additionally, the CSRD requires in-scope companies to obtain limited assurance of their disclosures by an independent auditor or certifier, while also strengthening the role and powers of the competent authorities and the European Securities and Markets Authority (ESMA) in supervising and enforcing compliance with the CSRD.

Penalties for non-compliance with the requirements of the CSRD are a matter for individual Member States of the European Union to determine.

For further information about the CSRD, read our earlier updates here and here.

CS3D

The Corporate Sustainability Due Diligence Directive (CS3D) is an EU directive that sets out human rights and environmental due diligence (HREDD) requirements covering the company’s value chain, along with obligations relating to the adoption and implementation of climate change mitigation transition plans. CS3D, which was initially the subject of a political agreement between the EU Council and the EU Parliament on December 14, 2023, was subsequently the subject of additional discussions resulting in a further compromise text being adopted by the EU Council on March 15, 2024. CS3D must now be formally endorsed by the EU Parliament, which is expected to take place in April 2024. CS3D will subsequently be published in the Official Journal and enter into force 20 days from such publication. Member States will thereafter have two years to transpose CS3D into national law. CS3D will then apply, through phased-in periods, as from 2027.

CS3D will initially apply as from 2027 to large EU limited liability companies with more than 5,000 employees and a net worldwide turnover above EUR 1,5 billion and non-EU limited liability companies with a net turnover in the EU above EUR 1,5 billion. The scope will be progressively extended until 2029, with the employee threshold being reduced to 1,000 and the turnover thresholds being reduced to EUR 450 million. In addition, as from 2029, CS3D will apply to large EU and non-EU limited liability companies with a net turnover of more than EUR 80 million, worldwide for EU (parent) companies and in the EU for non-EU (parent) companies, which have entered into franchising or licensing agreements with independent third-parties in the EU in return for royalties exceeding EUR 22,5 million.. Small and Medium Enterprises (SMEs) are excluded from the scope of CS3D (but may indirectly be affected; e.g., as suppliers to companies subject to the CS3D). In-scope companies will have to implement risk-based HREDD measures to identify, prevent, mitigate, bring an end to and remediate any actual or potential adverse impacts on human rights and the environment (including, e.g., child labour or exploitation of workers, but also environmental adverse impact such as pollution and biodiversity loss), with respect to: (i) their own operations; (ii) those of their subsidiaries; and (iii) those carried out by business partners, where related to their chains of activities, including upstream partners, whereas downstream partners would be limited to distribution, transport and storage.

Additionally, the CS3D requires EU and non-EU in-scope companies to adopt and effectively implement a climate change mitigation transition plan, except where they are already required to present a climate transition plan as part of their obligations under CSRD. In this transition plan, based on an obligation of means, companies will have to set their plan to ensure that their business model and strategy is compatible with the transition to a sustainable economy, limiting global warming to 1.5˚C in line with the Paris Agreement and the achievement of climate neutrality targets by 2050. To that end, the plan should provide for (i) time-bound targets related to climate change, (ii) a description of decarbonization levers and actions planned to reach climate change targets, (iii) an explanation and quantification of investments and funding supporting the plan, and (iv) a description of the role of administrative, management and supervisory bodies with regard to the plan.

Penalties for non-compliance with the CS3D will be enforced by national supervisory authorities and through civil liability mechanisms. National authorities may impose penalties, including "naming and shaming" the concerned companies and fines of a maximum of 5% of the company's net worldwide turnover. In addition, in-scope companies that do not comply with CS3D may be disqualified from public contracts or concessions. For further information about the CS3D, read our earlier update.

FRANCE

A large proportion of environmental regulation in France is based on EU law. In addition, various national laws apply. The interaction of these rules creates a redundancy of complex and sometimes overlapping ESG obligations, resulting in a complex framework in which it is difficult to know which information must be provided.

Certain climate-related disclosures result from article L. 229-25 of the French Environmental Code which requires companies with more than 500 employees to make available on a publicly accessible media managed by the French government an assessment of GHG emissions of their organisation, and to disclose a transition plan to reduce GHG emissions. This assessment must be updated every four years.

Disclosure requirements also arise from the French corporate duty of vigilance, which was introduced in March 2017 through Law no. 2017-399. Under the French corporate duty of vigilance, certain companies incorporated in France with more than 5,000 employees in France or 10,000 employees globally have to adopt a vigilance plan to identify risks and prevent serious harm towards human rights and fundamental freedoms, health and safety of people and the environment arising from the activities of the company, the companies it controls and sub-contractors and suppliers with which an established commercial relationship exists, when their activities are related to this relationship. Information on this vigilance plan and its effective implementation must be made public in the annual reports of in-scope companies.

In December 2023, France adopted Ordinance 2023-1142 (the "Ordinance"), *relating to the publication and certification of information relating to sustainability and the environmental, social and corporate governance obligations of commercial companies*, which replaces existing disclosure requirements based *inter alia* on the EU NFRD that were implemented through Ordinance 2017-1180. The Ordinance seeks to implement CSRD, while harmonizing and grouping various, but not all, pre-existing sustainability reporting requirements. In accordance with CSRD, additional reporting requirements, took effect, for certain companies, as early as the 2024 financial year, with the first reports to be published in 2025.

Financial institutions are subject to specific climate disclosure, in particular under the Sustainable Financial Disclosure Regulation (EU) 2019/2088, which entered into force on March 10, 2021 and is directly applicable in France.

GERMANY

Since the start of 2023, Germany has a law aimed at preventing environment-related risks and violations (as well as other matters) in the supply chains of enterprises operating in Germany or having a domestic branch office and employing 3,000 people—a threshold dropping to 1,000 starting in 2024. The German law imposes a wide range of environment-related due diligence and requires senior management of covered companies to adopt a policy statement and seek information on a regular basis, at least once a year, about the work of responsible persons.

The core of the law's due diligence obligations provides that companies that fall under the law must undertake a risk analysis. The goal is to understand any potential and actual human rights and environmental risks in their supply chain—in their own business operations as well as those of their direct suppliers. The companies are required to weigh and prioritize the identified risks and to implement measures to prevent or remedy any prioritized risks or violations. Other requirements of the Act include designating responsibility for human rights compliance within the company (e.g., designating a human rights officer) and introducing a complaint program. The latter must allow employees, suppliers' workers and other third parties to blow the whistle on any human rights or environmental risks or violations in the company's supply chain. The Act covers 13 different human rights and environmental obligations; e.g., if they lead to human rights violations (e.g., poisoned water), and on the other hand, when it comes to banning substances that are hazardous to humans and the environment.

However, the German law on supply chain due diligence does not include specific climate-related requirements. This will change once Germany has to amend the law pursuant to the EU CS3D, including the requirement to set out a climate transition plan (see above for European Union).

For further information about the German supply chain due diligence law, read our earlier updates here, here and here.

UNITED KINGDOM

The UK has introduced a range of requirements relating to climate change disclosures, and further requirements will be introduced in the near term.

For instance, quoted companies, large unquoted companies and large limited liability partnerships (LLPs) are required to report under the Streamlined Energy and Carbon Reporting (SECR) framework, which came into force on April 1, 2019. Unquoted companies and LLPs are considered "large" under the SECR framework if they meet two or more of the following thresholds: (a) a turnover of £36 million or more; (b) a balance sheet of £18 million or more; and (c) 250 employees or more.

Quoted companies must disclose in their Directors' Reports: (a) annual global scope 1 and 2 GHG emissions; (b) a minimum of one emissions intensity ratio (which compare emissions data with an appropriate business metric or financial indicator); (c) the global energy use for the current reporting year; (d) the previous year's figures for global energy use and GHG emissions; (e) information about energy efficiency actions taken over the financial year; (f) the methodologies used in calculations of disclosures; and (g) the proportion of energy consumption and GHG emissions that relate to consumption in the UK.

Large unquoted companies must disclose similar information in their Directors' Report, except that their disclosures are limited to UK, not global, GHG emissions and energy use. Large LLPs must prepare a separate "Energy and Carbon Report" containing the same information as large unquoted companies.

In addition to the SECR framework, the UK Listing Rules require companies with a premium listing (i.e., certain trading companies and investment entities) to include a statement in their annual financial reports setting out whether they have included climate-related financial disclosures that are consistent with the TCFD Recommendations. If they do not include such disclosures in their annual report, they must explain they have not done so, and the steps that they are taking to enable them to make TCFD-aligned disclosures in the future (as well as the time frame within which they expect to be able to make those disclosures).

Asset managers and asset owners regulated by the Financial Conduct Authority (FCA), including life insurers and FCA-regulated pension providers, are also required to make TCFD-aligned disclosures. The requirements came into effect for asset managers with over £50 billion in assets under management (AUM) on January 1, 2022 and for asset managers with over £5 billion in AUM on January 1, 2023.

In-scope entities must make entity-level disclosures that outline how they consider climate-related risks and opportunities when managing their investments. In-scope entities must also make product-level disclosures for certain products, such as authorized funds and unauthorized AIFs managed by UK AIFMs, reporting on metrics such as GHG emissions.

Further, the Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 require certain companies and LLPs to comply with climate-related financial disclosure requirements, which are also based on the TCFD Recommendations. The requirements, which came into force on April 6, 2022, apply to: (a) UK companies that have more than 500 employees with transferable securities admitted to trading on a UK-regulated market, banking companies or insurance companies; (b) UK-registered companies with securities admitted to the Alternative Investment Market (AIM) of the London Stock Exchange with more than 500 employees; and (c) and UK-registered companies that are not included in the categories above, but have more than 500 employees and a turnover of more than £500 million in the relevant financial year. The requirements also apply to: (a) traded or banking LLPs with more than 500 employees and (b) LLPs with more than 500 employees and a turnover of more than £500 million. As mentioned above, the disclosure requirements are based on the TCFD Recommendations.

Requirements for auditing and potential penalties vary between the regimes. However, there is no requirement for external auditing in respect of SECR disclosures and TCFD disclosures. Where set out in accounts, such disclosures are not generally audited on the basis that the reasonable level of assurance provided by the auditors in their audit report relates only to the financial statements included with a company's Annual report, not to the Annual report as a whole. However, auditors will need to check when auditing the financial statements that the key assumptions underlying their preparation are also aligned with the TCFD disclosures made in the front half of the annual report.

The applicable penalties in respect of breaches of the different UK regimes also vary. The Conduct Committee of the Financial Reporting Council is responsible for monitoring compliance of company reports and accounts with the relevant reporting requirements.

In addition to the above existing disclosure requirements, the UK government has proposed to create UK Sustainability Disclosure Standards (UK SDS) by assessing and endorsing the global corporate reporting baseline of IFRS Sustainability Disclosure Standards. The UK SDS will form the basis of any future requirements in UK legislation or regulation for companies to report on risks and opportunities relating to sustainability matters, including (but not limited to) risks and opportunities arising from climate change. The UK SDS will also align with the recommendations of the TCFD. The standard is expected to apply for annual reporting periods beginning on or after January 1, 2024, with earlier application permitted.

HONG KONG

The Stock Exchange of Hong Kong Limited (HKEX) issued a Consultation Paper on Enhancement of Climate-related Disclosures under the ESG Framework in April 2023, with the aim of enhancing climate-related disclosures made by Hong Kong listed companies. The Consultation Paper proposed amendments to the existing ESG Reporting Guide, which was first published in 2013. The proposed amendments, which consider the unique circumstances of the Hong Kong market, are expected to apply to disclosures covering financial years commencing on or after January 1, 2025.

The ESG Reporting Guide applies to all companies with equity securities listed on the Main Board or GEM Board of HKEX, about 2,600 listed companies as of October 20, 2023. The ESG Reporting Guide currently has two levels of annual disclosure obligations: mandatory requirements and "comply or explain" provisions. The mandatory requirements are in Part B of the Guide and cover the governance structure, reporting principles, and reporting boundary of the ESG report.

The "comply or explain" provisions are in Part C of the Guide and cover the environmental and social subject areas, aspects of these areas, general disclosure requirements, and key performance indicators (KPIs) for reporting. In addition, paragraph 28(2)(d) of Appendix 16 of the Main Board Listing Rules requires the listed company's directors' report for a financial year to contain a business review as prescribed in Schedule 5 of the Companies Ordinance (Cap. 622). The business review must include, among others, a discussion on the company's environmental policies and performance if this is necessary for an understanding of the development, performance, or position of the company's business.

Notably, the Consultation Paper proposed to introduce new or enhanced corporate governance and disclosure requirements for listed companies in relation to climate-related risks and opportunities. HKEX aims to transition to mandatory climate-related disclosures that are in line with international standards such as the recommendations of the TCFD and the IFRS S2 climate-related disclosure standards. The new requirements cover core pillars: (1) governance, (2) strategy, (3) risk management, and (4) metrics and targets, and will form a new Part D of the Guide.

Examples of the governance-related disclosure requirements include disclosing the identity of the board members or committees responsible for overseeing climate-related issues; how the board ensures climate competencies and is informed about climate risks; how the board considers climate risks in overseeing strategy and risk management; how the board oversees climate-related targets and links them to remuneration; and describing the management's role in assessing and managing climate-related risks.

Independent assurance of the ESG disclosures is optional. If independent assurance is obtained, the issuer should describe the level, scope and processes adopted for the assurance given clearly in the ESG report. This remains unchanged in the proposed amendments to the ESG Reporting Guide.

Failure to comply with the ESG Reporting Guide constitutes a breach of the HKEX's listing rules. The HKEX's Listing Committee has the power to bring disciplinary actions and impose sanctions against the listed issuer and its related parties including directors or members of the senior management of the listed issuer. The range of possible penalties include the issuance of a private reprimand, public reputational sanctions (e.g., statements involving criticism of the issuer or statements on the unsuitability of a director), denial of facilities of the market to the issuer, suspension of trading of the issuer's securities, or cancellation of the listing of the listed issuer's securities.

BRAZIL

The Brazilian Securities Commission (CVM) made a significant announcement in October 2023, by introducing CVM's Rule No. 193. This new rule provides comprehensive guidance on the creation and dissemination of sustainability information reports, specifically IFRS S1 and IFRS S2, as outlined by the ISSB (see below for more information on ISSB).

This move – which makes Brazil the first country to formally commit to the adoption of IFRS S1 and IFRS S2 – not only supports the globalization of these standards but also promises substantial benefits for analysts conducting comparative assessments, elevating the quality of investment evaluations, both within national and international environments.

Sustainability-related reports, adhering to the ISSB standards, will be mandatory for publicly traded companies, and will be required for fiscal years commencing on or after January 1, 2026. However, publicly traded companies, securitization firms, and investment funds that wish to voluntarily adopt this reporting framework should commence preparation for fiscal years starting on or after January 1, 2024 (meaning that the standards will not apply to reporting 2023 data). In addition, the Federal Accounting Council (CFC) has indicated its intention to approve a resolution mandating compliance with the ISSB standards for non-publicly traded limited liability companies as well.

In terms of voluntary adoption, CVM's Rule No. 193 stipulates that (i) the initial preparation and disclosure of the Report implies a commitment to continue this practice during all periods of voluntary adoption and (ii) entities that opt for voluntary adoption can take advantage of the relief outlined in the ISSB's standard up until the first fiscal year of mandatory adoption (with the exception of presenting comparative information, which must be adhered to from the second fiscal year of standard adoption). To be qualified for this relief the entity must explicitly and unambiguously declare its alignment with the standards issued by the ISSB.

For further details, please refer to our Eye on ESG blog post discussing CVM's Rule No. 193.[3]

MEXICO

Strictly speaking, under the current regulatory framework, there are no specific ESG corporate disclosure obligations, nor even a single definition of ESG. However, there is a set of substantive laws that contain specific climate-related reporting obligations for companies, especially the General Law of Ecological Equilibrium and Environmental Protection (LGEEPA) enacted in 1998, and the General Law of Climate Change (LGCC) enacted in 2012.

The LGEEPA aims to promote sustainable development through the enactment of certain obligations, applicable to local governments and to companies with certain characteristics. The most important requirement for companies is the submission of a Yearly Operation Certificate (CAO) before the Environmental Ministry (SEMARNAT) if a company (i) generates hazardous waste (more than 10 tons per year); (ii) manages hazardous waste; (iii) is a titleholder of an environmental license (required in the oil, chemicals, automotive, paints/inks, metallurgical, cement, glass and paper industries, among others); or (iv) produces more than 25,000 tons of carbon dioxide equivalent (CO_2e).

Since 2019, the LGCC has required companies that produce more than 25,000 tons of CO_2e to submit a report to the SEMARNAT.

In addition to the above, the Mexican Stock Exchange (BMV), followed by the Institutional Stock Exchange (BIVA), have constantly kept their standards and best practices aligned with the international market, through the implementation of ESG standards, adherence to best corporate governance practices, implementing ESG self-evaluation guides, and sustainability policies. Since 2011, the BMV created a Sustainable Index for those companies with best ESG practices. Then in 2013, the BMV announced its adherence to the SSE. In May 2017, a Sustainability Guide was published by the BMV, advising the listed companies to develop ESG reporting practices and methods for ESG self-evaluation. In January 2022, the BMV reported that 85% of listed companies had disclosed ESG reports.

Finally, in June 2022, the BMV announced its NetZero 2050 goal, with the issuance of a NetZero Guide for their listed companies In this guide the BMV developed a detailed framework for the analysis, implementation and dissemination of a NetZero process for companies listed on the BMV. The ESG disclosure is part of the four-step guidance for the listed companies to adhere to the NetZero initiative.

ISSB

The International Sustainability Standards Board (ISSB), which was established by the International Financial Reporting Standards Foundation (IFRS) to develop a comprehensive global baseline of sustainability disclosure standards, published its inaugural voluntary global sustainability disclosure standards on 26 June 2023: IFRS S1 and IFRS S2.

IFRS S1 requires entities to disclose material information about all sustainability-related risks and opportunities that could reasonably be expected to affect the entity's prospects. IFRS S2 builds upon IFRS S1 by requiring entities to disclose material information about climate-related risks and opportunities that could reasonably be expected to affect the entity's prospects. Together, IFRS S1 and IFRS S2 fully incorporate the TCFD Recommendations.

If companies choose to make their climate-related disclosures in accordance with IFRS S2, they will be required to disclose (among other things): (a) information about the governance bodies for oversight of climate-related risks and opportunities, as well as management's role in the governance processes, controls and procedures used to monitor, manage and oversee climate-related risks and opportunities; (b) information to enable users of financial reports to understand the climate-related risks and opportunities that could reasonably be expected to affect the entity's prospects and the effects of any such risks and opportunities on the entity's strategy and decision making; (c) the processes that they use to identify, assess, prioritize and monitor climate-related risks and opportunities; and (d) the quantitative and qualitative climate-related targets they have set to monitor progress towards achieving their strategic goals, as well as any targets that they are required to meet by law or regulation, including any GHG targets.

The ISSB Sustainability Standards are intended for use by companies for annual reporting periods beginning on or after January 1, 2024, meaning that the earliest they could be disclosed is in companies' 2025 annual reports.

The ISSB Sustainability Standards are voluntary and so it is up to the governments of jurisdictions across the globe to decide whether they want to mandate them, together with auditing requirements and any penalties for non-compliance.

For further information on the ISSB Sustainability Standards, read our previous update here.

ADDITIONAL RESOURCES

We have covered the details of many these new requirements in depth elsewhere:

Eyes On ESG: EU Corporate Sustainability Reporting Directive – new sustainability disclosure obligations for EU and non-EU companies

UK Sustainability Disclosure Framework – New FCA Greenwashing Rules Under Consultation

New California Anti-Greenwashing Law Goes Live on January 1, 2024 – What You Need to Know if You Make Certain "Green" Claims

New "Climate Reporting" Laws In California – Emissions and Climate-Related Financial Risk Disclosure Required

Appendix 2: Tabular Presentation

We have set out below an overview of some of the key facets of the regimes in the following table.

Please note that the following entries have been drafted by Mayer Brown lawyers in the respective jurisdictions with light centralized editing to add a degree of uniformity while maintaining the diversity of styles and substance across the world.

	US-SEC	California	UK	EU (CSRD)	Hong Kong	Brazil	ISSB	France	Mexico
Mandatory or voluntary?	Mandatory with some minor qualifications for disclosure about board oversight	Mandatory	Mandatory with "Comply or Explain" components	Mandatory with "Comply or Explain" components	*Current:* Mandatory with "Comply or Explain" components *Expected:* Increased mandatory requirements	Mandatory with "Comply or Explain" components	Voluntary (although may be adopted as a mandatory standard in certain jurisdictions)	Mandatory with "Comply or Explain" components	Mandatory under certain circumstances
Timing	For fiscal years ending on or after December 15, 2024, with a transition period for certain registrants	SB253/SB261 Applies to annual reporting periods beginning in 2026 or 2027, depending on the type of disclosure AB1305 At least annual reporting, with some ambiguity regarding timing of first disclosure, with the law taking effect on January 1, 2024, but without an express disclosure start date	Requirements phased-in for different entities since 2019	Requirements phased-in for different entities beginning in 2024	Current rules apply until expected amendments to annual reporting periods beginning in 2025	Applies to fiscal years commencing in 2026	Applies to annual reporting periods beginning in 2024	Existing reporting since 2012. EU-transposed requirements apply since 2017. Additional reporting phased-in for different entities in 2024	Annual reports
Scope	SEC registrants, encompassing all US listed entities, including foreign private issuers, but with exemptions for various classes of entities, including asset backed issuers, emerging growth companies (EGCs), smaller reporting companies (SRCs) and Canadian companies disclosing under the MJDS	SB253/SB261 All US-organized companies – public or private – who are doing business in California, with global annual revenue above $1 billion for GHG emissions disclosure, and with more than $500 million for climate-related financial risk disclosures who are doing business in California AB1305 US and non-US companies – public or private – that have a specified California nexus (i.e., operate in California	UK quoted companies, large unquoted companies, and large LLPs	Certain EU-based companies, and certain non-EU based companies with an EU-nexus	*Current and Expected:* All companies with equity securities listed on the Main Board or GEM Board of the Stock Exchange of Hong Kong Limited	Publicly traded companies	Countries to consider ways to adopt	Publicly traded companies, and non-publicly traded companies	Companies with environmental impact BMV and BIVA listed companies are adhered to ESG policies

	US-SEC	California	UK	EU (CSRD)	Hong Kong	Brazil	ISSB	France	Mexico
		and make certain claims or purchase/use VCOs sold within California, or market/sell VCOs in California)							
Nature of climate-related disclosures	Scope 1 and/or Scope 2 emissions by certain classes of registrants (accelerated filers) when material, with exemptions for SRCs and EGCs	SB253 Scope 1, Scope 2 and Scope 3 GHG emissions GHG Protocol-aligned SB261 Climate-related financial risk, and steps taken to reduce and adapt to such risk TCFD-aligned. AB 1305 Information about relevant VCO project or program, or GHG emissions associated with claims made	*Current:* Scope 1 and Scope 2 GHG emissions Energy use TCFD-aligned *Expected*: ISSB-aligned	Scope 1, Scope 2 and Scope 3 GHG emissions TCFD-aligned	*Current*: TCFD-aligned *Expected*: TCFD- and IFRS S2-aligned	ISSB-aligned	Scope 1, Scope 2 and Scope 3 GHG emissions TCFD-aligned	Scope 1, Scope 2 and Scope 3 GHG emissions TCFD-aligned	TCFD-aligned
Approach to materiality	Materiality is determined in the standard way as under other US/SEC securities laws, referring to information that would be important to a reasonable investor, focusing explicitly on climate-related risks and impacts on business, financial condition and results of operations and financial statement effects of severe weather events and other natural conditions.	SB253/SB261 Materiality defined by revenue thresholds – more than $1 billion in global annual revenue, or more than $500 million in global annual revenue, respectively AB1305 No materiality thresholds	Single materiality in respect of TCFD-aligned disclosures: The board determines the threshold at which climate-related issues are sufficiently important to investors and other stakeholders so that they should be reported Materiality is not a concept that applies with respect to non-TCFD-aligned disclosures	Double materiality: Impact materiality: Companies' / groups' impact on the people and the environment (including an analysis of the whole value chain) Financial materiality: How sustainability matters impact companies' / groups' business	*Current:* Single materiality: The board determines the threshold at which ESG issues are sufficiently important to investors and other stakeholders so that they should be reported. *Expected:* No change from current position	ISSB-aligned	Single materiality: Materiality of information is judged in relation to whether omitting, misstating or obscuring that information could reasonably be expected to influence decisions of primary users of general purpose financial reports, which provide information about a specific reporting entity	Double materiality: Impact materiality: Companies' / groups' impact on the people and the environment (including an analysis of the whole value chain) Financial materiality: How sustainability matters impact companies	Impact materiality
Governance requirements	No governance requirements, which the US SEC has no legal authority to set, but requires	SB253 GHG Protocol-aligned SB261	TCFD-aligned	TCFD-aligned	*Current*: TCFD-aligned *Expected*:	TCFD-aligned	TCFD-aligned	TCFD-aligned	BMV requirements are TCFD-aligned

	US-SEC	California	UK	EU (CSRD)	Hong Kong	Brazil	ISSB	France	Mexico
	disclosure of any processes by which boards of directors and managers participate	TCFD-aligned AB1305 No standards identified			TCFD and IFRS S2 aligned				
Audit / Assurance	Assurance by an independent auditor or certifier for Scope 1 and Scope 2 emissions, with phase-in periods	SB253 Assurance engagement from an independent third party for GHG emissions SB261/AB1305 No assurance required	Generally not subject to audit requirements	Assurance by an independent auditor or certifier	*Current*: Optional *Expected*: No change from current position	Assurance by an independent auditor registered at CVM (Brazil's SEC)	Not specified	Assurance by an independent auditor or certifier	Not specified
Penalties	No tailored penalties for violations but rather subjecting all the required disclosures to the full range of remedies for securities law disclosure violations, which include potential governmental sanctions and private damages	SB253 Administrative penalties not to exceed $500,000 per report year SB261 Administrative penalties not to exceed $50,000 per report year AB1305 Civil penalties not to exceed $2,500 per day, up to a maximum of $500,000 per violation	Range of sanctions available to the FCA and the FRC, as well as under Companies Act, including financial penalties, suspensions, restrictions, conditions, limitations, disciplinary prohibitions, and public censures. Breaches can result in both criminal and civil liability, depending on the nature of the breach and the specific rules breached	Sanctions for non-compliance not stipulated Member States should impose administrative pecuniary sanctions and penalties that are "effective, proportionate and dissuasive"	Range of private and public sanctions from HKEX disciplinary action (details in 'Hong Kong' section above)	Range of sanctions from CVM, especially fines	Varies by country	Risks of civil liability actions and stock market sanctions	Range of sanctions available to the LGEEPA, including financial penalties, suspensions, restrictions, and conditions Breaches to LGEEPA can result in both criminal and civil liability, depending on the nature of the breach and the specific rules breached

Endnotes

[1]https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2023/07/greenwashing_navigating-the-risk_final.pdf?rev=7de3a761bb754dc8945aa6125d083a35.

[2]https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2023/07/greenwashing_navigating-the-risk_final.pdf?rev=7de3a761bb754dc8945aa6125d083a35.

[3] For further details, please refer to our Eye on ESG blog post discussing CVM's Rule No. 193.