UNIVERSITY OF CAMBRIDGE
INSTITUTE FOR SUSTAINABILITY LEADERSHIP

Technical Report

TRANSFORMATIONAL LEADERSHIP

Future of Boards

Phase 1: Part 1

Foundation and Methodology

DLA PIPER

The University of Cambridge Institute for Sustainability Leadership

The University of Cambridge Institute for Sustainability Leadership partners with business and governments to develop leadership and solutions for a sustainable economy. We aim to achieve net zero, protect and restore nature, and build inclusive and resilient societies. For over three decades we have built the leadership capacity and capabilities of individuals and organisations, and created industry-leading collaborations, to catalyse change and accelerate the path to a sustainable economy. Our interdisciplinary research engagement builds the evidence base for practical action.

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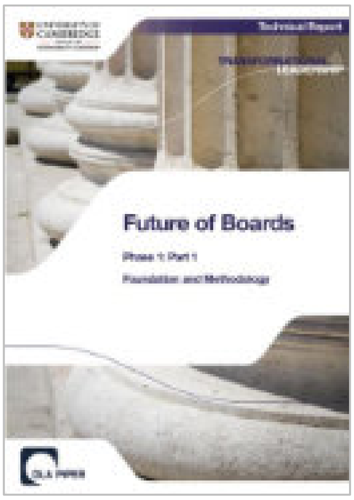
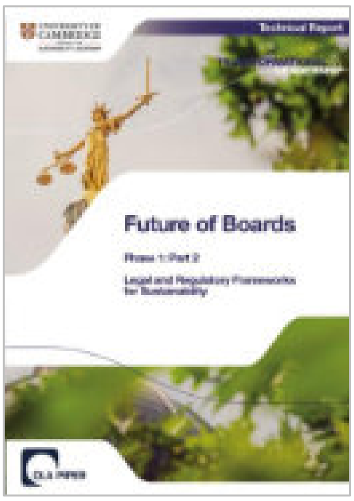
Contents

About the research

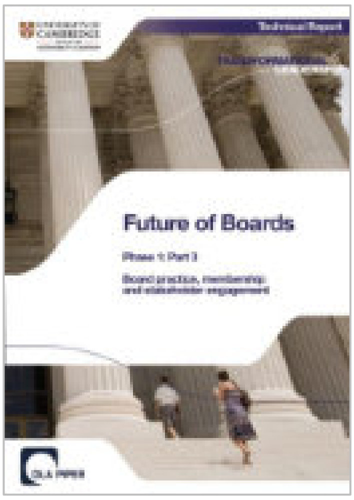
The Future of Boards Research Study by the University of Cambridge Institute for Sustainability Leadership (CISL), in partnership with the global law firm DLA Piper, explores key trends in how board practice and the wider legislative environment are changing around the world; how aligned with a sustainable future these trends in board practice, and their drivers, are likely to be; and the practical implications for boards. We draw from primary and secondary data to understand trends and their drivers, and use a bespoke sustainability framework to understand whether or not these trends are likely to support, or be obstacles to, the alignment of business success with the long-term wellbeing of all people and planet – in other words, a sustainable future where everyone's wellbeing is optimised which requires healthy social and environmental systems. We are carrying out the research in two phases. **Phase 1** explores the evolving and emerging trends in board practices and capabilities, and the related legislative context, using a range of primary and secondary data sources. It is divided into three parts.



Phase 1: Part 1 is the focus of this report. It sets out the context, rationale and theoretical underpinning for this study, as well as the research design.

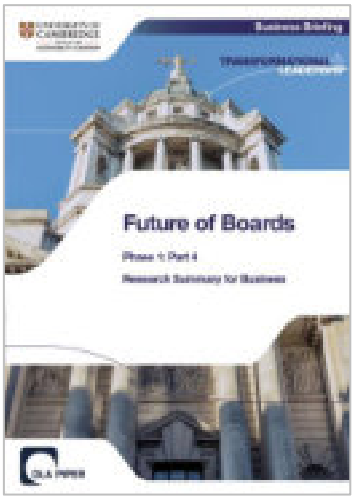


Phase 1: Part 2 explores the first domain of interest – trends in both 'hard' law (legislation and case law) as well as 'soft' law (such as codes and guidelines), which relate to areas of broad sustainability concern. This structured comparison of existing law enables us to gain insights into the legal context within which boards are currently operating, and are likely to operate, in the future. It also enables us to evaluate which trends, that are aligned with a sustainable future, warrant board support and leadership.



Phase 1: Part 3 looks at three further domains which relate specifically to trends in board practice, including in response to this evolving legal context, and wider pressures to achieve sustainability outcomes. These three domains are:

1) materiality, purpose, strategy and reporting
2) board membership, structure, individual capabilities and group dynamics, and
3) stakeholder engagement, including interfacing with investors.



Phase 1: Research Summary for Business a summary of Parts 1, 2 and 3.

Phase 2 of the research will explore and evaluate key findings from Phase 1 in greater detail. It will also arrive at a set of recommendations to enable boards to better align organisations with sustainability outcomes, and positively contribute to a thriving future for all (see *Figure 1*).

The research is being carried out with funding from, and in conjunction with, the global law firm DLA Piper, which is assisting CISL in identifying sources of data and gathering insights from multiple locations around the world. It is also providing guidance and advice as the project progresses. It is important to note that while DLA Piper has funded this work, intellectual stewardship lies with CISL.

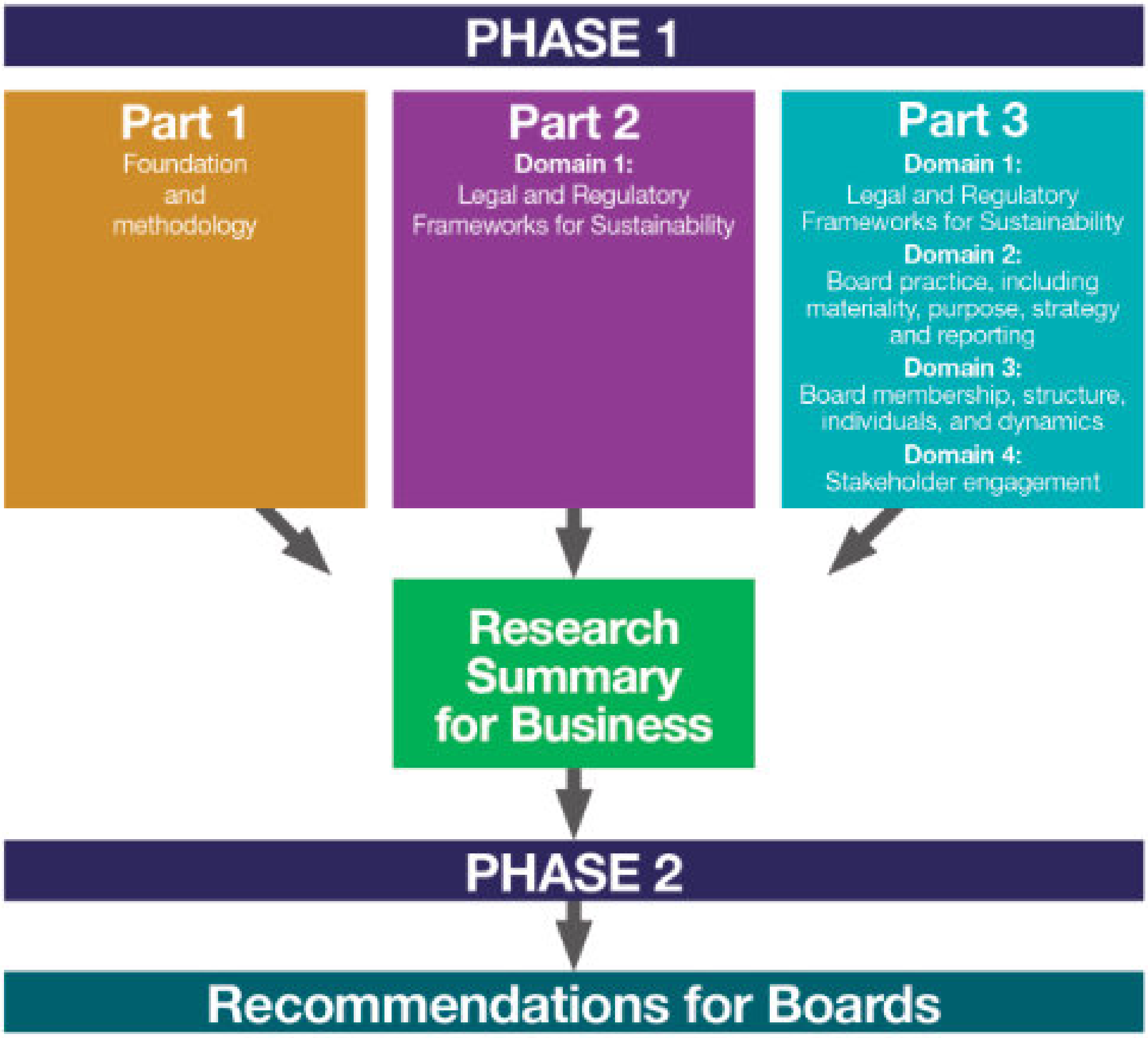


Figure 1 - Future of Boards Research Overview

1. Introduction

Businesses, while providing one of the primary ways in which people's wants and needs are met, are also central to the grand challenges facing the world today. Unprecedented economic development has increased material prosperity for many. Yet this 'Great Acceleration' of human economic activity, and other impacts, threatens our ability to live well within environmental limits.[1]

We are overshooting a range of planetary conditions which are vital for humans to live and thrive on earth – for example greenhouse gas emissions have destabilised the climate and risk becoming irreversible, and biodiversity loss is at a level where many believe we are on the verge of the sixth planetary mass extinction event (the last being when the dinosaurs became extinct).[2]

We are also facing degradation of our social systems. For example, inequality (of wealth, income and opportunity) is influenced directly and indirectly by economic actors through, for example, differences in capital ownership or wages. This inequality is close to its highest level in 150 years[3,4] and is evident both between and within nations.[5,6] It is also linked to growing social and political polarisation, and instability around the world.

Business leaders and investors are increasingly concerned that the resulting impacts, including climate instability, ecosystem degradation, diminishing raw materials, structural inequality, growing social polarisation and diminished public trust, represent significant material risks to their organisations.[7]

Boards are also facing growing pressure and scrutiny from a wide range of stakeholders, including financial investors and regulators, arising from the perceived risks to financial income, and the profound influence of companies on wider society and the environment. This is manifesting in a raft of new reporting requirements, performance expectations and associated ratings.[8] Stewardship by investors is growing, with activist investors' pressure on companies to improve ESG (environmental, social and governance measurement and reporting) performance at record levels.[9] Additionally, climate litigation is growing year on year.[10]

Today's volatile and complex world is comprised of additional, and inter-related challenges and pressures from, for example: developments in artificial intelligence and machine learning; geopolitical tensions and shifts in alliances that threaten existing patterns of 'globalisation' and trading as well as peace and security; and pandemics such as COVID-19. At the same time, companies and their boards also face intense market competition, and pressure to maintain high financial returns to shareholders.

Those 'enlightened' companies and investors who understand this broader strategic context are concerned about driving their financial profit beyond the short term, building this into their business case and making a clear case to invest in the health of systems and stakeholders. This concern for broader or longer-term threats is reflected in the environmental, social and governance (ESG) criteria being applied to companies by the finance industry, as well as through governmental legislation and soft law. The imperative to invest in supportive and well-functioning stakeholders, alongside the related strong public 'licence to operate', is also increasingly understood.[11] Boards that appreciate this are able to make a business case for distributing benefits to all stakeholders (not just investors) as a means to driving the company's long-term profit.[12]

Beyond an 'enlightened self-interest' approach to resources and stakeholders, there has also been growing discussion around the need to go further, with increasing challenges to the 'purpose' of business, its role in society, and the value it creates – for whom, in what way, and over what time horizons.[13] There is a relatively small but fast-growing pressure for companies to align their reason to exist with improving the long-term wellbeing of people and planet. This goal implies ensuring social and environmental system health at the same time as long-term financial viability. Overall, this reorientation directly challenges the view of companies as primarily mechanisms for financial capture by shareholders, instead seeing them as the way in which society creates value, and with shareholders one of a number of vital beneficiary stakeholders.

Within this rapidly evolving situation, the appropriate role, and effective functioning, of the main board – as the key body responsible for achieving the purpose of the organisation in an ethical and responsible fashion through appropriate direction, oversight and accountability – is central.[14] However, for board members, it also presents considerable challenges. There has been far less attention paid to the 'G' of ESG, specifically, how a company's governance, and particularly the role of its board, is designed or equipped to enable the company to be aligned with sustainability.[15] This is true whether the motivation for this alignment is to appease stakeholders, drive long-term profit, or because innovating for long-term wellbeing for all is the reason the organisation exists in the first place. Even companies that are in the latter category are struggling to design and determine the optimal governance models, and the appropriate role and functioning of the board.[16]

Our research has therefore been designed to practically support boards in this challenging environment, so that they can assess and navigate these multiplying risks, and respond appropriately, and in a timely fashion.

The research has three main aims:

- to identify trends in board practice, and the related legislative environment, including drivers, likely trajectories and pace of change
- to evaluate whether these trends are likely to support, or hinder, boards aligning business success with a sustainable future
- to provide evidence-based and globally relevant practical recommendations for boards and those that support and/or enable their practice (for example, advisors or legislators).

For the purposes of this research, a **trend** is understood as the general direction in which something is developing or changing.

1.1 The changing role of the board

Increasing scrutiny of whether companies are delivering for society's long-term survival and wellbeing, and the role of boards in this, has resulted in challenge to the decades-old doctrine of 'shareholder primacy' – the expectation that boards act *primarily* as agents of shareholders.

The origins of 'shareholder primacy'

Since the 1970s, the role and functioning of the board (particularly those most influenced by Anglo-Saxon theory and practice) has been legitimated and affected by the influential Friedman Doctrine: "there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud".[17]

Historically, because of the increase in 'separation of ownership and control' between shareholders and management, and the resulting 'principal–agent problem', as outlined in the 1930s by Berle and Means, shareholders are motivated to ensure that the incentives of management are aligned with shareholders' desire to maximise financial return.[18] The alignment of these interests would therefore minimise the risk that executives run the company primarily for the reputation and financial aggrandisement of the executives themselves, or any of their 'pet social projects'. This insight led to, and is reinforced by, a series of legal changes, rules and voluntary codes.

Developing views on shareholder primacy are further considered in Phase 1: Part 2 of this research.

In 2019, the US Business Roundtable produced a *Statement on the Purpose of a Corporation*, which argued that a business should not be run primarily for shareholders' interests, but rather for the benefit of all stakeholders.[19] In 2020, this rhetorical shift from a shareholder to a more 'stakeholder' capitalism was reinforced by the World Economic Forum's Davos Manifesto on *The Universal Purpose of a Company in the Fourth Industrial Revolution*.[20]

More recent ways of conceptualising this 'purpose' go beyond a focus on generally balancing the needs of current and future stakeholders, to that of an organisational purpose as the strategic North Star that aligns a company fully with a sustainable future. To make use of the most recent consensus-based thinking, practice and scholarship in this area, we are drawing on work by the national British Standards Institution (BSI) in their 2022 publication *Purpose-driven Organisations: Worldviews, principles and behaviours*.[21] We are also using their definition of a purpose-driven business.[22]

A purpose-driven business is one which has a "reason to exist that is an optimal strategic contribution to the long-term wellbeing of all people and planet".[23]

This situates the move towards 'purpose' as a deep strategic response to the tensions and pressure of business being misaligned with society's long-term interests as detailed above. This step change in thinking about the reason a company exists in the first place has therefore not just arisen from a narrow set of business commentators and academics, but is gaining momentum as a result of a number of reinforcing pressures and incentives. These drivers include: the preferences of younger people to impact positively on society and the environment through their careers; business creation opportunities; policy and regulatory change; or business benefits from increased goodwill and employee retention.[24]

There is also a realisation that the next phase of business sustainability is about market (and hence business) transformation in order to go beyond the limitations of just integrating sustainable practices into existing business models.[25] It appears, from a range of sources, that increasing numbers of companies are interested in, or actively engaging in, the journey to become purpose driven.[26]

1.2 Implications for our research

As outlined above, the context for boards and their governance practice is changing rapidly. The result is an unfolding and complex set of signals that are not easy to navigate. It is not yet clear which trends can be considered 'noise', which are desirable and should be responded to, and which are undesirable trends and as such should be actively resisted. Our research is designed to shine some light on this and explore the implications for boards in their assessment of how they might need to change, adapt or lead wider change if they want to align their organisations with a sustainable future.

This governance challenge holds for all kinds of organisational activity, from shareholder-owned companies, to mutuals and co-operatives, not-for-profits, and organisations and businesses adopting forms of multi-stakeholder ownership, governance, or no ownership (such as trusts). For the purposes of this research, however, we are focusing primarily on large public or privately owned shareholder companies.[27] This is primarily because such businesses have been the focus of most research and discussion around sustainability, as well as 'purpose', but also because of their relatively large impact on sustainability outcomes. They are, as a result, subject to additional legislation, relative to other organisations, as well as voluntary codes and media scrutiny.

We have drawn on an international multi-stakeholder consensus document which evaluates current thinking and practice to address how governance can best operate in the light of both sustainability challenges and opportunities, as well as how to operationalise sustainable organisational purpose. This guidance standard, produced by the international standards body, ISO, on *Governance of organizations* also provides our definitions of the board, and of governance.[28]

> ***Board or governing body:*** the "person or group of people who have ultimate accountability for the whole organisation".
>
> ***Governance:*** the "human-based system by which an organisation is directed, overseen and held accountable for achieving its defined purpose".

Trends in board practice can occur across many levels. We therefore made a judgement, based on existing literature and insights, about the four most fruitful areas or 'domains' which are likely to impact on the ability of a board to align business success with sustainability outcomes. These are:

Domain 1 – Legal frameworks in a range of jurisdictions (both 'hard' law – legislation, case law, as well as 'soft' law – codes and guidelines) which shape and underpin board practice. This domain is addressed in the Phase 1: Part 2 report.

Domain 2 – Board practice, including materiality, purpose, strategy and reporting.

Domain 3 – Board membership, structure, individuals and dynamics.

Domain 4 – Stakeholder engagement (including investor interface) as one specific board practice.

These last three domains are addressed in the forthcoming Phase 1: Part 3 report.

Domain 1: Legal frameworks in a range of jurisdictions

This domain examines the legal frameworks and emerging trends in legislative and regulatory practices in key jurisdictions across the globe, with particular reference to trends which are likely to catalyse or hinder the mainstreaming of sustainability within governance.

Due to the specific nature of comparative law research, this domain took a slightly different approach to the other three. In order to generate an overview from which to make global conclusions (as well as identify different approaches being used around the world), the research looked at 11 international jurisdictions, across different areas of the world and different legal traditions. These were Australia, China, Colombia, Dubai and the UAE, Hong Kong, Japan, The Netherlands, Singapore, South Africa, Sweden, and the United Kingdom. Two further jurisdictions were also considered in depth, those of the US (primarily the state of Delaware) and the EU. Other examples, which appeared during the wider literature review, were also included where appropriate.

Rationale for this domain: The law has emerged as both a core driver, and indeed barrier, in the debate about the future of sustainability and corporate governance. The last decade has been characterised by increasing legal codification and enforcement of mandatory frameworks on sustainability-related topics which go beyond voluntary commitments and corporate self-regulation.[29] This legal ‘patchwork’ of sustainability requirements, combined with a growing trend towards litigation on sustainability issues, presents boards (and indeed governments) with a new suite of legal risks.[30] It also renegotiates the legal latitude of boards to reconcile market forces with sustainability imperatives.

Moreover, it is in the legal domain that debates around company purpose, company interests and the scope of fiduciary duty have been the most animated. A range of academic, practitioner and policy voices have sought to deconstruct the legal underpinnings of traditional assumptions about shareholder primacy, fiduciary duties, corporate accountability, sustainability risks and investor stewardship.[31] Additionally, such trends have also prompted significant resistance in some countries, particularly the US. In short, law is often the site of contestation where the current sustainability debates and controversies are being played out and adjudicated.

Domain 2: Board practice, including materiality, purpose, strategy and reporting

This domain examines how board practices are adapting because of changing conceptions of material considerations, organisational purpose, strategy and reporting. It adopts a global scope and does not focus on specific regions as does Domain 1.

Rationale for this domain: The issues of ‘What is material?’, ‘What is our purpose?’, and the creation of organisational strategy and reporting, are strongly inter-connected.

Issues that are ‘material’ are, according to the Global Reporting Initiative (GRI), those aspects that “reflect the organization’s significant economic, environmental and social impacts, or substantively influence the assessments and decisions of stakeholders”.[32] This can happen through their impact on strategy, the business model or on one or more of the capitals (for example, environmental resources, or human labour) it uses or affects.

‘Purpose’ is the meaningful and enduring reason for an organisation to exist – meaningful because it aligns the organisation with the long-term wellbeing of society.[33] Where there is no such purpose, the firm’s legally stated ‘object’ acts as the overarching goal and de facto reason for its existence. The reason for a company to exist is often assumed to be maximising financial return for shareholders, and so the objects statement often just describes the market it operates in, or the products it produces. The narrative of an overarching purpose shapes decision-making in the firm. For example, it creates clarity on the strategy for value creation, or what is material, and requires the creation of appropriate indicators to identify whether or not an organisation’s purpose, and strategy to achieve it, have been achieved, within the parameters set by the governing body.[34]

Reporting is key to how a governing body undertakes accountability and oversight. This may either be through internal reporting of information from different parts of a business, which the governing body needs; or through external reporting by the governing body to account to stakeholders about whether, and how, it has achieved its purpose, and created value in the way intended. Reporting needs to be done well to ensure transparent and open disclosure.

Domain 3: Board membership, structure, individuals and dynamics

This domain examines board composition, board structure, the leadership capabilities exercised by individual board members, and the group dynamics between board members. As with Domain 2, it takes a global scope.

Rationale for this domain: Investor and regulator focus on board composition and practices has evolved significantly over the past 20 years, with resulting implications for board composition, size and education.[35] Annual board indices, such as those collated by Spencer Stuart, track trends in board composition, diversity, committees, tenure, remuneration, outside commitments and board evaluation practices.[36] One recent area of focus is that of the detailed interactions and structures of the board itself. These include: the time allocated to particular areas of decision-making; what information gets seen and what gets heard; and who has a voice in those decisions. These issues are shaped by board composition and board structure, as well as being strongly influenced by individual capabilities and group dynamics. The lack of knowledge about this area has been called the ‘black box’ of boards.[37]

An idealised view of boards may be that they function smoothly and are highly structured and deeply codified. However, the “experience of board meetings, or of the activities of any governing body for that matter, shows that the reality of board culture can be quite different” with “directors’ behavior ... influenced by interpersonal relationships, by perceptions of position and prestige, and by the process of power”.[38] This domain of interest therefore combines both the ‘harder’ cultural dimensions of board structure and membership, with the ‘softer’ cultural dimensions of people, personalities and power.

Domain 4: Stakeholder engagement (including with investors/shareholders)

This domain examines how stakeholder engagement, as a specific board practice, is changing. As with Domains 2 and 3, it adopts a global scope.

Rationale for this domain: A stakeholder is a person or organisation that can affect, be affected by, or perceive itself to be affected by, a decision or activity.[39] It is in the boardroom that the interests of all stakeholders ultimately meet and need to be resolved, in order to ensure that organisational goals, and how they are achieved, are appropriate and achievable.

Board stakeholder engagement is the way in which boards proactively interact with stakeholders, and goes to the heart of how power and authority are understood and used within the company. How a board engages with stakeholders is therefore core to board decision-making and how a board directs, oversees and accounts for its actions. There are several questions that arise within this domain, including who the board engages with – why and in what way; which stakeholders have more primacy or 'weighting'; and how the results of that engagement are incorporated into decision-making.

The answers to these questions relate to an organisation's capacity to deliver on sustainability. This is because the quality and content of stakeholder engagement is affected by, and itself affects, how a board makes decisions and understands the context and knock-on effects of those decisions. How a board relates to, and/or engages, its different stakeholders is likely to depend on its consideration of the value that the organisation exists to create; and for whom that value is created. It also depends on how the board sees the scope of its impacts on wider society, the environment, or on stakeholders, or its reliance on different resources (human or environmental).

Although subject to ongoing debate and development, our understanding of sustainability draws from the latest thinking and scientific understanding. It also draws particularly on the work of Herman Daly about the features of a sustainable economy, and the work of CISL in applying this to a company level (see Appendix 6 for further details).

What is sustainability?

Drawing from the classic definition of sustainable development from *Our Common Future*, the final report of the Brundtland Commission in 1987,[40] the international standards body, ISO, in its *Governance of organizations – Guidance*, defines 'sustainability' as a "state of the global system, including environmental, social and economic aspects, in which the needs of the present are met without compromising the ability of future generations to meet their own needs".[41] When needs are satisfied, wellbeing is the result.[42]

If we are to achieve the goal of sustainability, it is therefore vital that we protect and restore the natural and social systems on which all human wellbeing and company activity is based. There is growing acceptance that thriving companies, and the financial and manufactured capital they create, are critically dependent on, create and destroy natural capital, human capital and social capital.[43]

These underpinning capitals, along with the core social and environmental systems they rely on, have been referred to as the 'ultimate means' or 'foundational means'.[44] The growing scientific consensus is that humanity's current trajectory is in danger of compromising these foundational means, undermining the ability of current and future generations to meet their needs. For example, the

Stockholm Resilience Centre identified environmental planetary boundaries and introduced the concept of 'limits' to economic and social activity.[45]

The concept of sustainability brings sharply into question how we understand and achieve our needs, and hence wellbeing – which is the ultimate goal (ends) of sustainability, and of the economy. We can think about the 'ultimate ends' as 'thriving', 'flourishing', 'the good life', 'quality of life', 'needs satisfaction' or the commonly used umbrella term for this: 'wellbeing'.[46,47,48] What this means can be different for people. However, a range of universal needs theories and the existence of international norms of behaviour (as found for example, in international law, guidelines, or agreements) suggest that there are core aspects that make up a good life.[49,50] Equality and equity are examples of a norm that is routinely encoded into international norms. In other words, everyone should have the same opportunities to achieve and influence these ultimate ends. Overall, and consistent with the Brundtland report, "long-term wellbeing for all people and planet is the closest we might get to a meta-purpose of society".[51]

Actions that are aligned with a sustainable future help achieve – and do not destroy – long-term wellbeing, either directly or through the foundations on which all wellbeing can be achieved, now and in the future.

1.3 A framework for understanding board practice and its alignment with a sustainable future

Board decisions are shaped by the law. However, how this law is interpreted, and how boards act beyond what the law dictates, is based on the core worldviews held by board members about what value they think the business exists to produce, for whom and in what way. Through the governance system the board adopts, these different worldviews become embedded in the company culture – both intangible (through for example, norms and customs) and tangible (for example, in policies and processes). These systemic responses underpin the rationale or 'business case' for action that the company takes or does not take. Pressure from stakeholders, including internal pressure, about how the organisation 'ought' to act will be filtered through these worldviews and resulting culture. If no clear 'business case' can be found then action simply will not happen, or will not be sustained for long.

As outlined in CISL's previous work in this area, CISL has identified three cohesive approaches (or 'logics' that guide decision-making) that a company and its board might have in relation to sustainability. These underpin what actions do or do not have a rational basis for investment:[52,53]

- Corporate Social Responsibility (CSR): short-term profit driven
- Enlightened Shareholder Value (ESV): long-term profit driven
- Purpose driven: sustainability driven (see Appendix 6 for more details).

These approaches require different types of 'board excellence' in order to perform optimally. These board behaviours in turn dictate how far and how fast a board is able to align with a sustainable future. We will use these three different approaches to sustainability as the basis for a sustainability framework to help us make sense of the trends we observe, and the drivers and trajectory for them (see Section 2.1 on research methods). It is important to note that the terms 'CSR', 'ESV' and 'purpose driven' may be used by others in different ways. For example, some businesses may use the term 'CSR' to describe values-driven activities that deliver some sustainable outcomes, however these are usually separate to core activities of the organisation and are not the key driver of the organisation's decision-making.

Corporate Social Responsibility (CSR) (short-term profit driven)

Many boards respond to stakeholder pressure because it exerts a threat to driving the business's short-term profit. In other words, they try to keep up with the rapidly changing legislative environment and expectations, and show that change is happening in order to gain and keep favour with important stakeholders that are increasingly demanding it. For these boards, their responses to unsustainable outcomes become, in effect, a game of 'cat-and-mouse', to reduce threats to their short-term financial profits. The result is a series of ad hoc CSR activities. These are often limited to attempts to look good, and hence protect reputation and the social licence necessary to maximise profits, rather than to systemically address environmental or social risks or proactively create wellbeing outcomes. A board driven by this approach would not be able to justify continued investment in a sustainability initiative if there was no continuing threat to being short-term profit driven.

Enlightened Shareholder Value (ESV) (long-term profit driven)

Other boards more clearly understand that their company's ability to optimise profits in anything but the short term is threatened unless they shift their business strategy and models to operate within the healthy thresholds of the multiple sources of value they are dependent on. Hence, these 'enlightened' boards can see the risks and opportunities posed by the broader system. They can make the business case for investing in the health of a wide range of capitals (beyond just financial), the social and environmental systems that underpin them, and the stakeholders who enable access to these resources. They also see the benefit of advocating wider system change (for example, through changes in laws, regulations, or wider industry or societal norms to 'level the playing field'). For these companies, ESG is not just a public relations exercise but a way of gaining vital information about the sustainability of their companies and improving their governance of them, although the ultimate motivation is to maximise financial performance or survival in the long term.

Purpose driven (sustainability driven)

These boards understand that businesses are enterprises that innovate to help the economy to achieve collective long-term wellbeing (sustainability). They have carefully considered the very reason for their company's existence, and recognise that, rather than optimising financial returns for investors, in either the short or the long term, the key task their business is required to do is to innovate solutions to enhance long-term wellbeing, and to do this within health system thresholds.

This 'purpose' is much more than just a shallow purpose or a brand positioning statement. Whether or not it is summarised in a statement, this meaningful reason to exist sits at the heart of all strategy and decision-making, aligning internal and external operations with sustainability. This is, however, not done at the expense of a sound market position and financial management, both of which are critical to ensuring that the company has the short and long-term financial resources to deliver on its purpose. This meaningful and clear strategic goal that is engaging for stakeholders, helps overcome many of the tensions, challenges and drags on innovation that organisations are currently facing.[54]

Like ESV, it stewards the natural, human and social capitals on which it depends, as well as caring for stakeholders. But it goes beyond that approach to redefine the *fundamental value-creation goal* of the company so that the organisation is fully aligned with a sustainable future.

2. Research design

The study is based on two overall research questions:

Research question 1

- What are the trends in board practice, and the related legislative environment, that are likely to support an organisation aligning its success with sustainability outcomes?

Research question 2

- What are the trends in board practice, and the related legislative environment, that are likely to be an obstacle to an organisation aligning its success with sustainability outcomes?

The research is taking place over two years and is split into two distinct phases.

Phase 1

- identifies the key trends across a range of international jurisdictions. It undertakes an initial assessment of these trends for their ability to support or undermine an organisation's ability to align its success with sustainability outcomes. It also identifies gaps and areas of uncertainty, some of which together with key trends identified, will be explored further in the next stage of research.

Phase 2

- will consolidate some of the conclusions of Phase 1, resulting in more substantial recommendations for boards and those that support and/or enable their practice (for example, advisors or legislators). It will do this through deeper dives into how some key trends identified are playing out in practice in different contexts; more detailed primary and secondary evidence gathering at the level of the board; and further analysis of how these trends support, or provide obstacles to, organisations aligning their success with sustainability outcomes.

2.1 Research scope and method

In order to manage the complexity of this research project, we restricted its scope by using some specific parameters.

This research is based primarily on large mainstream businesses with external shareholders, whether private or publicly listed. As such, it does not generally include small and medium-sized companies; nor other business types and organisations which are not set up with the primary motivation to make profit. However, this line is not clear-cut. The evolution in thinking about the 'purpose' of a business has blurred the already fluid boundary and spectrum between organisations that operate solely to achieve public interest or public benefit goals, and those that operate to achieve primarily private interest, generally financial.

The trends were identified and analysed using a combination of primary (original) and secondary (existing) data, and analysed by mostly qualitative research techniques (see *Figure 2* below).

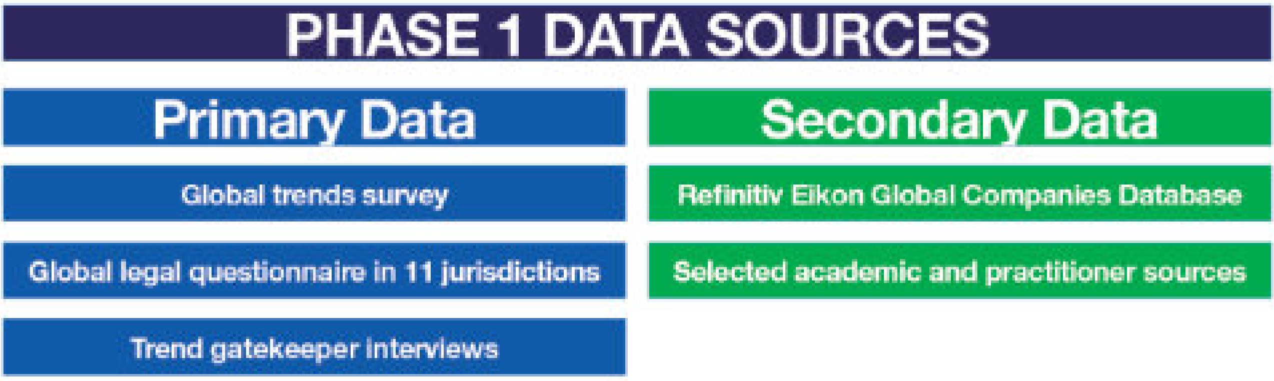


Figure 2 - Future of Boards Phase 1 Data Sources

Primary data

The **Global Trends Survey** is a short 'landscape' survey (Appendix 1) that was created as an initial, broad-brush 'scan' of the landscape of trends in board practice, and the pace of change. It also identifies whether or not the people contacted have any interest in further in-depth participation in the study. The survey includes quantitative and qualitative questions.

It was prepared and distributed to individual executive and non-executive board members, as well as to people who have an interest in boards, such as advisors.

Potential respondents were identified, and accessed, through LinkedIn, CISL and DLA Piper networks. Four hundred and thirty-three valid responses came from respondents who lived in 61 countries, and were completed between May and October 2022.

The survey asked respondents to:

- indicate to what degree they felt different areas of board practice were changing
- identify what they believe to be the most significant trends in board practice today, and
- identify what they believe to be the top leadership capabilities required by boards over the next 3–5 years.

The responses to the qualitative questions were analysed with NVivo using an agreed coding frame.[55] This frame was informed by the literature review underpinning the study, and adapted to respond to the themes that emerged from the questionnaire responses themselves (Appendix 2).

Demographic data on the participants was also collected to identify if there were any obvious gaps in coverage, which could be addressed at a later date.

A **Global Legal Questionnaire** (Appendix 3) was designed to draw out and map legal and regulatory trends in selected jurisdictions.

Original data in the form of an up-to-date assessment of the relevant statutes, secondary regulations, case law and soft law was collected through a legal questionnaire across 11 selected jurisdictions. It was administered and filled in by DLA Piper lawyers. Given the extensive amount and scope of legislation relating to corporate governance that could be included, the decision was made to identify only that which relates to potential sustainability impact.

The questionnaire covered the areas of:

- company law
- supply chain due diligence
- sustainability reporting requirements
- financial law and listing rules
- corporate governance codes and stewardship codes.

Respondents were asked to:

- identify any legislation or regulation in force in the five categories that might support, or be an obstacle to, boards aligning business success with sustainability outcomes
- reflect on how legislation or regulation has changed over recent years; comment on any indications of change going forward, and how far and fast these changes are happening
- identify any recent reform proposals or legislation/regulations being considered in the five categories that might act in support of, or be an obstacle to, boards aligning business success with sustainability outcomes.

Taking into consideration the differences between jurisdictions, particularly in available legal forms, there was a need to restrict the scope of this research to specific types of business. The legal types investigated through the questionnaire were therefore those supporting private and public companies, as well as 'dual-purpose' companies where they exist (in other words, benefit corporations).[56] The scope and the outcomes of the survey form the basis of the research in the next report in this series, Phase 1: Part 2.

Interviews with 'trend gatekeepers' – people with significant knowledge of the wider landscape for insights into trends and supporting evidence.

A series of carefully selected 1:1 semi-structured interviews were undertaken with 'trend gatekeepers' – individuals with a broad knowledge of what is happening within and to boards, and therefore most likely to be in a position to help identify trends in global board practice. Twenty-nine interviews were held, which created results for 30 interviewees between August 2022 and January 2023. A copy of the interview schedule can be found in Appendix 4.

Respondents were identified through a combination of professional networks across a range of jurisdictions; desktop research; and contacts identified through the landscape survey.

The interviews focused on identifying key global trends in board practice across the four domains. There was a particular focus on identifying supporting evidence for these trends, and reflecting on the drivers, trajectory, pace of change, and any geographical variation in relation to each trend. Detailed notes were taken at all interviews, and where permitted these were recorded and transcribed.

The transcriptions and notes were analysed with NVivo using a coding frame which was created to help analyse and cluster the responses. This frame was informed by the literature review underpinning the study and adapted to respond to the themes emerging from the interview responses (Appendix 5).

Secondary (existing) data

The focus of Phase 1 was on understanding trends perceived on the ground, and hence our data in this phase was focused on primary data. This was supplemented by analysis of a large-scale global database, the Refinitiv Eikon and some secondary data sources with potential relevance to the project (some broad-ranging and rigorous, others more anecdotal). The themes emerging from the Global Trends Survey and the trend gatekeepers' interviews across all the identified jurisdictions, and beyond, were triangulated with this data. This synthesis identified further areas to be explored through deeper dives in Phase 2 of the project.

This most promising source of such data at global level, the **Refinitiv Eikon Global Companies Database**, tracks over 450 ESG metrics from around 10,000 of the world's largest quoted companies (typically those with a value of more than US$400 million) across 76 countries. The information is gathered from companies' annual reports, sustainability reports, stock exchange filings, and other news and third-party commentary, and builds a comprehensive ESG dataset on each company. Given the size and scale of this dataset, it is one of the best tools to identify macro trends at a global level.

Trend identification

The data above was analysed to identify trends in board practice and the related legislative environment.

An assessment was made of **drivers** (those elements of context and activity which have influenced those trends to emerge), and the likely **trajectory** of those trends (over what time, scale and at what **pace**). A critical evaluation was also made of the clarity and consistency of the evidence obtained.

Given the systemic risk that climate instability, ecosystem degradation and structural inequality represents to the quality and resilience of long-term wellbeing of society at large, and shifting societal expectations, three critical questions emerge:

1) How and why is the current landscape regarding board practice changing – in other words, what are the key trends?
2) Are these trends likely to support or be obstacles to boards aligning their organisations with a sustainable future?
3) What do boards need to know and do in order to change their practice to align with a sustainable future?

In order to evaluate whether the trends identified support or disable boards in aligning with sustainability, they were assessed against a bespoke sustainability framework.

We developed this framework to help assess whether or not the observed trends in board practice contribute to positive sustainability outcomes. It draws on thinking published in the CISL paper *Unleashing the Sustainable Business* and an aligned approach used in a guidance standard produced by BSI (the UK national standards body), *PAS 808: Purpose-Driven Organisations*.[57,58]

This framework determines the extent to which the observed trends support board practice and decision-making that aligns broadly with either CSR, ESV, or Purpose driven as previously identified – either in 'intention' or in the realisation of that intent.

Table 1: The sustainability framework

Approach to sustainability	Criteria
Corporate Social Responsibility (CSR)	• focus on short-term shareholder financial value maximisation • limited and unsystematic responses to societal and stakeholder pressure to limit negative environmental and social impacts. Action is based on relieving pressure from influential stakeholders and ultimately protecting short-term profit • strong rules-based and compliance mindset • primarily a self-interested motivation (short-term)
Enlightened Shareholder Value (ESV)	• aims to create long-term shareholder financial value • recognises the importance of operating within accepted environmental and social thresholds, and therefore natural, social and human capitals are stewarded, stock and flows of these capitals are accounted for and benefits are allocated to ensure healthy stakeholders, including the environment • concerned with double materiality – external influences on financial income, *and* the impact of the organisation on the environment and wider society because of its impact on long-term financial performance (impact materiality) • varying levels of systemic response, from limited and partial (for example, targets for CO_2 emissions only), to explicitly aiming to operate within all accepted environmental and social thresholds (eg all Sustainable Development Goals or all social and environmental elements outlined in *Doughnut Economics*[59])

	• primarily a self-interested motivation (long-term)
Purpose driven	• has a clearly defined purpose which defines its reason to exist as an optimal strategic contribution to the equitable long-term wellbeing of people and planet • while all stakeholders are therefore the ultimate beneficiary, the organisational purpose acts as a strategic filter to direct all actions of the company towards an ambitious contributing aspect or sub-stakeholder group • the purpose informs all value-creation goals and parameters for operating. These parameters ensure action within social norms and scientific consensus, and in a way that ensures the health of stakeholders, wider society and the environment, which is necessary to achieve the purpose, and/or may be the object of the purpose (as opposed to the reason to exist being to maximise financial value for members/shareholders) • the purpose is achieved within accepted environmental and social thresholds, and therefore natural, social and human capitals are stewarded, stock and flows of these capitals are accounted for and benefits are allocated to ensure healthy stakeholders, including the environment • shareholders are seen as one of a number of core stakeholders, and profitability is seen as a vital means to achieve the purpose • primarily an externally directed 'other' orientation, with self-interest of the business as a means to that end

3. Phase 1 continued

On the basis of this research design, and the sustainability framework, we will continue to explore the four domains of interest.

Phase 1: Part 2 explores the first domain of interest – trends in both 'hard' law (legislation and case law) as well as 'soft' law (such as codes and guidelines), which relate to areas of broad sustainability concern. This structured comparison of existing law enables us to gain insights into the context within which boards are currently operating, and are likely to operate, in the future.

Phase 1: Part 3 then looks at three further domains which relate specifically to trends in board practice, including in response to this evolving legislative context, and wider pressures to achieve sustainability outcomes. These three domains are:

1) materiality, purpose, strategy and reporting
2) board membership, structure, individual capabilities and group dynamics, and
3) stakeholder engagement, including interfacing with investors.

Phase 1: Research Summary for Business provides a summary of Parts 1, 2 and 3.

Phase 2 of the research will explore and evaluate key findings from Phase 1 in greater detail. It will also arrive at a set of recommendations to enable boards to better align organisations with sustainability outcomes, and positively contribute to a thriving future for all.

Appendix 1

Global Trends Survey

Please tell us about your role.

(If you have multiple Board/advisor roles, please pick one and answer the rest of the survey with this role in mind.)

Are you:

- A Board member (you serve on the main governing body of your organisation, usually as a director)
- An investor/shareholder
- A professional Board advisor (eg a consultant, accountant or lawyer)
- An academic
- A recruiter for Boards
- A leadership/executive management team member (and not on the main Board)
- A Board sub-committee member (and not on the main Board)
- An employee (and not a Board member)
- Other

If answer yes to 'Board member':

- As a Board member, are you:
- An executive member of your Board
- A non-executive member of your Board
- Other, such as an observer

If answer yes to 'executive member':

What is your executive role?

- Chair
- Chief executive officer
- Chief financial officer
- Chief commercial/sales/marketing officer
- Chief strategy/innovation officer
- Chief people officer (Human resources)
- Chief technology officer
- Chief sustainability officer
- Chief legal officer/General counsel

- Company secretary
- Employee/union representative
- Other

If answer yes to 'non-executive member':

What is your non-executive role?

- Chair
- Chair of the audit committee
- Chair of the remuneration committee
- Chair of the risk committee
- Chair of the sustainability committee
- General counsel
- Company secretary
- Non-executive director
- Other

If answer yes to 'professional Board advisor':

What type of advisor are you?

- Lawyer
- Accountant
- Management consultant
- Educator/assessor
- Recruiter
- Academic/expert
- Sustainability consultant
- Other

In this short section, we explore how you perceive trends in Board practice.

In which of these areas do you see Board governance/practice changing?

Please use the slider to indicate how **fast** you feel these changes are taking place. 0 (zero) means no change; 10 means rapid change.

Legal frameworks	
Financial frameworks	
Organisational purpose & values	
Vision	
Strategic oversight	
Oversight of delivery, risk & opportunity	
Accountabilities	
Board composition & structure	
Leadership skills	
Stakeholder engagement	
Focus on the **impacts of sustainability** on organisations (including ESG)	
Focus on the **impacts of organisations** on sustainability (including ESG)	

What do you believe to be the most significant trends affecting Board practice today?

Please use keywords or short sentences.

Key trend 1 ____

Key trend 2 ____

Key trend 3 ____

Over the next 3 to 5 years, what do you think will be the top leadership capabilities required by Boards?

Please use keywords or short sentences, and provide up to three answers.

Capability 1 ____

Capability 2 ____

Capability 3 ____

Is there anything else you'd like to add about trends in Board practice?

Please include links to any research, articles or media you think we should be aware of.

In this brief section we ask for some information about your organisation and a few demographic questions about you.

Which type of legal entity is your organisation?

- Public Limited Company (PLC)
- Private Limited Company (Ltd)
- Limited Liability Partnership (LLP) or similar
- Dual objective company (eg Benefit organisation)
- Other

If answer yes to 'other':

Please state the legal status of your organisation.

Which sector does your organisation work in?

- Aerospace & Aviation
- Agriculture
- Automotive
- Capital Projects, Construction & Infrastructure
- Charities & Non-Governmental Organisations
- Chemical
- Consumer Goods (FMCG) & Household
- Creative Industries, Media & Publishing
- Defence Industries
- Education
- Electronics
- Energy
- Engineering
- Fashion & Textiles
- Financial Services
- Fishing
- Food & Drink Industry
- Forest, Paper & Packaging
- Gambling
- Government (Central & Local)
- Healthcare Provider
- Hospitality, Leisure, Travel & Tourism

- HR & Recruitment Services
- Information & Communication Technologies
- Legal & Accounting
- Management Consultancy
- Manufacturing
- Maritime Industries
- Mining & Raw Materials
- Natural Resource Management
- Pharma, Health & Biotech
- Plastics & Packaging
- Property
- Public Sector (excluding Government)
- Retail
- Telecommunications
- Transport & Logistics
- Other

What is your organisation's turnover (in GBP equivalent)?

>£5m

>£25m

>£100m

>£1bn

>£5bn

>£10bn

£10bn+

How many employees work for your organisation?

1–5

6–25

26–50

51–100

101–250

251–1,000

1,001–5,000

5,000+

In which country is your organisation based? – *List of countries provided to tick*

How old are you?

18–24 years old

25–34 years old

35–44 years old

45–54 years old

55–64 years old

65+ years old

What is your gender?

- Female
- Male
- Other
- Prefer not to say

In which country do you live? – *List of countries provided*

How did you hear about this study?

- CISL Newsletter
- CISL Website
- CISL Social Media
- DLA Piper Website
- DLA Piper Newsletter
- DLA Piper Social Media
- DLA Piper Staff
- University of Cambridge Website
- University of Cambridge Newsletter
- University of Cambridge Social Media
- Web search
- Word of mouth
- Other

Appendix 2

Coding scheme for the analysis of the Global Trends Survey.

- Knowledge/Experience
- Mindset
- Organisational success
    - Board
        - Board diversity/composition
        - Board independence
        - Board member roles
        - Board recruitment
    - Dialogic
    - Finance
    - Governance
        - Accountability
        - Audit
        - Culture
        - Decision-making improvements
        - DEI [diversity, equality, and inclusion]
        - Due diligence
        - Evaluation
        - External expertise
        - Information collection
        - Oversight
        - Reduced bureaucracy
        - Transparency
        - Vision
    - Operational
        - Business model
        - ESG leadership
        - Financial management
        - Global reach
        - Horizontal management
        - Labour policies
        - Market analysis
        - Operational excellence
        - Risk
        - Strategy
        - Supply chain oversight
        - Talent
        - Training
    - Partnerships
    - Resilience
    - Strategies for VUCA [volatility, uncertainty, complexity, and ambiguity]
- Personal qualities
- Skills
- Unsure

Appendix 3

Legal questionnaire mapping legal trends in support and obstacles to the integration of sustainability in corporate governance.

Introduction and guidelines

This legal questionnaire aims to investigate the legal and regulatory trends, in selected jurisdictions, that support or hinder the integration of sustainability considerations in corporate decision-making, operations, and governance. The comparative analysis of these findings will inform and enrich discussions about the pathways to sustainable corporate governance and serve as a blueprint for incorporating sustainability factors in corporate law, regulations, and soft law.
The questions cover mainly the areas of (1) company law, (2) supply chain due diligence, (3) sustainability disclosure requirements, (4) financial law and listing rules, (5) corporate governance codes and stewardship codes.

The legal forms investigated in this questionnaire are private and public companies, as well as 'dual-purpose' companies (both for private and public benefit) where existing. Considering the differences between jurisdictions, for the purpose of this study:

A private company is defined as a legal entity with independent legal personality, limited liability, share capital, limited transferability of shares, delegated management and investor ownership.

A public company is defined as a limited liability company that has offered shares to the general public.

Dual-purpose companies are for-profit legal entities whose purpose, in addition to generating profits, is to reduce negative externalities and produce a positive impact on the environment, society, the workers and the community in which they operate (the so-called 'public benefit').

We kindly ask you to provide answers to the questions below, indicating the exact **references to laws, regulations, case law and other sources mentioned**.

In answering the questionnaire, please refer to the law in force highlighting, if any, recent reforms and any pending legislative or regulatory initiatives likely to promote or hinder sustainability outcomes.

1. Company law

1.1. Purpose and director's duties

1. What is the "legal purpose" of private companies/public companies according to law/case law in your jurisdiction (*e.g.*, pure profit-making purpose, allows the pursuit of both profit and altruistic purposes, etc.)?

2. Does the law allow or require companies to state their higher "purpose" (that goes beyond the profit orientation) in the articles of association and/or bylaws?

3. Are dual-purpose entities (for-profit and for public good/public benefit, such as the benefit corporations) regulated in your jurisdiction? If yes, what are their main features according to the law?

4. What are the duties of directors in your jurisdiction? Are they defined in law or case law?

5. What are the legal effects of failing to fulfil the duties? Who may take action to enforce them?

6. To what extent are the duties of directors in your jurisdiction owed to shareholders over all other stakeholders?

7. Are individual directors or boards required or permitted to identify and disclose the legal entity's stakeholders and their interests?

8. Are individual directors or boards required or allowed to take into account the effects of corporate decisions and operations on stakeholders? If yes, to what extent do they have discretion in determining how to prioritise different factors and constituencies?

9. Does the law regulate CEO and directors' remuneration policy? How?

1.2. Stakeholder engagement

1. Which stakeholders, if any, have a role in the enforcement of the directors' duties?

2. Does the law prescribe any stakeholder engagement mechanisms? If yes, please describe them?

3. Does the law prescribe companies to disclose how they engage with their stakeholders? And is that disclosure standardised?

1.3. Board structure

1. Please describe the possible structure of board governance in your jurisdictions (e.g., one-tier vs two-tier boards, executive and non-executive directors, etc.)?

2. Does the law allow individuals to hold at the same time the role of CEO and board chairperson?

3. Are there any legal obligations relating to the presence of specific constituencies on boards (i.e., independent directors, employees, representatives of minorities, or others)?

4. Are there any legal rules mandating companies to consider the environmental, social, and/or other sustainability-related skills and expertise in the directors' nomination and selection process?

1.4. Obstacles and enablers

1. Are there any other company law provisions that promote the integration of sustainability factors into corporate strategy, operations, and governance?

2. Are there any company law provisions that constitute an obstacle to integrating sustainability factors into corporate strategy, operations, and governance?

2. Supply chain due diligence

1. Are companies/directors legally required to identify and prevent the adverse impacts of their activities - and of activities taking place within their supply chain - on human rights (e.g., child labour and exploitation of workers), and/or the environment (*e.g.,* pollution and biodiversity loss)?

2. Briefly describe the scope and content of the supply chain due diligence obligations, if existing.

3. Do these obligations, if existing, apply to companies registered in other jurisdictions?

4. Are there legal obligations regarding the use of specific templates, guidelines, or standards for meeting supply chain due diligence requirements?

5. Are companies legally required to publicly communicate about their supply chain due diligence/monitoring activities?

6. Is there a regulator/independent authority with the power to verify compliance with the abovementioned (substantial or disclosure) requirements?

7. What are the legal effects of failure to fulfil supply chain due diligence requirements?

8. Is it required to have in place a third-party assurance regime?

2. Sustainability Disclosure Requirements

1. Do companies have corporate sustainability disclosures/reporting requirements?

2. If yes, please briefly describe the scope and content of any existing or pending sustainability disclosure/reporting requirements.

3. Are there any legal requirements or regulatory guidance mandating companies to align sustainability disclosure with internationally recognised standards (e.g., TCFD)?

4. What are the legal effects of misrepresentation or failure to fulfil sustainability disclosure requirements?

5. What are the most relevant disclosure provisions that promote the integration of sustainability factors into corporate strategy, operations, and governance?

6. Are there disclosure requirements that constitute an obstacle to integrating sustainability factors into corporate strategy, operations, and governance?

4. Financial law/capital markets law/listing rules

1. What are the legal duties that apply to directors and boards of asset owners and investment managers in managing their portfolios? In the interest of whom, legally, should board members of asset owners and investment managers fulfil their duties?

2. Do asset owners and investment managers have legal obligations to use investment powers to identify, prevent or mitigate sustainability risks?

3. Do asset owners and investment managers have a legal obligation or permission to consider the beneficiaries' interests beyond their financial interests?

4. Are asset owners and investment managers prohibited, required, or permitted to pursue sustainability goals through stewardship activities?

5. Do asset owners and investment managers carry out legal liability to third parties (including asset owners) for adverse impacts?

6. Are there any ESG disclosure guidelines for listed entities? Please provide details.

7. Do the listing rules of stock exchanges in your jurisdiction require companies and their boards to consider and report on their social or environmental impacts?

8. Are there any other provisions of financial law that promote the integration of sustainability factors into corporate strategy, operations, and governance?

9. Are there any provisions of financial law that constitute an obstacle to integrating sustainability factors into corporate strategy, operations, and governance?

5. Corporate Governance Codes and Stewardship Codes

1. Is there a corporate governance code in your jurisdiction? When has been/will be enacted/amended? To whom is it applicable?

2. To what extent does the corporate governance code provide guidance on the integration of sustainability in corporate governance? Please refer to the main relevant provisions.

3. Is there a mandatory duty to comply with the Corporate Governance Code?

4. Is there a stewardship code in your jurisdiction? When has been/will be enacted/amended? To whom is it applicable?

5. To what extent does the stewardship code provide guidance on the integration of sustainability factors in stewardship activities? Please refer to the main relevant provisions.

6. Is there a mandatory duty to comply with the Stewardship Code?

7. Is there a mandatory duty to report on compliance with any other specific Code of Conduct?

(A) Securities Listing Regulations

(B) Financial Instruments and Exchange Act

6. Case studies

1. Please list examples of any landmark cases on sustainability-related matters in your jurisdiction.

2. Please list any companies established in your jurisdiction that, in your view, are leading the way in sustainable corporate governance.

7. Pending legislation

1. Please list below any incoming laws or regulations that might be relevant to the topics above.

2. If so please describe, please indicate the reference and describe the main content and possible date of enactment of the legislation.

Appendix 4

Trend Gatekeeper Interview Schedule.

- What are the top three things that rise to the surface when you think about trends influencing boards? How has it changed / Is it changing?
- In brief, what do you think are currently the biggest pressures driving the changes you described above?
- Looking specifically at actual practices, intentions, pressure on intentions, geographical cover/limit:
    - What are the biggest trends you are seeing around board governance of stakeholder engagement?
    - What are the biggest trends you are seeing around board membership, structure, individual capabilities and dynamics?
    - What are the biggest trends you are seeing happening around board practices including purpose, strategy, materiality and reporting?
    - What are the legal and regulatory trends you are seeing today around organisational governance?

Appendix 5

Thematic coding scheme for the analysis of the Trend Gatekeeper Interviews.

- Trend Name
  - Direction (can be other options as well)
    - Increasing
    - Decreasing
  - Speed
    - Fast
    - Moderate
    - Slow
    - General comments on timescale
  - Geography (can break this down further to specific countries, regions etc)
    - Africa
    - Asia
    - Australia/Oceania
    - Europe
    - UK
    - EU
    - Other countries in Europe
    - North America
    - South America
    - Global
  - Drivers
    - eg Consumer pressure
  - Barriers
    - eg Resistance to change
  - Evidence (judgement on how solid the evidence base is for the statement made)
    - Strong (eg reference to publicly available data, eg legislation, databases, peer-reviewed research)
    - Moderate (eg anecdotal – reference to multiple boards, conference proceedings)
    - Weak (eg anecdotal – singular reference)

- Signals (to what degree the trends are established)
    - Strong (manifest in legislation and/or board practice)
    - Emerging (while they may not be routinely practised there is a clear shift in the consensus about how board practice should change)
    - Weak (the consensus may not be strong but there is a shift in the broader conversation by powerful stakeholders about the coming future of board practice)
- Potential sustainability impact (you might want to qualify this further by indicating where the respondent explicitly addresses impact (reported impact) versus where your judgement as researcher is that the point made could have significant sustainability impact (assessed impact))
    - Enabler
    - Barrier
    - Ambiguous (used when someone is explicitly reflecting on potential alignment with sustainability but not sure/could go either way)
- Potential trend outcomes (other)
- Alignment with the different approaches to sustainability (perhaps not applied to everything but where you feel the framing/language really obviously aligns with one approach)
    - Corporate Social Responsibility (CSR)
    - Enlightened Shareholder Value (ESV)
    - Purpose driven
    - Other business structures and approaches (eg co-operatives and mutuals which are not profit driven and which operate with specific end goals which may be seen to align with public interest, although not in the full 'purpose' way. Some financial mutuals for example are very large and may be caught here – also trusts/foundation owned and without outside shareholders which are not likely/as likely to be fully profit driven)
- Survey (other additional comments)

Appendix 6

The conceptual basis for the sustainability analysis framework.

The intellectual underpinning derives from, and expands the thinking in, Herman Daly's 1973 edited book, *Toward a Steady-State Economy*, which was further adapted by Donella Meadows and then further in the CISL report *Unleashing the Sustainable Business*.[60,61,62]

The influence of Herman Daly

In understanding the actions of companies, it is important to understand the economic context that they operate in and for. Herman Daly was one of the original ecological economists. He focused at the macro-economic level and described what a sustainable economy was and should be, and how and why we are off track in achieving it. One main insight he had was that, reflecting the Brundtland report conclusions, any human economy exists to achieve wellbeing for the society it serves. To do this, it rests, and relies on, the world's natural environmental stocks, such as its geology, soils, air, water and all living organisms.

A second important insight of Daly's work was that this goal, and these dependencies, go unrecognised in mainstream economic thinking. In other words, the business-as-usual (BAU) way of organising the market economy is focused narrowly on creating the 'intermediary ends' (for example, financial capital) and on governing the health of the 'intermediary means' (for example, manufacturing capital) as the basis to achieve this goal. Hence, gross domestic product (GDP) is the key measure of the success of an economy, and the foundations, as well as the end goals of the economy, go unrecognised and ungoverned. In the context of an ever-expanding economy, it is therefore not surprising that we are in a state of severe unsustainability – where our long-term wellbeing is under existential threat. CISL's *Unleashing the Sustainable Business* report outlines the specific assumptions about how the market is assumed to act to automatically optimise wellbeing for society – assumptions that motivate and moralise the BAU approach.

Business-as-usual

Daly organised his thinking about a sustainable economy into a triangle, which was then modified by Donella Meadows. The macro-economy and the decision-making of the companies that operate within it, are intricately connected. The organisational level was not something, however, Daly focused on. Figure 1, taken from PAS 808:2022 shows the more recent adaptation of Daly's famous triangle, which brings a range of insights about the economy and the company together, and uses this to explain the paradigms or approaches that constrain companies', and their boards', 'line of sight' in terms of sustainability.[63]

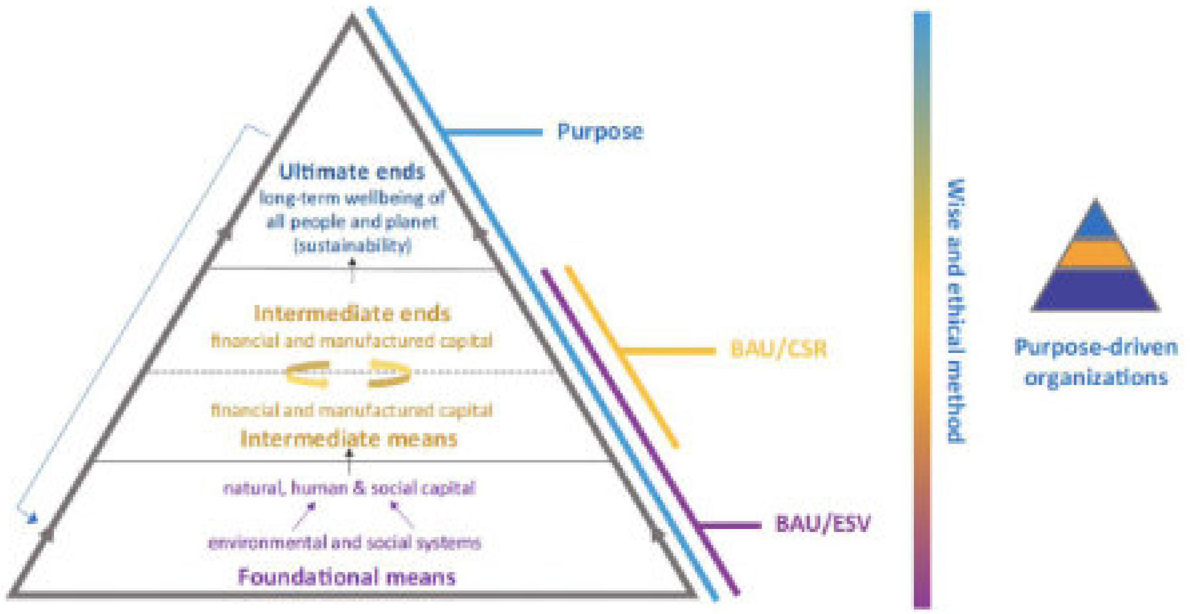


Figure 3: An adapted Daly's Triangle (Source: PAS 808:2022)[64]

Here, mirroring the normal macro focus on GDP, the current narrow focus of business is on the 'intermediate means and ends', in other words, it is focused on accumulating and protecting financial and manufactured capital, normally for members (shareholders) and the survival of the company. This is what we primarily legislate and regulate for.

We can call this 'middle of the triangle' focus on driving short-term profit, where there is a cursory attention to sustainability issues, 'Business-as-usual (BAU) CSR'. As PAS 808 outlines: "To ease stakeholder pressure to address the negative effects of [unsustainability], many organizations have adopted corporate social responsibility (CSR) programmes. These tend to result in an ad-hoc series of actions which do good, and can be comprehensive and multi-year, but remain peripheral to the operation of the business." BAU/CSR has been justified, not only by the shareholder primacy model, but also by an economic mainstream which sees this narrow focus as the most efficient way to deliver the 'greatest good for the greatest number'.[65]

The 'ultimate ends', or purpose of it all (wellbeing) and the 'ultimate means' they, and financial and manufactured capital rely on (the natural, human and social capital) lie outside the line of sight of business decision-making – including innovation and accounting. It is not difficult to see that if all strategy and innovation is focused purely on maximising financial income, then opportunities to create improvements to short or long-term wellbeing will go unexplored, and the likelihood of externalising the costs of profits on others is high.

At the 'bottom of the triangle', Daly focuses on environmental limits. Further global scholarship has clarified and articulated our understanding of these capitals and systems; their current degraded state; the threshold conditions we need to act within; and the restoration strategies we need to adopt. For example, the Stockholm Resilience Centre identified environmental planetary boundaries and introduced the concept of 'limits' to economic activity.[66] Kate Raworth developed the Doughnut Model of the economy, building directly on Daly's work, and introducing the idea of social boundaries (or a social floor) alongside the planetary boundaries (ecological ceiling).[67] And several interdisciplinary projects have sought to map and measure the foundational capitals.[68]

This 'bottom of the triangle' thinking has also been extended to the company level. For example, work undertaken by organisations such as Forum for the Future,[69] the Capitals Coalition and the International Integrated Reporting Council[70] (now part of IFRS) illuminates these environmental foundations of an economy (or capitals), and the equally important human (individual) and social capitals. For companies, these foundational capitals are equivalent to 'intermediary' financial and manufactured capitals that the board closely governs. A core insight is that all these capitals are vital for a company to achieve its goal. They all need to be accounted for, and companies need to act so that the shared social and environmental systems that underpin these resources, such as human flourishing, a stable climate, fresh water, as well as well-connected communities and people, and strong and resilient social institutions[71] are governed properly.

BAU companies that do understand that severe degradation of the foundational means poses an urgent risk to their profit maximisation or survival in anything but the short term, are beginning to integrate these risks into their governance and decision-making. We can think of this longer-term approach to BAU as 'enlightened shareholder value' or BAU/ESV. For these companies, ESG is, at its best, a way for businesses to report and make better decisions to ensure they are operating within thresholds of healthy social and environmental systems, govern properly the stocks and flows of the capitals that derive from them, and invest in the health of the stakeholders they rely on. For those still in BAU/CSR, ESG is more often ad hoc compliance to assuage ESV-focused investors who are concerned about risk to their financial capital.

A sustainability-driven approach as adopted by 'purpose-driven' companies, and as outlined in PAS 808, is governed and managed within the whole triangle. This involves a move away from relying on market dynamics to automatically achieving collective long-term wellbeing. These companies have a reason to exist, and an accountability frame, that directly contributes to long-term wellbeing for all – achieved within operating parameters that ensure the health of systems, stakeholders and capitals (as is also true for ESV firms). These parameters ensure ethical behaviour and evidence-based decision-making.

Wellbeing

Daly clarified the 'ultimate ends' of any economy as "maximizing the cumulative number of lives ever to be lived over time at a level of per capita wealth sufficient for a good life".[72] This reminds us that financial income (measured by GDP at a national level and profits at a company level), is of course a proxy means to that ultimate end. Donella Meadows clarified these ultimate ends as 'wellbeing' and as the consequence of meeting universal human needs.[73] More recent analysis and thinking has brought to the fore the insight that 'long-term wellbeing for all' is simultaneously the goal of an economy and the definition of sustainability – a reworking of the Brundtland definition.[74]

The UK's BSI Guidance Standard BS 8950: Enhancing Social Value defines wellbeing as "a balanced state of being where no fundamental psychological or physical human needs are significantly deficient and hence the foundations of physical and psychological health are present in enough measure to meet challenges faced".[75]

The word 'wellbeing' as a 'catch-all' word to encompass varying conceptions of the 'good life' is not used everywhere around the world and varies between cultures. There is, however, broad consensus that fundamental needs are universal, and these underpin our understanding of wellbeing.[76]

The goal of an economy, and of sustainability, is optimisation of wellbeing for society 'as a whole', not just for a few. We therefore need to talk about long-term wellbeing for all – the equitable wellbeing of society as a whole over time. The guideline standard *PAS 808: Purpose-Driven Organisations* argues that the worldview underpinning equitable wellbeing is one in which equality, equity and citizenship are end-goals, because "we are all of equal and high worth and should have the same opportunities to achieve wellbeing and influence long-term wellbeing for all people and planet."[77]

Endnotes

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[8] For instance, the governments of 18 countries are working within the framework of the International Platform on Sustainable Finance to develop regulatory frameworks that realign capital markets and redirect capital flows towards sustainable activities. Many convening bodies – such as the Task Force on Climate-Related Financial Disclosures (TCFD), the World Economic Forum (WEF), the World Federation of Exchanges (WFE), and joint work by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and the World Business Council for Sustainable Development (WBCSD) – have published recommendations on the disclosure and management of non-financial risks.

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[11] The World Economic Forum's 2021 article: "The global eco-wakening: How consumers are driving sustainability" quoted research by Morgan Stanley that sustainable investments make up 26 per cent of global assets: www.esgthereport.com/why-is-there-a-rise-of-esg-investing/#:~:text=The%20rise%20of%20ESG%20investing%20can%20be%20attributed,and%20governance%20issues%20by%20society%20as%20a%20whole.

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[27] Larger businesses, particularly those that operate internationally, are also the most studied academically, and their case studies form the basis of teaching at business and management schools. This previously narrow focus of teaching on primarily the theoretical underpinnings of shareholder primacy models, is however beginning to change, as a result of challenges by both students and the emerging discussion around purposeful business. For example, see British Academy, *Teaching purposeful business in UK business schools* (BA, 2022), www.thebritishacademy.ac.uk/publications/future-of-the-corporation-teaching-purposeful-business-in-uk-business-schools/.

[28] ISO, *ISO 37000:2021 Governance of organizations*.

[29] The main areas of legislative and regulatory action across jurisdictions include: (1) the incorporation of climate commitments into law, (2) the integration of sustainability risks across the investment chain, (3) the introduction of non-financial disclosure requirements, (4) the requirement to perform human rights due diligence and ensure corporate accountability for social and environmental impacts arising across supply chains, (5) the harmonisation of sustainability reporting standards, (6) the creation of new corporate forms to accommodate profit-making and altruistic goals, (7) the regulation of ESG data and rating providers, (8) the introduction of mandatory diversity requirements for corporate boards, and (9) the development of green taxonomies for sustainable finance and mandatory rules to combat greenwashing.

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[34] Victoria Hurth et al., *Unleashing the Sustainable Business*.

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[39] ISO, *ISO 37000:2021 Governance of organizations*, 5.

[40] The World Commission on Environment and Development, *Our Common Future* (Oxford, New York: Oxford University Press, 1987).

[41] ISO, *ISO 37000:2021 Governance of organizations*.

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[44] BSI, *PAS 808: Purpose-driven Organisations*.

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"expectations of socially responsible organizational behaviour derived from customary international law, generally accepted principles of international law, or intergovernmental agreements that are universally or nearly universally recognized". They add additional notes to clarify this definition: intergovernmental agreements include treaties and conventions; although customary international law, generally accepted principles of international law and intergovernmental agreements are directed primarily at states, they express goals and principles to which all organisations can aspire; and international norms of behaviour evolve over time.

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[63] BSI, *PAS 808: Purpose-driven Organisations*.

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