SQUIRE PATTON BOGGS

Update 3 – ESG Laws Across the World

Global – November 2024

Environmental, Social and Governance (ESG) Regulations

ESG regulations are government standards for ESG-related actions, reporting or disclosures. In various countries, legal requirements have been passed in recent months with the EU still leading in this regard but implemented at different paces. Some businesses may already be undertaking ESG reporting and disclosures, depending on their size and industry, based on various reporting frameworks and standards.

ESG Reporting Standards

Many stakeholders – including investors – now expect companies to disclose information pertaining to their sustainability and climate change policies and performance. However, there are a range of different mandatory and voluntary frameworks and standards, from a variety of different organizations, from which companies can choose. This makes it difficult for global operating companies to know where to start and raises issues regarding the reliability and comparability of information. The following are the most prominent international ESG frameworks, with details on where they now stand.

1. European Sustainability Reporting Standards (ESRS)

The ESRS are mandatory for companies when reports are required by the EU's Corporate Sustainability Reporting Direct (CSRD). They were developed by an independent association formerly known as the European Financial Reporting Advisory Group (EFRAG) that was assigned to create the standards. The standards are comprised of 12 ESR standards, two overarching and 10 topic-specific standards (1 (general requirements), 2 (general disclosures), E1 (climate change), E2 (pollution), E3 (water & marine resources), E4 (biodiversity & ecosystems), E5 (resource use & circular economy), S1 (own workforce), S2 (workers in the value chain), S3 (affected communities), S4 (consumers & end-users) and G1 (business conduct). This includes two general standards, whereby one details things such as concepts, principles and how reports must be structured, while the other outlines required disclosures on business operations, ESG materiality assessments, compliance practices and other general characteristics. The ESRS align or support interoperability with many of the voluntary frameworks and standards, including the International Financial Reporting Standards (IFRS) and the Global Reporting Initiative (GRI) standards as described below.

2. IFRS Sustainability Disclosure Standards

In March 2022, the International Sustainability Standards Board (ISSB) set up in 2021 by the IFRS Foundation, published an Exposure Draft IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information, proposing general requirements for an entity to disclose sustainability-related financial information about its sustainability-related risks and opportunities. The Exposure Draft also proposed that an entity provides a complete set of sustainability-related financial disclosures, and in June 2023 the ISSB issued the IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information.

IFRS S1 is effective for annual reporting periods beginning on or after 1 January 2024, with earlier application permitted as long as IFRS S2 Climate-related Disclosures is also applied. In 2024, the ISSB launched projects to research possible new standards for disclosures on biodiversity and human capital issues. The latter would involve a company's own employees as well as workers at suppliers and other business partners.

3. Task Force on Climate-related Financial Disclosures (TCFD) Recommendations

The TCFD recommendations on climate-related financial disclosures are widely adoptable by and applicable to organizations across various sectors and jurisdictions. The recommendations are structured around four thematic areas that represent core elements of how organizations operate: governance, strategy, risk management, as well as metrics and targets.

The recommendations were incorporated into the IFRS disclosure standards, which led the TCFD to end in October 2023. The ISSB took over responsibility for monitoring use of the recommendations in 2024.

4. Sustainability Accounting Standards Board (SASB) Standards

Developed by the SASB and released in 2018, the SASB Standards contain specifications on disclosing financially material sustainability information across 77 industries. The standards were developed using a transparent standard-setting process that included: evidence-based research, broad and balanced participation from companies, investors and subject-matter experts and oversight and approval from the independent SASB Standards Board.

The SASB was consolidated into the Value Reporting Foundation, which then was absorbed by the IFRS Foundation in 2022. Thus, the ISSB encourages their standards continued use by companies that prefer them to the IFRS standards and states it still plans to maintain and update them. The SASB Standards play an important role in the first two IFRS Sustainability Disclosure Standards.

5. Climate Disclosure Standards Board (CDSB) Framework

The Climate Disclosure Standards Board (CDSB) is an international consortium of business and environmental non-governmental organizations which was established in 2007. The CDSB was one of the first groups to create climate-related disclosure standards. The framework was developed by the CDSB to support the inclusion of climate related reporting in corporate reports, such as annual reports and 10-K filings. The framework's first version, released in 2010, focused on climate change issues. An update that incorporated broader environmental reporting became available in 2015, and another that added information on ESG social factors followed in 2022. In 2022, the CDSB was consolidated into the IFRS Foundation to support the work of the newly established ISSB, which has since released additional standards on sustainability disclosures.

6. Global Board Initiative (GRI) Standards

Developed by the GRI, the GRI Standards enable any organization – large or small, private or public – to understand and report on their impacts on economy, environment and people in a comparable and credible way. In addition to companies, the GRI Standards are highly relevant to many stakeholders- including investors, policymakers, capital markets and civil society. GRI released its formal standards in 2016. It then began adding the topic standards in 2019 and the sector ones in 2021. Officially, the standards are overseen by the Global Sustainability Standards Board, an independent body that GRI set up in 2015. GRI and the ISSB are working jointly to identify and align common disclosures in their respective standards, which will remain separate.

7. Carbon Disclosure Project (CDP)

CDP was established as the "Carbon Disclosure Project" in 2000, requesting companies to disclose their climate impact. Since then, CPD has broadened the scope of environmental disclosure, to incorporate deforestation and water security CDP Global is an international non-profit organization comprising of CDP Worldwide Group, CDP North America, Inc. and CDP Europe AISBL. It is directed by a board of trustees and board of directors respectively. As an international organization, CDP receives funding support from a wide range of sources.

CDP gives companies scores in each area to be viewed by various stakeholders. The CDP questionnaires for various areas were combined in 2024, but CDP still issues separate scores. In addition, the integrated questionnaire has been aligned with the IFRS standard on climate-related disclosures, which is now the baseline for CDP's questions on climate issues. More than 23,000 companies worldwide, with over 3,700 in North America, used the disclosure system in 2023, according to CDP.

8. Taskforce on Nature-related Financial Disclosures (TNFD) Recommendations

TCFD's guidelines are a set of 14 recommendations for disclosing information about business risks and impacts related to nature and biodiversity issues. On September 18, 2023, TNFD released its final recommendations for disclosures on nature-related dependencies, impacts, risks and opportunities. TNFD aims to tackle nature and biodiversity loss and make it easier for investors to identify those companies that align with their values, which also provided guidance on implementing them. The 14 TNFD recommended disclosures include 11 nature-related disclosures and add a further three disclosures relating to: stakeholder rights and engagement; priority locations and value-chain risk and impact management. The TNFD recommendations are structured similarly to the TCFD ones around disclosures on nature-related governance, strategy, risk and impact management and metrics and targets. As of June 2024, the ISSB said it is considering how it can build upon the TNFD Recommendations as part of the possible new IFRS standard on biodiversity disclosures.

9. UN Global Compact

Formed in 2000, the Global Compact is a non-binding United Nations pact to get businesses and firms worldwide to adopt sustainable and socially responsible policies, and to report on their implementation. According to the Global Compact, it is the world's largest corporate sustainability and corporate social responsibility initiative, with more than 20,000 corporate participants and other stakeholders in over 167 countries. The framework focuses on aligning business strategies and operations with a set of 10 principles on human rights, labor practices, the environment and anticorruption measures. Participating companies file an annual Communication on Progress (CoP) report detailing their adherence to the 10 principles which represent a set of core values drawn from major international agreements. It launched a new digital platform for CoP submissions that replaced the original narrative format with a standardized questionnaire. In addition, businesses can report on their contribution to and impact on the UN's broader Sustainable Development Goals through a separate platform that blends the Global Compact's principles and the GRI Standards.

Country Overview and Competent Regulatory Authorities

Australia

- **Legislation** – Climate-related Financial Disclosure (CRFD) Rule

  The Federal Parliament passed Australia's mandatory climate disclosure regime on 17 September 2024. In March 2024, the government introduced the Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024 to Parliament. The bill includes updated legislation setting out the government's proposed mandatory CRFD regime. CRFD was first proposed in December 2022. The regime will commence on 1 January 2025, with many entities required to comply with the regime's reporting requirements from that date and with phased implementation for other entities in 2026 and 2027

  The treasury published the Exposure Draft legislation and accompanying explanatory materials in January 2024, with a consultation that ended in February. In the draft, the treasury mentioned: "the Government endorses full adoption of the ISSB's IFRS S2 Climate-related Disclosures standard in Australia, with modifications limited to those necessary to ensure standards are fit for purpose for Australia." Companies that prepare annual financial reports and meet certain thresholds will be required to submit a "sustainability report" as part of their annual financial reports. Disclosure will be phased in from 2025 (first reporting period) to 2027, across three groups of entities. The climate statements will initially only need to be audited to the extent required by the Australian Accounting Standards Board (AASB) with a transition to full auditing for all reporting entities from 2030.

- **Regulatory body** – Treasury of Australia, AASB

Brazil

- **In development** – Requisitos Gerais Para Divulgação De Inormações Financeiras Relacionadas À Sustentabilidade/ Divulgações Relacionadas Ao Climhe Comitê Brasileiro de Pronunciamentos de Sustentabilidade (CBPS), together with the Conselho Federal de Contabilidade (CFC), had published two exposure drafts for sustainability disclosure standards based on the standards of the International Sustainability Standards Board (ISSB). The exposure drafts are titled CBPS 01 *Requisitos Gerais Para Divulgação De Inormações Financeiras Relacionadas À Sustentabilidade* ("General Requirements for Disclosure of Sustainability-related Financial Information") and CBPS 02 *Divulgações Relacionadas Ao Clima* ("Climate-related Disclosures"). The Brazilian Comissão de Valores Mobiliários (CVM) has issued resolutions that make the standards published by the Comitê Brasileiro de Pronunciamentos de Sustentabilidade (CBPS) mandatory to apply from 1 January 2026. On 13 May 2024, the CVM, which is the Brazilian securities and exchange commission, had launched an overlapping consultation on the two standards. If approved, listed entities would be required to apply the standards from 1 January 2026 (as set out in a CVM resolution from October 2023) with early adoption permitted.

  An entity can only early adopt both standards at the same time.

- **Regulatory body** – Securities and Exchange Commission (CVM), CBPS, CFC.

EU

The EU has introduced several regulations concerning ESG as outlined in more detail in our ESG Update 2. Since then, further directives and guidelines have been published, aiming to achieve the envisaged green transition.

The Empowering Consumers Directive

The Empowering Consumers Directive (Directive on empowering consumers for the green transition, 2024/825/EU) was proposed as part of the circular economy package by the European Commission on March 30, 2022. The directive came into effect on March 26, 2024, after being published in the EU's Official Journal on March 6, 2024. The deadline for member states to implement the directive is September 27, 2026. The directive aims to safeguard consumers better from unfair practices and to provide them with better information to empower them for the green transition. This directive amends the Unfair Commercial Practices Directive and updates the existing EU list of banned commercial practices while adding multiple marketing habits related to greenwashing and early obsolescence of goods.

Generic environmental claims without proof of performance will be banned, along with claims based on emissions offsetting. The use of sustainability labels, as well as any claim on future environmental performance, will become much stricter. Further, companies will be prohibited from presenting a mandatory requirement imposed by law as an offer's distinctive feature. In addition, companies will not be allowed to make an environmental claim on an entire product or business when it relates solely to a certain aspect of the product or a specific activity of the business. Finally, new prohibitions and obligations in commercial and circularity-related communication have been set out.

Guidelines on Fund Names Using ESG or Sustainability-related Terms

The European Securities and Markets Authority (ESMA) published, on May 14, 2024, a final report containing guidelines on fund names including ESG or sustainability-related terms to address concerns about greenwashing and ensure that fund names accurately reflect their investment strategies and objectives. Concretely, the guidelines aim to limit greenwashing and develop a set of streamlined names and terminology for funds to accurately reflect investment objectives. Marketing and fund documents cannot be misleading on ESG or sustainability claims but must provide evidence of sustainability objectives. If a fund includes any ESG-related terminology or terms derived from the word "sustainable" in its name, at least 80% of its assets must be allocated to fulfill environmental or social characteristics or sustainability investment goals. This should align with the binding elements of the investment strategy, as detailed in Annexes II and III of the SFDR.

In addition to the 80% asset allocation, these funds must adhere to the exclusions outlined in the EU's Paris Aligned Benchmark, which includes restrictions on companies involved in controversial weapons, tobacco production, those violating UNGC or OECD guidelines and sector-specific restrictions. Some funds must comply with the Climate Transition Benchmark, which applies the first three exclusions.

Switzerland

- **Legislation** – Ordinance on Climate Disclosure

  In June 2024, the government announced the launch of a consultation on new proposals aimed at aligning the rules with the EU's CSRD. Public companies, banks and insurance companies with 500 or more employees, and at least CHF20 million in total assets or more than CHF40 million in turnover are obliged to report publicly on climate issues in line with the recommendations of the Task Force on Climate related Financial Disclosures (TCFD). The ordinance entered into force as of January 1, 2024, and companies have a year to implement the rules. Large financial institutions are required to publicly disclose information on climate-related matters for the 2024 business year, with the first reports to be published in the first half of 2025. The climate disclosures will form part of the disclosures on environmental matters pursuant to Art. 964a of the Swiss Code of Obligations, and therefore need to be submitted to the Annual General Meeting. Reporting must cover the financial risks the company faces as a result of climate change and the impacts the company's activities have on the climate. Companies must also set out emissions reduction targets for direct and indirect emissions and the steps they plan to take to reduce emissions.

- **Regulatory body** – Swiss Federal Council

Taiwan

- **Legislation** – Taiwan Sustainable Taxonomy

  On 8 December 2022 the Financial Supervisory Committee (FSC), the Environmental Protection Administration (EPA), the Ministry of Economic Affairs (MOEA), Ministry of Transportation and Communications (MOTC) and the Ministry of the Interior (MOI) jointly issued "Taiwan Sustainable Taxonomy" on 8 December 2022 In support of the nation's aim of net-zero emissions by 2050, and to encourage financial institutions to assist enterprises' transition towards a sustainable and low-carbon economy, . The taxonomy is intended to encourage companies to voluntarily disclose information on whether their activities follow the taxonomy. In this regard, ordinary economic activities and forward-looking economic activities in which Taiwanese financial institutions direct the most investments and financing the taxonomy provides a basis for identifying whether those activities qualify as sustainable Further, the Greenhouse Gases Reduction and Management Act (GGRMA), the key legislation governing the reduction of greenhouse gases (GHG) in Taiwan, went through a major overhaul in 2022 and has now been renamed the Climate Change Response Act (CCRA), which took effect on February 15, 2023. The CCRA expands on the regulatory boundaries of the GGRMA,

  In addition, the Taiwan Stock Exchange (TWSE) Corporation Rules Governing the Preparation and Filing of Sustainability Reports by Listed Companies requires listed companies to submit ESG reports. On September 22, 2022, the TWSE amended said rules, adding ESG performance indicators to be disclosed in the ESG reports, with the aim of strengthening the disclosure of ESG information of listed companies. Similar amendments have also been made to said rules by the Tapei Exchange. Currently, companies listed on the TWSE and TPEx are required to issue annual ESG reports based on the guidelines set out by the Global Reporting Initiative (GRI), the Sustainability Accounting Standards Board (SASB) and the Task Force on Climate-related Financial Disclosures (TCFD) (a certain transition period of compliance has been granted to some sectors).

- **Regulatory body** – FSC, the Environmental Protection Administration, the Ministry of Economic Affairs, the Ministry of Transportation and Communications and the Ministry of the Interior

UAE

- **Legislation** – Company Rulebook

  The Virtual Assets Regulatory Authority (VARA) has issued its Virtual Assets and Related Activities Regulations 2023. The regulations set out a comprehensive Virtual Assets (VA) Framework built on principles of economic sustainability and cross-border financial security. The regulatory framework in the Company Rulebook dated 5 June 2023, sets out ESG disclosure requirements and potential scope and direction of further regulation of ESG by VARA . VARA has established three different levels of ESG disclosure requirements, which it may add to or amend from time to time: voluntary ESG disclosure; compliance on ESG disclosure; and mandatory ESG disclosure. A key aspect of the VARA framework is that only licensed entities are permitted to conduct business involving virtual assets. This requirement includes adherence to specific regulations concerning corporate governance, compliance and risk management, which are detailed in various rulebooks.

- **Regulatory body** – UAE VARA

US (New York)

- **Legislation** – Climate Corporate Data Accountability Act

  The Senate Bill S897A, which as of May 2024, had been amended and resent to the state senate's finance committee for further review, would require businesses with more than US$1 billion in revenue the previous calendar year to report Scope 1, 2 and 3 emissions to an emissions registry. It would also require emissions reports to be independently verified for accuracy and completeness. The bill is currently with the Senate Committee.

What Do Organizations Need to Do Now?

If not started already, organizations must acquaint themselves with ESG reporting efforts, which will be beneficial in ensuring compliance and avoiding fines.

What Are We Doing to Assist Our Clients in This Area?

The reporting obligations arising from the above-mentioned regulations and reporting standards are significant, and we can assist clients in fulfilling these.

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