

# Review of Responsible Investment Regulatory Expectations



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## Introduction

Responsible Investment (“RI”) covers a wide range of issues often classified into Environmental (“E”), Social (“S”) and Governance (“G”) considerations:

Environmental	Social	Governance
<ul style="list-style-type: none"> <li>• Climate change and greenhouse gas (GHC) emissions</li> <li>• Energy efficiency</li> <li>• Resource depletion, including water</li> <li>• Hazardous waste</li> <li>• Air and water pollution</li> <li>• Deforestation</li> </ul>	<ul style="list-style-type: none"> <li>• Human rights</li> <li>• Working conditions, including slavery and child labour</li> <li>• Local and indigenous communities</li> <li>• Conflict</li> <li>• Health and safety</li> <li>• Employee relations and diversity</li> </ul>	<ul style="list-style-type: none"> <li>• Executive pay</li> <li>• Bribery and corruption</li> <li>• Political lobbying and donations</li> <li>• Board independence, diversity and structure</li> <li>• Tax strategy</li> <li>• Transparency</li> <li>• Shareholder rights</li> </ul>

Governance has long been a key focus of regulators and investors, while environmental factors have attracted more significant attention in recent years. The Covid-19 pandemic has resulted in an additional shift of investor focus, placing increased emphasis on social issues such as human rights, social responsibility and employee safety and wellbeing.

RI, from an asset management or ownership perspective, covers a wide range of investment approaches. These can include screening for exclusions or inclusions, incorporating E, S and G factors into risk analysis, engagement with companies or issuers and impact investing amongst others. The full spectrum of approaches and practical implementation of RI frameworks will be the topic of future memos in the SBAI’s RI series.

Governments and regulators globally have been taking views on topics relating to the broad area of RI and there has been a substantial increase in regulation in this field. In most RI regulations, the emphasis is currently on disclosure and the creation of market solutions, rather than taking a prescriptive approach on how the requirements should be implemented. Since 2018, there have been over 170 RI-related regulatory measures proposed globally – more than in the previous six years combined. The EU has been

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The SBAI Toolbox is an additional aid to complement the SBAI’s standard-setting activities. While alternative investment fund managers sign up to the Alternative Investment Standards on a comply-or-explain basis, the SBAI Toolbox materials serve as a guide only and are not formally part of the Standards or a prescriptive template.

at the fore-front of RI regulation, including mandatory disclosure requirements on RI factors, and is the source of over 65% of all RI regulation.

The RI regulatory landscape, however; is shifting rapidly in some jurisdictions, as 'soft' law measures are being progressively transposed into 'hard' law rules with 'teeth'. The EU has been at the forefront of regulatory change following the launch of its Sustainable Action Plan and the European Green Deal, which seeks to “reorient capital flows towards a more sustainable economy”, “integrate sustainability into risk management” and “foster transparency and long-termism”.

This is not, however, a unified trend across the global landscape. A recent rule proposed by the Department of Labor (DOL) in the United States, seeks to prevent employee benefit plans from pursuing “non-financial objectives”, including ESG considerations, if doing so subordinates returns or increases risk for participants.

Commissioner Pierce of the US Securities Exchange Commission (SEC) gave a speech in September 2020 on the role of ESG in Asset Management.<sup>1</sup> In this speech he stated that, while disclosure of investment strategies would always be expected from Registered Investment Advisers, the SEC would not be mandating specific ESG disclosure frameworks which run the risk of arbitrage, lack of consistency and do not align with the SECs materiality focus (as opposed to a focus on specific metrics).

This Toolbox Memo provides a global overview of the different types of RI regulations and guidance that have surfaced so far, as well as additional legislation that has been proposed.

The memo looks at these regulations through three central perspectives:

1. Regulation for Investors
2. Regulation/Guidance for Investment Managers
3. Regulation/Guidance for Issuers

It also takes a brief look at the change that may be driven by EU RI Regulation in Europe and beyond.

## 1. Regulation for Investors

Investor interest in RI continues to grow with assets in sustainable investment funds globally continuing to rise.<sup>234</sup>



<sup>1</sup> <https://corpgov.law.harvard.edu/2020/09/18/remarks-by-commissioner-pierce-on-the-role-of-asset-management-in-esg-investing/>

<sup>2</sup> <https://www.morningstar.co.uk/uk/news/199190/record-shattering-year-for-sustainable-investments.aspx>

<sup>3</sup>

[https://www.morningstar.com/content/dam/marketing/shared/pdfs/Research/Sustainable\\_Funds\\_US\\_Landscape\\_021920.pdf?utm\\_source=eloqua&utm\\_medium=email&utm\\_campaign=&utm\\_content=20871](https://www.morningstar.com/content/dam/marketing/shared/pdfs/Research/Sustainable_Funds_US_Landscape_021920.pdf?utm_source=eloqua&utm_medium=email&utm_campaign=&utm_content=20871)

<sup>4</sup>

[https://www.morningstar.com/content/dam/marketing/shared/pdfs/Research/Global\\_Sustainable\\_Fund\\_Flows\\_Q2\\_2020.pdf?utm\\_source=eloqua&utm\\_medium=email&utm\\_campaign=&utm\\_content=23897](https://www.morningstar.com/content/dam/marketing/shared/pdfs/Research/Global_Sustainable_Fund_Flows_Q2_2020.pdf?utm_source=eloqua&utm_medium=email&utm_campaign=&utm_content=23897)

Among the initiatives for investors that indicate a growing RI focus are:

- The Principles for Responsible Investment (PRI), whose signatories commit to principles, including the incorporation of RI issues into their investment decision-making processes, and
- The Institutional Investors Group on Climate Change (IIGCC), which has produced a range of guides on climate-related topics, to ensure that the risks and opportunities are addressed in investment practices.

Enacted regulation for investors globally currently has two main areas of focus – governance (stewardship) and disclosure. Proposed (but not yet adopted) legislation in the US, at present, appears to be moving in a different direction from Europe. The EU Sustainable Action Plan is moving forward with its efforts to encourage ESG considerations and the UK is considering reforms to improve pension fund disclosures on sustainability, stewardship and ESG risks. In the US, however; proposed DOL legislation would prohibit ERISA fiduciaries from using ESG investments if they would subordinate beneficiary returns.

The below sections summarise the legislation in North America, Europe and Asia for investors, further details of the applicable legislation and regulations can be found in [Appendix I](#).

## North America

RI legislation in the US is currently issued only on an individual state level. Various US state authorities have issued regulations which affect public institutional investors (such as State Pension Funds) in their respective states. The current approaches include disclosure of climate risks in California, publication of sustainable investment policies in Illinois and divestment from coal, oil, and gas in New York.

The DOL, however; has recently proposed changing the rules in relation to pension plan management, this would discourage RI considerations in favour of a sole focus on the financial return of an investment. If adopted, this would have wider reach than the state level legislation and may, in some cases, appear to be incompatible, for example, the State of New York being required to divest from oil securities may subordinate the returns for beneficiaries of that plan.

Further details in Appendix I - [Table 1](#)

## Europe

The primary legislation in Europe is the EU's Sustainable Action Plan, which seeks to re-orient capital flows towards sustainable investment, manage financial risks stemming from climate change, natural disasters, environmental degradation and social issues, and foster transparency in financial and economic activity.

The Sustainable Action Plan sets out several key actions, including:



The Sustainable Action Plan is being implemented by the EU in a package of sustainable finance reforms over the near- to medium-term. As the EU prioritises RI engagement and disclosure, issuers based outside the EU may choose to demonstrate engagement with these market standards in order to remain attractive to European investors. Outside of EU initiatives, both France and the UK have also enacted RI related legislation.

UK legislation, in the form of the UK Stewardship Code, currently focuses more on Governance factors, however; signatories are expected to take all ESG considerations into account. France now requires annual reporting on how ESG risks are factored into decisions and how investor’s policies align with the National Strategy for Energy.

There are two important aspects to note from the regulations in the UK and France:



The Law Commission in the UK published a report that determined that the barriers to social investment by pension funds are structural and behavioural rather than legal or regulatory. It proposed several reforms including disclosures on sustainability, stewardship and ESG risks which are being considered for adoption by the UK.

There are also a number of sector-specific guides, such as the Responsible Investment Guide 2013 published by the UK Pensions and Lifetime Savings Association. This aims to help pension fund investors to incorporate material RI risks into their investment decisions.

Further details in Appendix I - [Table 2](#)

## Asia

Regulation in the Asia Pacific region is currently focused solely on the Governance elements of RI. Both Japan and Thailand have enacted Stewardship Codes which aim to enhance RI through investors oversight of governance of the issuers they invest in.

Whilst not going as far as to mandate oversight of other RI elements, both codes allude to this. The Japan Stewardship Code explicitly instructs investors to consider sustainability and Principle 3 of Thailand's Stewardship Code encourages institutional investors to incorporate ESG considerations into investment analysis and decision-making processes.

Further details in Appendix I - [Table 3](#)

## 2. Regulation for Investment Managers

Regulation or legislation for investment managers in the RI space is the lightest of the three areas discussed in this memo, and the most recent. Presently, the EU is the only jurisdiction that has enacted legislation in this space (due to come into force in 2021 and 2022). Asian regulators and governments have very recently started to become more involved in RI, with several guidance documents on being published in 2020. Currently the US has one rule that is being put out for consultation, however, this relates to the risk of misleading fund names as opposed to any RI disclosure rules or guidance on RI policies.

Full details of the regulations discussed below are provided in [Appendix II](#).

### North America

There are no regulations or legislation in the US that have been enacted that are applicable to RI for investment managers. There is, however; a proposed rule change to ensure that any funds that purport to use responsible investment in their fund name are not misleading. The US SEC issued a request for comments in 2020 on a Consultation on Rule 2001 on fund names. This is an existing rule relating to a concern that fund names could be false or misleading to potential investors. This consultation has raised the question as to whether the rules should be updated to cover areas of ESG, for example, where a fund has words like "impact", "responsible", "sustainable" etc. in its fund name.

The Commodity Futures Trading Commission (CFTC), the US regulator in the derivatives market, has recently published a report [on managing climate risk in the US financial system](#). The report noted climate change was a major and complex risk affecting the stability of the financial system in the US.

A key finding of the report was that existing legislation in the US already provides regulators with authority to address financial climate-related risk but, that this legislation was not currently being used to monitor and manage such risks. The CFTC set out several recommendations, including:

- All relevant federal financial regulatory agencies, should incorporate climate-related risks into their mandates and develop a strategy for integrating these risks in their work, including into their existing monitoring and oversight functions.
- Financial supervisors should require bank and non-bank financial firms to address climate-related financial risks through their existing risk management frameworks in a way that is appropriately governed by corporate management.
- Material climate risks must be disclosed under existing law, and climate risk disclosure should cover material risks for various time horizons.

Further details in Appendix II - [Table 4](#)

## Europe

The EU is the only jurisdiction that has enacted legislation for investment managers on RI. The legislation, which is part of the EU's Sustainable Action Plan, is primarily focused on disclosure and consistency in the RI space.

The EU Disclosures Regulation aims to clarify and harmonise existing ESG disclosure requirements for “financial market participants” (this includes investment firms carrying out portfolio management in relation to a wide range of financial products including AIFs, UCITs, PEPPs<sup>5</sup> and IORPs<sup>6</sup>). The regulation includes requirements for policy publication, detailing how sustainability is integrated into decision making processes, governance of ESG products and disclosure of sustainability risk impacts.

The EU Taxonomy Regulation sets basic rules for defining what sort of economic activities are considered environmentally sustainable and will be the governing standard for any future EU regulation on sustainable products.



The EU has also issued some guidance on the practical application of the Green Bond Standard<sup>7</sup>.

Further details in Appendix II - [Table 5](#)

## Asia

Asian governments and regulators have not enacted any legislation relating to RI, however; in 2019 and 2020 several pieces of guidance on the topic have been issued, particularly in Hong Kong:

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<sup>5</sup> Pan-European Personal Pension

<sup>6</sup> Institutions for Occupational Retirement Provision

<sup>7</sup> An EU Green Bond is defined as “any type of listed or unlisted bond or capital market debt instrument issued by a European or international issuer, defined as meeting the 3 following requirements: Green bond framework; Proceeds to green projects; and External verification.”

April 2019	May 2020	July 2020
<p>The Hong Kong Securities and Futures Commission (SFC) issued a circular which warned authorised managers running Green or ESG funds to abide by general disclosure requirements to explain how these factors feature in their investment process.</p>	<p>The Hong Kong Quality Assurance Agency (HKQAA) extended its Green Finance Certification Scheme to include ESG Funds (previously it covered Green Debt instruments and Green Funds).</p> <p>The Hong Kong Government indicated its support for the certification and stated that it would encourage more mainland China and overseas entities to make use of the scheme.</p>	<p>The Hong Kong Monetary Authority (HKMA) released a paper that discussed its initial thinking about its supervisory approach in addressing climate related issues</p>

Malaysia also issued guidance of a more targeted nature for Islamic financial institutions to assess their adherence to their value-based intermediation commitments. This is also expected to serve as a reference for other financial institutions looking to include value-based risks such as ESG in their investment process.

In Singapore, the Monetary Authority of Singapore (MAS) had put out to public consultation a draft set of Environmental Risk Management guidelines that it had co-drafted. These guidelines would be applicable to investment managers amongst other entities.

Further details in Appendix II - [Table 6](#)

### 3. Regulation for Issuers

This is the area that has seen the biggest focus to date in terms of RI regulations. There has been a greater focus on corporate reporting of ESG issues, which is driving businesses to focus on and improve risk identification, engagement, and disclosure. While this will likely require greater resource to be spent on corporate reporting, such measures may present opportunities for companies to attract longer-term investors and lower their cost of capital.

Stock exchanges are increasingly taking responsibility for requiring listed issuers to make disclosures in relation to:

- Environmental Impact and Climate Change related risk exposure,
- Human Capital related information (such as pay ratio disclosure and treatment of customers and communities) and,
- Internal Governance (including gender diversity and internal systems and controls).

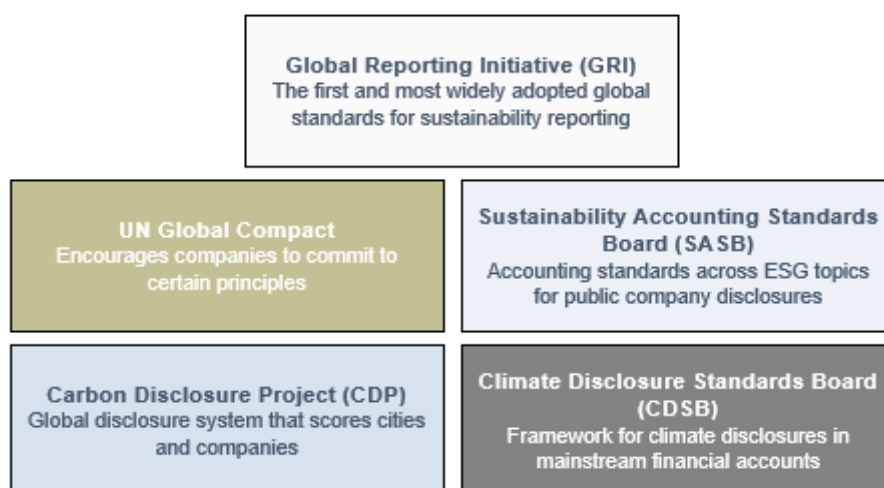
Currently around 12 stock exchanges require listed companies to make RI-related disclosures, including the London Stock Exchange, which published guidance for issuers on integrating RI into their reporting and communications in 2018.

All the regulations and legislation discussed in this section can be found in more detail in [Appendix III](#).

## Environment and Climate Risk

Climate change and greenhouse gas emissions are at the forefront of the “environmental” factors which issuers are being asked to consider. Issuers are now increasingly required to report on more specific topics such as energy efficiency, resource depletion, deforestation, and air and water pollution. The nature and extent of these disclosures varies between industries and countries.

While there is currently no global consensus on RI disclosures and data, there are several voluntary global standards and frameworks which issuers (and investors) rely on including:



Several jurisdictions have adopted guidelines for the disclosure of climate change risks of listed issuers, that are generally principles-based and aligned with the Financial Stability Board (FSB) recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD).

The objective of the TCFD is to develop a global foundation for consistent, climate-related financial disclosures, structured around four core themes: governance, strategy, risk management, and metrics and targets. The TCFD’s [final report and recommendations](#) (2017), set out the information which issuers should disclose. The voluntary disclosure framework aims to strike a balance between providing an ‘ambitious’ framework to raise climate disclosure standards, while being practical to enable widespread near-term adoption.

A number of global organisations are now beginning to collaborate, and the CDSB and SASB have produced a [TCFD implementation guide](#) which provides practical solutions for companies to implement the TCFD recommendations, using their standards and framework.

In September 2020, the International Integrated Reporting Council (IIRC), [Carbon Disclosure Project \(CDP\)](#), the [Climate Disclosure Standards Board \(CDSB\)](#), [Global Reporting Initiative \(GRI\)](#) and [Sustainability Accounting Standards Board \(SASB\)](#) issued a [joint statement](#) setting out a shared vision to progress towards global consistency in reporting, and to provide clarity over using a combination of the organisations’ frameworks.

Further details in Appendix III - [Table 7](#)



## North America

The US and Canada have taken a disclosure-based approach to regulation. The Canadian Securities Administrator has issued guidance for public issuers, on the approach to preparing disclosures of material climate-related risks. Issuers are encouraged to disclose:

- Board and management responsibilities for climate change-related risks oversight,
- Physical and transition risks, and
- Opportunities they are exposed to that may have a variety of financial impacts on their business.

In the US, there are some suggested disclosures in place and further legislative proposals are being considered, that would allow the SEC to mandate disclosure requirements (although, as noted in the introduction, a recent SEC Commissioner speech argues against the SEC mandating ESG metrics to be reported).

Further details in Appendix III - [Table 8](#)

## Europe

The United Nations Framework Convention on Climate Change (UNFCCC) Paris Agreement of 2016 aims to strengthen the global response to the threat of climate change, by dealing with greenhouse-gas emissions mitigation, adaptation, and finance. This has been the source of several recent EU regulations.

The EU Sustainable Action Plan has put forward measures to enhance transparency in relation, not only to EU climate transition benchmarks, but also to EU Paris-aligned Benchmarks.<sup>8</sup>

Further details in Appendix III - [Table 9](#)

## Asia

In Asia, both regional bodies and local regulators have also been quite active focusing on regulation in a few specific issues, such as developing a taxonomy suitable for Asian jurisdictions, regulatory disclosure, ESG scoring and risk management.

Climate change and emissions are becoming an increasing area of focus for stock exchanges in Asia, with issuers being required to make public disclosures in the area. There are several IPO-related disclosures, as well as guidelines on green bond certifications.

Further details in Appendix III - [Table 10](#)

## Social and Human Capital (including Pay Ratio Disclosures)

Several countries now have regulations requiring companies to disclose certain employee remuneration statistics, such as CEO compensation and gender pay gap data. Regulators in the US are also considering rules that would require public companies to disclose information about their human capital management policies, practices, and performance.

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<sup>8</sup> An 'EU Paris-aligned Benchmark' is a benchmark where the underlying assets are selected in such a manner that the resulting benchmark portfolio's greenhouse gas emissions are aligned with the long-term global warming target of the Paris Climate Agreement

Within the “social” dimension of RI regulation more broadly, issuers are also required to make disclosures and take positive action in respect of human rights, working conditions, health and safety, local communities, employee relations and diversity.

## North America

Several US States are beginning to adopt laws or regulations which protect employees from pay discrimination, for example by prohibiting employers from requesting salary history from job applicants. The US also has legislation in place that requires public companies to disclose the ratio of CEO annual compensation to the median of total annual compensation for all its employees.

Canada has introduced pay transparency legislation, where companies with more than 100 employees must report compensation gaps based on gender, and other prescribed characteristics, on an annual basis.

Further details in Appendix III - [Table 11](#)

## Europe

The UK, Germany, France, and Spain have all introduced Gender Pay Gap legislation and there is similar proposed legislation in the Netherlands. Interestingly, none of these countries have targeted this in precisely the same way:

- The UK requires the data to be published publicly (where total employees are greater than 250)
- In Germany, reporting is not required unless the total number of employees is greater than 500 (where there are more than 200 employees, there is an entitlement to request information on the determination of and criteria for salaries.)
- France has no minimum employee number for the requirement to report and has the most metrics that must be included in the report.
- Spain does not require any reporting; however, companies with more than 50 employees must have an equality plan in place and keep records.
- If the Netherlands enacts its proposed legislation, it will require an external certificate confirming equal pay for equal work and employees will be entitled to see anonymised data on wages for employees doing the same work.

The UK has additional legislation on Modern Slavery, which includes annual reporting for companies with a turnover of more than GBP 36m.

Further details in Appendix III - [Table 12](#)

## Asia

Except for Australia, which has similar gender equality and modern slavery legislation as the UK, there is relatively little in the way of legislation in Asia that requires reporting of social and human capital metrics.

China has social responsibility legislation, this requires listed companies to consider welfare, environmental protection, and public interests of the community. There is no public reporting required on this and companies must do this at the same time as maximising the benefits for shareholders.

Further details in Appendix III - [Table 13](#)

## Governance and Gender Diversity

The below section focuses on the codes, regulations or guidance that has been put in place, in various countries, to foster gender diversity on company boards. These rules have tended to apply to listed companies and companies above certain size thresholds.

Issuers, however; should consider “governance” factors more broadly, also including areas such as bribery and corruption, political lobbying and donations, tax strategy, and transparency.

### North America

Currently only Canada has enacted legislation on diversity disclosures. The disclosure requirements are wider than just the representation of women, they also include:

- Aboriginal persons,
- Persons with disabilities, and
- Members of visible minorities.

**This makes Canada the first country to require diversity disclosures on metrics other than gender.**

In the US, the state of California has proposed legislation (that has not yet been adopted), that would specify gender requirements on the boards of publicly owned companies that are headquartered in the state.

Further details in Appendix III - [Table 14](#)

### Europe

National approaches vary across Europe. While most European countries have enacted legislation aimed at gender diversity on corporate boards, like the gender pay gap disclosures noted above, approaches differ between countries. There are two main approaches:

- Gender Targeting – targeting a specific percentage or number of women on boards (Belgium, France, Netherlands, and Norway)
- Equal Gender Participation – aiming for a balance between men and women on corporate boards (Austria, Germany, and Spain)

The UK also provides guidance on corporate governance through its Corporate Governance Code.

Further details in Appendix III - [Table 15](#)

## Asia

Stock exchanges in Asia are requiring increasing RI related disclosures, and the Taiwan Stock Exchange Corporation (TWSE) has been improving reporting standards for listed companies, while balancing cost-efficiency and the time needed for companies to adapt.

Further details in Appendix III - [Table 16](#)

## 4. Change which may be driven by EU RI Regulation in Europe and Beyond

The EU is seeking to drive widespread uptake of RI integration and reporting. The Sustainable Action Plan is ambitious in scope, with the clear intention of encouraging systemic change in the financial sector. Potential changes that may follow this legislation include:

### Enhancement of Systems and Controls related to RI Reporting and a growing drive to harmonise them globally

Importantly, although the Taxonomy is European in its remit, it is likely that there will be many similar regional and domestic frameworks to come. For example, projects to develop 'principle-based' green taxonomies are already at various stages in Canada, Japan and Malaysia.

- **Short term jurisdictional misalignments:** Going forward, the challenge will be to harmonise these regional-specific frameworks. To this end, there are initiatives being developed to aid the comparison of regional taxonomies and a 'taskforce' between Europe and China has also been proposed, aimed at harmonisation of these regions' sustainability frameworks.
- **Re-mapping of investment firm portfolio sectors:** The Taxonomy uses the Statistical Classification of Economic Activities in the European Community (commonly referred to as NACE) sector classification system, rather than the Global Industry Classification Standard (GICS). Therefore, portfolio sector remapping may be required.
- **Reduced risk of greenwashing:** By allowing investors to organise and communicate their portfolio's environmental impact under a common classification system.

### The Enhancement of Internal Expertise on RI-related Risks, Opportunities and Adverse Impacts

The potential consequence of the disclosure and reporting regimes, will be the need for RI experts to be embedded in all functions within corporations and investors (not as has been the case historically, in isolated stand-alone teams).

Initiatives arising from the third pillar of the UK's Green Finance Strategy, 'Capturing the Opportunity', with its focus on promoting green finance education in the UK finance sector, will also contribute to this change.

## **Increase in External ESG Data Providers and Ratings for Risks and Adverse Impacts**

This will necessarily be driven by the need for external verifiers to measure and assess that products meet relevant sustainability criteria (in the case of the Taxonomy) or align with the green bond standard. The EU Commission is working on extensive technical screening criteria across each sector that will need to be applied and verified.

There are already a number of external aggregators and verifiers but we are likely to see a significant expansion in this space.

## **Closer Engagement between Investors and Investee Companies**

In order for companies to demonstrate engagement on RI issues to their investors, and for investors to ensure they discharge their obligations under the new regulations, asset managers will need to work more closely with portfolio companies on their RI credentials and be provided with any material RI-related information to better analyse the RI-related profiles of their investee companies.

## **Changes to Capital Allocation arising from more RI Sensitive Client Onboarding**

Until now, clients' RI preferences have not been required to be addressed. As a result of proposed amendments to MiFID II, the UCITS Directive and AIFMD regimes published by the EU Commission in June 2020, MiFID firms will now be under a duty to take into account the RI considerations and preferences of their clients. This, in turn, will likely drive changes in the way that RI factors inform capital allocation.

## **Launch of New Products to align with New EU Green or Sustainable Labels**

The 'common language' created by the Taxonomy and Disclosures Regulation, and the potential expansion of the EU EcoLabel to financial products, means there is much greater scope for development of new, bespoke products by asset managers as they are able to better communicate the green credentials or performance of a financial product to clients, and organise a new product around its targeted impact.

## **Changes to Existing products to bring them either Within or Outside the Scope of Regulations**

Existing products may be re-labelled or refined to bring them within or outside the clearly defined and standardised categories.

It is likely that this will lead to greater clarity in the market, increasing the ability to make 'like-for-like' comparisons and a decrease in greenwashing risk.

## **Changes to Investment Processes and Due Diligence to take RI Risks into Account**

The requirements laid out by the Disclosures Regulation and amendments to UCITS, AIFMD and MiFiD II regimes, will require firms to demonstrate that sustainability risks, sustainability factors or client RI preferences, have been taken into account, and therefore that the ESG credentials of various products and investments have been verified appropriately.

This will require large-scale changes to internal investment processes, product governance and due diligence.

## **Human Rights are Becoming a Point of Growing Attention for Investors**

This is echoed in existing and contemplated legislation in several countries, including the relevant modern slavery legislation in the UK and Australia and the French Law on the Corporate Duty of Vigilance (Vigilance Law).

In particular, mandatory human rights and environmental due diligence, as it exists in the Vigilance Law, is likely to be generalised.

See this article on [human rights due diligence](#) for further information.

## Appendix I – Detail of Regulation for Investors

### North America

Table 1

#### Regulation and Enacted Legislation:

Approach	Requirement	Source
<b>United States California:</b> Climate related risk assessments and reporting	Climate-related financial risk assessment must be completed before making investments. Pension funds must publicly report on their climate-related financial risks every three years starting in 2019.  This is applicable to the California Public Employees' Retirement System (CalPERS) and California State Teachers' Retirement System (CalSTRS)	California: <a href="#">California Bill 964, the Pension Fund Climate Law</a>
<b>United States Illinois:</b> Establishment of sustainable investment policies	All public or government agencies involved in managing public funds in Illinois must develop, publish, and implement sustainable investment policies.	Illinois: <a href="#">HB 2460, the Sustainable Investing Act</a> (effective 01/2020)
<b>United States New York:</b> Investment restrictions	The Common Retirement Fund must divest from all direct and indirect investments in companies that meet the Bill's definition of coal producers within 2 years and oil or gas producers within 5 years.  This is applicable to the New York State Comptroller (Common Retirement Fund)	State of New York: <a href="#">S.2126-A, the Fossil Fuel Divestment Act (2015)</a>

#### Proposed Legislation/Regulation that has not yet been adopted:

Approach	Requirement	Source
<b>United States:</b> Guidance for fiduciaries when exercising their duties	For Employee Retirement Income Security Act (ERISA) fiduciaries, ESG integration is a consideration as part of a prudent risk management strategy, however, the interests of the beneficiaries must not be subordinated for investments in ESG vehicles.	DOL notice of proposed rulemaking <a href="#">Financial Factors in Selecting Plan Investments</a> (2020)

## Europe

Table 2

### Regulation and Enacted Legislation:

Approach	Requirement	Source
<b>European Union:</b> Engagement of long-term shareholders	Long term share-holders must focus on transparency between traded companies and investors, including identification of related-party transactions and voting on the CEO/board's remuneration plans.	Shareholder Rights Directive II (2017)
<b>European Union:</b> Enhanced ESG disclosure	For large public interest entities with more than 500 employees, their public disclosure documents, such as annual reports, must include a range of ESG topics on a 'comply or explain' basis.	Non-Financial Reporting Directive (2014/95)
<b>France:</b> Enhanced ESG disclosure	Annual reporting must include a disclosure of how ESG risks are factored into investment decisions and how investors' policies align with the national strategy for energy.  This marked the first time that reporting requirements for climate change and ESG more generally were imposed on institutional investors and is France's leading legislation in the area.	Article 173 of the Energy Transition Law (2015)
<b>United Kingdom:</b> Stewardship responsibilities	Twelve voluntary 'apply and explain' principles for asset owners and asset managers and producing an annual stewardship report.  Signatories are expected to ensure their investment decisions are aligned with their client's needs, taking ESG considerations into account: this should be exercised across asset classes beyond listed equity (e.g. fixed income bonds, private equity) and across geographies, in investments outside the UK.	<u>UK Stewardship Code</u> (2020)

### Proposed Legislation/Regulation that has not yet been adopted:

Approach	Requirement	Source
<b>United Kingdom:</b> Social investment by pension funds	The barriers to social investment by pensions funds were identified as structural and behavioural rather than legal or regulatory.  The Government has agreed to work towards implementing reforms proposed by the Law Commission.	<u>Law Commission recommended reforms</u> (2017)



## Asia

Table 3

### Regulation and Enacted Legislation:

Approach	Requirement	Source
<b>Japan:</b> Fiduciary responsibility	<p>Corporate governance reform is a key pillar of Japan's current economic program.</p> <p>This updated Code aims to guide investors in fulfilling their stewardship responsibilities. One of the key changes in the 2020 Code has been to include, and explicitly instruct investors to consider, sustainability.</p>	<u>Updated Stewardship Code (2020)</u>
<b>Thailand:</b> Stewardship Responsibility	<p>In 2017, the Thai Securities and Exchange Commission launched the Investment Governance Codes (I Code) for institutional investors, which is the first statement of principles on responsible and effective stewardship over investments in Thailand.</p> <ol style="list-style-type: none"><li>1. It sets out broad principles of effective stewardship for institutional investors including:</li><li>2. the disclosure of stewardship policies,</li><li>3. the monitoring of and engagement with investee companies, and</li><li>4. the management of conflicts of interest.</li></ol> <p>Principle 3 of the I Code encourages institutional investors to incorporate ESG considerations into their investment analysis and decision-making process.</p>	<u>Investment Governance Codes (2017)</u>

## Appendix II – Detail of Regulation for Investment Managers

### North America

Table 4

#### Proposed Legislation/Regulation that has not yet been adopted:

Approach	Requirement	Source
<b>United States:</b> Fund names not to be misleading	<p>There was a concern that fund names could be false or misleading to potential investors. Originally Rule 2001 was aimed at mutual fund managers, but it now covers all investment advisers (e.g. requiring that a “technology fund” trades at least 80% of its assets in technology related stocks).</p> <p>This consultation raised the question as to whether the rules should be updated to cover areas of ESG e.g. where a fund has “impact”, “responsible”, “sustainable” or “ESG” in its name. This has focussed on the degree of investor reliance on terminology, and whether requirements are needed to classify funds.</p>	US SEC: Request for Comments on Fund Names: Consultation on Rule 2001 on fund names (2020)

### Europe

Table 5

#### Regulation and Enacted Legislation:

Framework	Purpose
<b>Transparency in the financial services sector</b> Disclosures Regulation <a href="#">(EU 2019/2088)</a>	<p>The aim of the Disclosures Regulation is to clarify and harmonise existing disclosure requirements for “financial market participants” on ESG matters – this includes AIFMs, UCITS management companies and investment firms carrying out portfolio management in relation to a wide range of financial products (AIFs, UCITS, PEPPS and IORPS).</p> <p>An AIFM will be required to:</p> <ol style="list-style-type: none"> <li>1. Publish on its website information about its policies on the integration of sustainability risks in the investment decision-making process;</li> <li>2. Pre-contractually disclose the manner in which sustainability risks are integrated into its investment decisions;</li> <li>3. Periodically disclose the likely impact of sustainability risks on the financial returns of the fund; and</li> <li>4. Where the product promotes environmental or social characteristics, the disclosures 2 and 3 above must include information on how those characteristics are met – and if an index has been designated as a benchmark, information on whether and how this index is consistent with those characteristics.</li> </ol>

## Framework

## Purpose

By the end of 2020, the European Securities Market Authority (ESMA) is due to publish standards of how these disclosures should be made – detailed terms of presentation and content. Most of the provisions will apply from 10 March 2021.

### **Framework for sustainable investment Taxonomy Regulation (EU 2020/852)**

This sets the basic ground rules for defining what sorts of economic activities are considered environmentally sustainable and serves as the governing standard for any future regulation by the EU or any EU country regarding environmentally sustainable products.

Enterprises required to report under the Non-Financial Reporting Directive (i.e. large public-interest companies (with more than 500 employees), including companies with EU-listed debt or equity, banks and insurance companies and other designated national authorities) have to disclose the extent to which they are environmentally sustainable, consistent with the Taxonomy Regulation.

Hedge fund managers and other financial market participants must disclose the investments underlying the financial products – even of investments in a company not subject to the Non-Financial Reporting Directive – if they are promoted for their environmental or social characteristics, or have sustainability as their objective or, alternatively, include a disclaimer if they do not.

According to the Taxonomy Regulation, to qualify as ‘sustainable’ an activity must meet three criteria:

1. It must make a substantive contribution to one or more of the following six objectives:
  - Climate change mitigation,
  - Climate change adaptation,
  - Sustainable use and protection of water and marine resources,
  - Transition to a circular economy,
  - Pollution prevention and control, and
  - Protection and restoration of biodiversity and ecosystems
2. It must not do significant harm to any of the other objectives listed in 1; and
3. It must meet certain minimum social and governance safeguards – including those set forth in the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights.

The EU’s Technical Expert Group on Sustainable Finance (TEG) published its final report in March 2020 along with a technical annex setting forth its recommendations regarding the design and implementation of the Taxonomy Regulation. The EU Commission is expected to adopt legislation by the end of 2020 implementing the criteria covered by the TEG final report. The first company reports and investor disclosures using the Taxonomy Regulation are due at the start of 2022.

For a detailed analysis see also: <https://www.herbertsmithfreehills.com/latest-thinking/the-taxonomy-regulation-an-overview>

**Guidance:**

Framework	Purpose
<b>Green bond standard Usability guide (2020)</b>	Recommendations on the practical application of the green bond standard to assist issuers, verifiers and investors.

## Asia

Table 6

**Guidance:**

Framework	Purpose
<b>Hong Kong: HKMA White Paper on green and sustainable banking (July 2020)</b>	<p>HKMA has recently published a white paper on green and sustainable banking, which provides some background on climate and environmental issues, and discusses the HKMA's initial thinking about its supervisory approach in addressing climate-related issues, and to a less extent, broader sustainability issues.</p> <p>The white paper is aimed at providing authorised institutions (AIs), which may include asset managers, with a good understanding of the issues and to help shape a greener, better and more climate-resilient banking system.</p>
<b>Hong Kong: HKQAA launches extension of Green Finance Certification Scheme for ESG funds (May 2020)</b>	<p>The Hong Kong Quality Assurance Agency (HKQAA) announced the launch of its Green Finance Certification Scheme - ESG Fund - to provide third-party conformity assessments on ESG funds. It will also help to further promote ESG initiatives with a view to directing capital flows towards green and sustainable uses. This follows the certification schemes for green debt instruments and green funds introduced in 2018 and 2019, respectively.</p> <p>The certification requirement for ESG funds resembles that for green funds. To accommodate the broader coverage of ESG, certain adjustments have been made on the terminology and fund's objective requirements under the scheme, such as addressing objectives in ESG aspects and expanding the related taxonomy.</p> <p>The Government has indicated that it will continue to support the certification scheme and encourage more local, Mainland China and overseas entities to make use of the scheme and Hong Kong's capital markets for ESG investment and financing.</p>
<b>Hong Kong: SFC Circular to management companies of SFC-authorized unit trusts and mutual funds - Green or ESG funds (April 2019)</b>	<p>The SFC published a circular in April 2019 to provide guidance to management companies of SFC-authorized funds with an ESG investment focus.</p> <p>It also released the results of its survey of asset managers in December 2019, indicating that it plans to develop standards and provide practical guidance on the management of climate change risks in asset management, and establish an industry group to exchange views amongst the SFC and experts on environmental and climate risks and on sustainable finance.</p>

Framework	Purpose
<b>Hong Kong:</b> Additional disclosure requirements	Having identified that a majority of SFC authorised funds do not disclose ESG integration, the SFC announced that it expects assets managers to make clear to investors how they take ESG factors into account, rather than simply stating that they do.  Securities and Futures Commission (SFC) <a href="#">guidance on enhanced disclosures for ESG funds</a> (2019)
<b>Malaysia:</b> Value-based Intermediation (VBI) Financing and Investment Impact Assessment Framework (November 2019)	Issued by the Bank Negara Malaysia, this Framework aimed to facilitate the implementation of an impact-based risk management system for assessing the financing and investment activities of Islamic financial institutions, in line with their respective VBI commitments.  It also serves as a reference for other financial institutions intending to incorporate ESG risk considerations into their own risk management systems.

**Proposed Legislation/Regulation that has not yet been adopted:**

Framework	Purpose
<b>Singapore:</b> MAS Consultation on Environmental Risk Management Guidelines for Financial Institutions (June 2020)	MAS has co-written a set of draft Environment Risk Management Guidelines with the Investment Management Association of Singapore to provide guidance to asset managements, amongst others,  The guidance is on sound environmental risk management practices for funds and segregated mandates. The guidelines are currently the subject of public consultation.

## Appendix III – Detail of Regulation for Issuers

### Environment and Climate Risk

#### Global Frameworks

Table 7

Framework	Purpose
<b>Global Reporting Initiative (GRI)</b>	The GRI Sustainable Reporting Standards are the first and most widely adopted global standards for sustainability reporting. The GRI Standards are developed with multi-stakeholder contributions and focus on consistent sustainability disclosures and efficient, effective sustainability reporting.
<b>UN Global Compact (UNGC)</b>	The Global Compact is a non-binding initiative to encourage companies to commit to ten universal principles concerning human rights, labour, environment and anti-corruption.
<b>Carbon Disclosure Project (CDP)</b>	The CDP is a global disclosure system for investors, companies and regions to manage their environmental impacts. It aims to use data to enhance global engagement on environmental issues. Companies and cities are scored in order to incentivise the disclosure process and to promote transparency and action.
<b>Climate Disclosure Standards Board (CDSB)</b>	Companies can use the CDSB Framework to guide them in incorporating ESG information into their mainstream financial reports. The framework aims to provide assistance to companies for achieving a holistic view of how climate change and natural capital <sup>9</sup> can affect their performance and decision-making.
<b>Integrated Reporting Framework / International Integrated Reporting Council (IIRC)</b>	The Integrated Reporting Framework focuses on promoting a cohesive and efficient approach to corporate reporting. It establishes the guiding elements that govern an integrated report in order to provide insight to investors about the resources and relationships that affect an issuer.
<b>Sustainability Accounting Standards Board (SASB)</b>	SASB produces sustainability accounting standards across ESG topics for public companies to disclose material and useful information to investors in their mandatory filings, based on their industry. The disclosures were designed to be in line with existing mandatory filings to the US Securities and Exchange Commission (US SEC) in Forms 10-K or 20-F.

<sup>9</sup> Natural capital is a reference to the inventory of natural resources held by companies, such as water, gold, natural gas, silver, or oil

## North America

Table 8

### Regulation and Enacted Legislation:

Approach	Requirement	Source
<b>United States</b> Climate change disclosures	Disclosures suggested on the impact of regulations concerning climate change.	US SEC Disclosure Requirements (2010)
<b>Canada</b> Climate change disclosures	The guidance contained in this notice is primarily focused on issuers' disclosure obligations as they relate to the MD&A and AIF, including how they might approach preparing disclosures of material climate change-related risks.	CSA (Canadian Securities Administrators): Staff Notice 51-358

### Proposed Legislation/Regulation that has not yet been adopted:

Approach	Requirement	Source
<b>United States:</b> Simplification of Disclosure Requirements	<p>In July 2019, the House Financial Services Committee held hearings on a series of ESG related bills, including the Climate Risk Disclosure Act and the ESG Disclosure Simplification Act.</p> <p>The Climate Risk Disclosure Act would require public companies to disclose critical information about their exposure to climate-related risks.</p> <p>The ESG Disclosure Simplification Act would require the US SEC to issue rules that define ESG metrics and require companies to disclose their views about those metrics to their shareholders and the US SEC annually. The bill would also establish a sustainable finance advisory board.</p>	The Climate Risk Disclosure Act and The ESG Disclosure Simplification Act (2019)
<b>United States:</b> Climate change disclosures	The decision urges the US SEC to take the lead in mandating corporate ESG disclosures. While the Committee's decision is not binding, it does show shifting sentiment in the US and could be a sign of how the US SEC may act in the future.	US SEC Investor Advisory Committee recommendation (2020)

## Europe

Table 9

### Regulation and Enacted Legislation:

Approach	Requirement	Source
<b>EU:</b> Climate transition benchmarks	Benchmark administrators must make disclosures in relation to how ESG factors are reflected in their benchmarks, and how the benchmarks align with the Paris Agreement targets on carbon emission reductions.	Amending Benchmark Regulation ( <a href="#">EU 2019/2089</a> )

### Guidance:

Approach	Requirement	Source
<b>EU:</b> EcoLabel - Environmental labelling	<p>The EU has sought to be a world leader in the transition to a 'circular economy' for a long time, and the EcoLabel was one of the earliest manifestations of this.</p> <p>Established in 1992 as a 'label of environmental excellence', products and services that meet certain environmental standards throughout their life-cycle (from raw material extraction to production, distribution and disposal) can be accredited with the EcoLabel. This aims to promote the circular economy and encourage companies to develop products that are easy to repair and recycle.</p>	EcoLabel (1992)
<b>United Kingdom:</b> Green Finance Strategy (GFS) - Climate Disclosures	<p>The strategy is aimed at mandating TCFD-style disclosures for listed companies and asset owners, by 2022, in order to address environmental risk.</p> <ul style="list-style-type: none"> <li>▪ The GFS has established three strategies:</li> <li>▪ Greening Finance: disclosure of financial risks and opportunities presented by environmental challenges. The UK government expects all large asset owners, listed companies and publicly funded financial bodies to disclose in line with the TCFD by 2022. Investors may have to engage with companies on disclosure of ESG information, particularly UK issuers who fall outside of pending and existing EU ESG disclosure policies.</li> <li>▪ Financing Green: initiatives and policies to accelerate private investment into green projects.</li> <li>▪ Capturing the Opportunity: improving the relationship between public and private sectors</li> </ul>	<p>Green Finance Strategy (2019)</p> <p>An interim report on the GFS is due at the end of 2020.</p>



and promoting green education among UK finance professionals.

## Asia

Table 10

### Regulation and Enacted Legislation:

Approach	Requirement	Source
<b>Singapore:</b> Sustainability disclosures	An annual sustainability report is to be produced by all listed companies on a 'comply or explain' basis.	Exchange Listing Rule (2017)
<b>China:</b> Emission Disclosures	Heavy emitters are required to disclose detailed information to the public in relation to their main pollutants.	Environmental Protection Law (2015)
<b>Australia:</b> Reporting disclosures	<p>The Australian regulator, the Australian Securities and Investments Commission (ASIC), has in its guidance recognised climate change as a systemic risk that could have a material impact on the future financial position, performance or prospects of companies.</p> <p>The effect is that directors are now on notice that climate change is a potential area of risk they need to at least consider (if not disclose) when reviewing material risks for disclosure in their annual reporting.</p>	Corporations Act and Regulatory Guide 247 (Effective disclosure in operating and financial review)
<b>Australia:</b> Sustainability disclosures	Entities listed on the Australian Securities Exchange (ASX) are recommended to disclose whether they have material exposure to environmental and social risks on a 'comply or explain' basis.	ASX Corporate Governance Council's Principles and Recommendations (ASX Recommendations) 4 <sup>th</sup> edition
<b>Malaysia:</b> ESG disclosures	Listed issuers are required to include in their annual report, a narrative statement of the management of material economic, environmental and social risks and opportunities. The statement must contain information that is balanced, comparable and meaningful according to Bursa Malaysia's Sustainability Reporting Guide.	Bursa Malaysia's Sustainability Reporting Guide
<b>India:</b> ESG disclosures	ESG regulatory requirements in India continue to be a part of the Business Responsibility Reporting (BRR) norms issued by the Securities and Exchange Board of India in August 2012. These	Securities and Exchange Board of India (2012)

Approach	Requirement	Source
	<p>were extended to the top 500 listed companies (including banks and other financial institutions) in November 2015.</p> <p>The key principles of the BRR norms include asking businesses to ‘respect, protect, and make efforts to restore the environment’ and to ‘support inclusive growth and equitable development.’</p>	
<b>Japan:</b> Sustainability disclosures	<p>Listed companies are required to take appropriate measures to address sustainability issues on a ‘comply or explain’ basis, however, there are currently no detailed requirements on the disclosure of ESG information.</p> <p>Nonetheless, the situation may change quickly in the next few years. The Japan Exchange Group (JPX), which operates the Tokyo Stock Exchange, joined the Sustainable Stock Exchanges Initiative in December 2017. As a partner exchange in the initiative, the JPX is expected to voluntarily commit to promoting long-term sustainable investment and improving ESG disclosure and performance among listed companies.</p>	Amended Corporate Governance Code

**Proposed Legislation/Regulation that has not yet been adopted:**

Approach	Requirement	Source
<b>Hong Kong:</b> Reporting disclosures	Key changes include introducing mandatory disclosure requirements of the board’s engagement with ESG matters and applying materiality and consistency to the reporting principles.	<a href="#">Consultation paper on ESG reporting (2019)</a>

**Social and Human Capital**

**North America**

*Table 11*

**Regulation and Enacted Legislation:**

Approach	Requirement	Source
<b>United States:</b> Management pay gap	Public companies are required to disclose the ratio between the annual compensation of the company’s CEO, and the median of the total annual compensation of all its employees.	US SEC: Pay Ratio Disclosure Rule (2016)

Approach	Requirement	Source
<b>Canada:</b> Pay transparency	Companies with 100 or more employees must annually report compensation gaps based on gender and other prescribed characteristics.  Other requirements of the act are that all publically advertised jobs must state the salary rate or range, and candidates cannot be asked about their past compensation.	<a href="#">Ontario Pay Transparency Act (2018)</a>
<b>United States California:</b> Compensation history	Private and public employers cannot seek a candidate's pay history or, where known, the employer is prevented from using the information to determine salary.  If requested, employers are required to provide pay scale information to job applicants.	AB-168 Employers: salary information.(2017-2018)
<b>United States New York:</b> Compensation history	Employers cannot ask about an applicant's pay history, nor can they rely on pay history in determining salary.  Employers cannot discriminate or retaliate against a prospective employee for failing to disclose their pay history.	6549 ( 2019-2020 Regular Sessions)
<b>United States Connecticut:</b> Compensation history	Employers may not ask about an applicant's pay history, unless it is voluntarily disclosed.	Substitute House Bill No. 5386, Public Act No. 18-8
<b>United States Delaware:</b> Compensation history	Employers are prohibited from screening applicants based on past compensation and cannot ask about salary history.	House Substitute No. 1 for House Bill No. 1

**Proposed Legislation/Regulation that has not yet been adopted:**

Approach	Requirement	Source
<b>United States:</b> Human capital disclosures	The US SEC has proposed to modernize its human capital reporting requirements, stating “[we] propose replacing the current requirement to disclose the number of employees with a requirement to disclose a description of the registrant’s human capital resources, including in such description any human capital measures or objectives that management focuses on in managing the business.”	US SEC: Proposed Rules on Human Capital Reporting (2019)

## Europe

Table 12

### Regulation and Enacted Legislation:

Approach	Requirement	Source
<b>United Kingdom:</b> Gender pay gap disclosures	<p>Any organisation that has 250 or more employees, must publish and report specific figures about their gender pay gap.</p> <p>Employers must publish their gender pay gap data with a written statement on their website and report their data to government.</p>	Equality Act - Gender Pay Gap Regulations (2017)
<b>Germany:</b> Gender pay gap disclosures	<p>For companies with more than 200 employees, individual employees are entitled to request information about the criteria and determination of salaries.</p> <p>Companies with more than 500 employees must publish regular reports on pay structures.</p>	Pay Transparency Act (2017)
<b>France:</b> Gender pay gap	<p>Companies must adopt the goal of eliminating the gender pay gap.</p> <p>Companies must publish a report of indicators such as pay gap percentage, gap in the rate of salary increase, gap in the rate of promotions, and number of employees in the under-represented gender within the highest-paid employees.</p>	Law on Professional Future (2018)
<b>Spain:</b> Gender pay gap	Companies with 50 or more employees must implement an equality plan and keep a record of average salaries according to gender, among other measures such as increasing the length of paternity leave.	Royal Decree- Law 6/2019
<b>United Kingdom:</b> Modern slavery	<p>Companies, LLPs and partnerships with a turnover above £36 million are required to prepare a slavery and human trafficking statement for each financial year.</p> <p>If a business fails to produce a slavery and human trafficking statement for a particular financial year, the Secretary of State may seek an injunction through the High Court requiring the organisation to comply. If the organisation fails to comply with the injunction, it will be in contempt of a court order, which is punishable by an unlimited fine.</p>	Modern Slavery Act 2015

## Proposed Legislation/Regulation that has not yet been adopted:

Approach	Requirement	Source
<b>Netherlands:</b> Gender pay gap	<p>Companies with 50 or more employees, must apply for an external certificate showing that there is equal pay between men and women doing the same work.</p> <p>Employees may request anonymised details of wages of other employees doing the same work from the company.</p>	Proposed bill on equal pay (2019)

## Asia

Table 13

## Regulation and Enacted Legislation:

Approach	Requirement	Source
<b>Australia:</b> Gender equality in the workplace	<p>All companies with 100 or more employees must report on the following specific items and any other matters specified by the minister for the reporting period:</p> <ul style="list-style-type: none"> <li>▪ Gender composition of the workforce and the governing bodies;</li> <li>▪ Remuneration gap between men and women;</li> <li>▪ Availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and working arrangements supporting employees with family or caring responsibilities; and</li> <li>▪ Consultation with employees on issues concerning gender equality in the workplace.</li> </ul>	Workplace Gender Equality Act (2012)
<b>Australia:</b> Modern slavery	<p>There are annual reporting requirements for companies with a revenue greater than AUD 100 million, in relation to the modern slavery risks in their operations and supply chains.</p> <p>These companies must also report actions taken to address such risks, including due diligence and remediation.</p>	Modern Slavery Act (2019)
<b>China:</b> Social responsibility	<p>Listed companies are required to consider the welfare, environmental protection and public interests of the community in which it operates, and to pay attention to the company's social responsibilities.</p> <p>This must be done while still maximising the benefits of its shareholders.</p>	Code of Corporate Governance for Listed Companies in China (2018)

## Governance and Gender Diversity

### North America

Table 14

#### Regulation and Enacted Legislation:

Approach	Requirement	Source
<b>Canada:</b> Diversity disclosures	Diversity disclosure requirements are not only in relation to the representation of women, but also for Aboriginal persons, persons with disabilities, and members of visible minorities.  This makes Canada the first country to require diversity disclosures beyond gender.	<u>Regulations amending the Canada Business Corporations Regulations (2019)</u>

#### Proposed Legislation/Regulation that has not yet been adopted:

Approach	Requirement	Source
<b>United States California:</b> Gender requirements	Publicly held companies headquartered in California are required to have at least one female on its board of directors.  By 31 December 2019, covered corporations must have at least one female on the board.  By 31 December 2021: <ul style="list-style-type: none"><li>▪ If a corporation has six or more directors on its board, then a minimum of three directors must be female,</li><li>▪ If a corporation has five directors on its board, then a minimum of two directors must be female, and</li><li>▪ If a corporation has four or fewer directors on its board, then a minimum of one director must be female.</li></ul>	State of California: <u>Senate Bill No. 826 (Corporate Governance/Diversity) (2019)</u>

### Europe

Table 15

#### Regulation and Enacted Legislation:

Approach	Requirement	Source
<b>Austria:</b>	Listed companies and companies with more than 1,000 employees must have a minimum of 30%	<u>Equal Participation of Women and Men on</u>

Approach	Requirement	Source
Equal gender participation	women and 30% men in the governing body if the following criteria is met: <ul style="list-style-type: none"> <li>▪ The governing body consists of at least 6 members, and</li> <li>▪ The employee base consists of at least 20% women or men.</li> </ul>	<u>Advisory Boards</u> (Gleichstellungsgesetz von Frauen und Männern im Aufsichtsrat)
<b>Belgium:</b> Gender targeting	At least one-third of the board members of a listed company must be of a different gender than the other members.	Code of Companies and Associations (2019)
<b>France:</b> Gender targeting	Listed companies and companies with more than 500 workers and turnover/total balance sheet of more than EUR 50 million during the last 3 years, are required to have at least 40% women members on their boards.	Commercial Code (Article L225-18-1) (2017)
<b>Germany:</b> Equal gender participation	Large listed companies are required to have at least 30% of women on their Supervisory Boards – note: the requirement does not apply to the board of directors (the Executive Board) in the German two-tier structure.	Equal Participation of Women and Men in the Labor Market (2017)
<b>Netherlands:</b> Gender targeting	Listed companies with more than 250 employees must have female directors for 30% of the board seats.	The Dutch Management and Supervisory Act (2012)
<b>Norway:</b> Gender targeting	On the board of directors of public limited liability companies, both genders shall be represented in the following manner: <ul style="list-style-type: none"> <li>▪ If the board has two or three members, both genders shall be represented;</li> <li>▪ If the board has four or five members, each gender shall be represented by at least two members;</li> <li>▪ If the board has six to eight members, each gender shall be represented by at least three members;</li> <li>▪ If the board has nine members, each gender shall be represented by at least four members; and</li> <li>▪ If the board has more members, each gender shall represent at least 40% of the members of the board.</li> </ul>	Public Limited Liability Act (Chapter 6 Section 11a.1) (2006)
<b>Spain:</b> Equal gender participation	Companies which are obliged to present unabridged financial statements of income, will endeavour to include a sufficient number of	Constitutional Act 3/2007 of 22 March for effective equality between women and men (Article 75) (2007)

Approach	Requirement	Source
	<p>women on their boards of directors to reach a balanced presence of women and men.</p> <p>The Corporate Governance Code issued by the Spanish Securities and Exchange Commission (CNMV) states that companies which do not follow the recommendation of having a corporate board with 40% female positions, must provide an explanation of why that is the case.</p>	

**Guidance:**

Approach	Requirement	Source
<p><b>United Kingdom:</b> Corporate governance</p>	<p>Premium listed companies<sup>10</sup> on the London Stock Exchange have reporting obligations on a comply or explain basis in relation to, among other things:</p> <ul style="list-style-type: none"> <li>▪ The gender balance of those in senior management</li> <li>▪ Their policy on diversity and inclusion</li> <li>▪ Board independence must be considered on an ongoing basis, and the chair should not remain in post beyond 9 years from being appointed to the board.</li> </ul>	<p><u>Corporate Governance Code (2018)</u></p>

Asia

Table 16

**Regulation and Enacted Legislation:**

Approach	Requirement	Source
<p><b>Taiwan:</b> Corporate governance</p>	<p>Listed companies with a market cap of NTD 5 billion or more, are required to file corporate social responsibility reports.</p>	<p><u>TWSE extended CSR reporting rules (2015)</u></p>
<p><b>India:</b> Diversity objectives</p>	<p>Listed companies and other large public limited firms must have at least one female director on the board.</p>	<p><u>Companies Act (2013)</u></p>

**Guidance:**

Approach	Requirement	Source
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<sup>10</sup> A premium listing is typically used by large firms looking to benefit from an increased profile and highly liquid market. Premium Listed companies comply with the UK's highest standards of regulation and corporate governance, as a consequence they may enjoy a lower cost of capital through greater transparency and through building investor confidence.



**Australia:**  
Diversity  
objectives

ASX listed entities are recommended (on a 'comply or explain' basis) to have a diversity policy and to set, and report against, measurable objectives for gender diversity in their annual reporting.

For companies in the ASX300, one of those objectives is recommended to be (on a 'comply or explain' basis) that 30% of the directors on the board should be of either gender.

ASX Recommendations

## **Appendix IV – Workstream Members**

The SBAI would like to thank the following members of the Responsible Investment Working Group for their participation in the production of this Toolbox Memo.

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