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**FROM SHAREHOLDER PRIMACY TO ECOLOGICAL  
ACCOUNTABILITY: A JURISPRUDENTIAL INQUIRY INTO  
CORPORATE ENVIRONMENTAL RESPONSIBILITY  
UNDER MODERN COMPANY LAW**

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**Abstract**

Corporate law is currently undergoing significant changes. Originally designed to prioritize shareholder value, corporate law is now evolving into a much broader and more committed approach to environmental responsibility as a legal obligation. The purpose of this research is to investigate the movement toward integrating environmental responsibilities into corporate governance. To this end, the analysis of various country-specific regulations will demonstrate how changes in the disclosure process, the imposition of due diligence, and the evolution of fiduciary duties in several locations (such as Europe, the United Kingdom, the United States of America, Australia, and India) relate to these changes. In this document, the term "ecological accountability" will be defined as a set of environmental obligations legally enforceable under the law and only applicable to direct environmental impacts rather than the broad ESG narrative we typically see today. The research presented here will use team production principles to explain how board members must consider climate-related exposure in their decisions while also balancing the competing interests of shareholders and stakeholders. Also, it will look at how increasing amounts of litigation (lawsuits) and soft-law norms (non-binding methods of governing) are helping to create enforceable standards for the environment. Finally, this paper will present a strategic governance roadmap for corporate boards, detailing how boards can move away from a compliance-based approach to governance and develop proactive and risk-integrated corporate structures to promote ecological accountability.

**Keywords:** Corporate, Shareholder, Environment, CSR, Company Law

## 1. Introduction

Modern-day company law has undergone significant change in recent years as it transitions away from the more traditional understanding of Shareholder Primacy in Law. The shift occurring is towards ecology and environmental-based principles of Corporate Accountability in Law. Despite the fact that Shareholder Primacy still serves as the basis for company law in many jurisdictions, like Delaware, there continue to be challenges against it in many other jurisdictions worldwide. The approach to incorporating "Enlightened Shareholder Value" into the UK Companies Act (2006) requires company directors to consider both Environmental and Community impacts when making decisions to support the success of the company.

The European Union has gone even further with the establishment of the European Union Corporate Sustainability Reporting Directive and the Corporate Sustainability Due Diligence Directive. These legal instruments establish a baseline for companies to provide standardized/assured disclosures regarding their level of sustainability using double materiality, as well as impose risk-based due diligence obligations regarding the environmental harm created within the company's value chain.

Under Australian law, companies are required to include financial disclosure of climate-related risks based on ISSB standards, and directors should consider foreseeable climate risk when making business decisions under their duty of care. Companies in India are required to spend a minimum percentage of profits on the environment and on social projects as imposed by the Companies Act of 2013. In addition, a recent trend towards climate litigation is reinforcing the legislative and regulatory momentum for companies to be accountable for their climate impacts. For example, the ruling in *Milieudefensie v. Shell* held that the Dutch courts would impose a direct obligation on companies to reduce their greenhouse gas emissions by interpreting broad standards of care in light of the obligations of international climate treaties. Overall, the development of these fiduciary duties, climate disclosure, and liability will support the promotion of environmental accountability as part of the basic standards of corporate governance.

## 2. Objective and Scope - Statement and Board of Directors imply an action plan for handling an issue with a high probability of success

The report collates fragmented global advancements in ecological accountability into actionable governance, disclosure, and litigation risk actions to provide boards with an overall

understanding of their legal obligations with respect to transforming their company from a traditional shareholder-centric approach toward adopting ecological accountability. This analysis will utilize many primary sources, articles, etc., that address the evolving trend of the jurisprudential transition of corporate legal responsibility from shareholder primacy to ecological accountability as part of the strategic objective stated herein.

### **3. Why is it important now? The multi-track transition away from shareholder primacy has begun now**

Through requirements for disclosure, fiduciary duties evolving, and litigation working together, ecological accountability has been embedded into a corporation's core functions. Fiduciary duties are evolving or transitioning rather than being replaced; the shift to ecological accountability is primarily made by reallocating current requirements upon directors, especially duties of care and diligence, so that they take into account foreseeable environmental and climate risks. The principal regulatory mechanism for enforcing transparency in this area has been and will continue to be through mandatory disclosures (e.g. the European Union's Corporate Sustainability Reporting Directive (CSRD), Australia adopting sustainability disclosure standards aligned with ISSB and California's climate disclosure laws), and globally there is a trend toward mandatory disclosure as a way to force corporations to be transparent about their environmental impact. In addition, there is an increase in strategic litigation that creates new substantive obligations, as case law has transformed "soft law" norms into binding "hard law" obligations for corporations.

### **4. What is Ecological Accountability? Legally enforceable obligations beyond ESG language**

Ecological Accountability is an umbrella term that covers a wide range of legal issues concerning how corporations are held accountable for the impact their activities have on the environment, in contrast to the more general definitions used by existing environmental, social, or governance frameworks. It focuses narrowly on legally enforceable obligations and direct impacts associated with the environment, nature, and climate. Ecological Accountability includes the legal responsibilities and potential liabilities that every corporation must meet in terms of carrying out all of its activities without in any way causing damage or harm to the environment.

The three main elements of this arrangement are: 1. Disclosure requirements - requiring organizations (for example, the EU's directive on corporate sustainability compliance, also called "ECSD," or the UK Companies Act Law - both of which will require all businesses to publish their environmental performance); 2. Securities laws - including the duty to maximize shareholder value and to incorporate and utilize environmentally responsible practices into a corporation's activities; and 3. Potential legal exposure for corporations if proven to have intentionally generated or engaged in an unsafe manner.

### **5. Legal Foundation - The Legal Basis for the Team Production Theory**

This view of corporate structure (team production) recognized that corporations are composed of multiple members of a team whose contributions to the team are reflected in the way they operate together as part of the organization/team, including shareholders, employees, suppliers, and community members. Because the corporation is a joint venture, the board of directors exists as a moderator to weigh the competing interests and maintain the stability of the organization's overall value and success by balancing the competing interests of all the teams, while not limiting the rights of individual shareholders.

The theory supports the newly emerging ecological accountabilities by establishing a clear legal precedent for board members to exercise their authority and use their discretion to take environmental impact(s) (long-term, non-shareholder) into consideration in their decision-making processes.

### **6. Directors' Fiduciary Responsibilities Are Changing - What do Board Members Need to Prove to Maintain Protection?**

A director must meet their fiduciary duty (the duty of a director) by behaving in a way that is consistent with doing what is best for the corporation to which they are a director. In today's world, fulfilling this obligation goes beyond merely meeting short-term financial objectives and includes a comprehensive approach to identifying, evaluating, and addressing foreseeable environmental and climate risks, as well as other conventional business metrics (e.g., profitability, competitive position, and efficiency). The philosophy underlying corporate sustainability has evolved to incorporate a view of sustainability as playing an important role in creating long-term value and managing risk. Different jurisdictions are at different stages of this transition. Some countries have placed legal obligations in written statutory law or have

imposed a duty to disclose certain information through written statutory law; others have used court decisions and emerging litigation trends as a means of establishing accountability.

## **7. Legal Background of Duty of Care in Delaware - Duty of Oversight and 102(b)(7) protection.**

Delaware (and the US in general) remains the most active supporter and protector of "shareholder primacy." However, the "business judgment rule" assumes that boards of directors carry out their responsibilities with due care, by exercising business judgment in the best interests of the company, by overseeing the affairs of the corporation under the care doctrine established by "Caremark." Courts are beginning to view the duty of care imposed on corporate directors through the lens of oversight concerns, particularly with respect to "mission-critical" risks, although relatively few succeed in proving a breach of the duty. There is a compelling argument that, at this point, many companies are starting to consider climate change as a "mission-critical" risk.

The legal, procedural, and substantive duties of a company's board are governed by an "enlightened shareholder value" model, as established by the UK Companies Act 2006. This means that directors must act in a manner that is in good faith and that they believe will promote the success of the company. When fulfilling this function, directors are required to also consider certain factors, in particular "the social and environmental impacts of the company's operations". The act creates an obligation for directors to document their consideration of environmental matters within the company's operations before they make any operational decision.

In Australia, there has been an evolution in corporate law through interpretation rather than modification, which has transformed directors' duties of care and diligence under section 180 of the Corporations Act 2001 into a widely accepted and consistent interpretation that directors' duty of care and diligence requires them to consider foreseeable and material climate-related risks.

The EU has adopted a regulatory approach to governance via regulation with respect to companies operating in the EU [via the Corporate Sustainability Due Diligence Directive (CSDD)], as of the 2026 revision of the CSDD, which requires companies operating in the EU to establish policies and risk management systems that are structured to incorporate due

diligence requirements into their business practices to manage the environmental impacts of their operations.

India's obligatory CSR framework, as stipulated under Section 135 of the Companies Act 2013, distinguishes its model. Under this rule, specific companies have to utilize a percentage of their profits for particular CSR purposes, which can include efforts directed at environmental sustainability.

## **8. Mandatory Reporting Regimes - the Bar for Assurance and Comparability**

Assured, standardized disclosures form the basis of evidence for markets, regulators, and the judiciary.

### **8.1 EU CSRD /ESRS twofold sustainability materiality and assurance**

Under the CSRD, there is a wide-ranging, uniform sustainability reporting requirement imposed on in-scope large companies, listed SMEs, and non-EU companies conducting substantial activity within the EU. All entities subject to this requirement must comply with the extensive ESRS, which adopts the dual materiality principle. The CSRD is effective, with the first phase having commenced with the first wave of companies for the financial year 2024 (reporting in 2025).

### **8.2 UK SRS + TCFD/SDR/FCA data integration of anti-greenwashing initiatives**

As of March 2026, the UK will have developed an expanding ecosystem of mandatory climate and sustainability disclosure. As of late that same year, the UK Sustainability Reporting Standard (UK SRS) was adopted, which is aligned to the ISSB global guidance.

Australia has enacted an extensive, legally mandated climate reporting framework. Changes to the Corporations Act were made by way of legislation passed in September 2024 to require climate-related financial reports in line with the Australian Accounting Standards Board (AASB)'s developed standards.

The open status of the U.S. SEC's (Securities and Exchange Commission) climate disclosure rule lends uncertainty to the ongoing litigation challenges, therefore putting practical obligations on states and markets instead of a rule that may ultimately remove the need for SEC-issued rules. The SEC has indicated through records from March 27, 2025, that it has

voted to cease the defense of its climate disclosure rules during the ongoing litigation, resulting in this ambiguity. California has enacted a state-mandated climate disclosure requirement through SB 253/SB 261.

In India, the Business Responsibility and Sustainability Report (BRSR) is an innovative, detailed report from the SEBI (Securities and Exchange Board of India) that introduces an indicator-based reporting framework.

**Comparison Table: Scope, assurance, timing, penalties across 5 regimes**

Regime	Entities Covered	First Reporting Year	Assurance Level/Timeline	Supervision
<b>EU CSRD</b>	Large + listed SMEs + certain non-EU	2024 FY	Limited → Reasonable	National oversight
<b>UK SRS/SDR</b>	Listed/large cos, asset mgrs.	2025 start (phased)	Voluntary → Assurance	FCA/CMA/ASA
<b>Australia</b>	Group 1 (from 2025), others phased out	2025 FY	To be reasonable by 2030	ASIC RG 280 powers
<b>US SEC</b>	Adopted 2024; defense ceased 2025	N/A	N/A	N/A
<b>California SB 253/261</b>	\$1B/\$500M rev doing business.	2026/2027	Attestation Scope 1-2; TBD	CARB; SB 261 voluntary pending court
<b>India BRSR</b>	Top listed cos (phased)	2022+	BRSR Core assurance (phased)	SEBI

Takeaway: A simplified crosswalk will lower redundancy and litigation risks. The build of a unified data architecture that meets multiple jurisdictions, so there are no conflicting public records.

**9. EU Due Diligence & Taxonomy - Process Responsibilities & Activity**

**Definitions that affect Capital**

**9.1 CSDDD Scope: Dates & Penalties – 3% of Global Turnover**

The Corporate Sustainability Due Diligence Directive (CSDDD) created a corporate responsibility for conducting Due Diligence regarding Human Rights and the Environment. It is now fully adopted after being amended by the "Omnibus I" Directive on 2/26/2026. The criteria for applicability were significantly increased, now applying to EU-based companies

with more than 5,000 employees & global revenue in excess of €1.5 billion, and to non-EU-based companies with global revenues greater than €1.5 billion with EU-sourced revenue.

### 9.2 Enforcement Structure and Risk of National Fragmentation

The framework of enforcement for the sustainability Regime in the EU is a co-mingled model of public supervision and private action as a mechanism for enforcement. While there are maximum caps on administrative fines of 3% of a company’s Global Revenue, the final version of the CSDDD removed the common standard for civil liability across all member countries of the EU, such that victims’ opportunities to recover damages will depend solely on the relevant law in each member jurisdiction.

The EU Taxonomy regulation creates a classification system to define a variety of environmentally sustainable economic activities. An economic activity can be considered "Taxonomy-aligned" as long as it meets all three criteria; it must: a) make a profound impact on at least one of the EU's six corresponding Environmental Objectives; b) "Do No Significant Harm" (DNSH) to the remaining five Environmental Objectives; and c) meet minimum requirements for social safeguards.

### 9.3 Litigation & enforcement options: where pressing for accountability works

Soft norms become hard liabilities because of courts and regulators applying them; therefore, being rigid with the process is the most effective way to get protected.

#### Landmark cases table: what has changed & how to proceed.

Case	Jurisdiction	Holding/Status	Corporate Duty Signal	Board Response Priority
<b>Milliedefensie V. Shell</b>	NL	Duty affirmed; target overturned (2024)	Duty of care re climate	Transition plan integrity
<b>Vedanta V. Lungowe</b>	UKSC (2019)	Parent duty of care possible	Group policy = assumed responsibility	Policy-to-control alignment
<b>ClientEarth V. Shell</b>	UK (2023)	Derivative action refused	High process bar	Documented s.172/s.174 process
<b>Vanguard greenwashing</b>	AU (2024)	Regulator court wins	Claims must match data	Substantiation protocol

The key point here is that, while not every plaintiff successfully sued a company, there has still been some meaningful impact of these cases on companies’ obligations to monitor and oversee

the risks presented by climate change.

In the United States, especially under Delaware law, plaintiffs have increasingly framed the failure of boards to monitor "mission-critical" risks related to climate change as a violation of a standard known as "Caremark."<sup>15</sup> While the standard for stating a claim is generally quite high, the Delaware courts have recently shown a willingness to allow such claims to proceed beyond the initial motion to dismiss stage, based on allegations of very specific facts that would establish that there is a total failure by the Board to adequately oversee a risk that is known to be critical to the company.

### **10. Surge in Enforcements Against Greenwashing - ACCC/ASIC; CMA/ASA; FTC; FCA**

Liability related to greenwashing is a fast-becoming common area for enforcement action, as corporations are increasingly held liable for making false or misleading claims about how well they are doing in relation to the environment or climate. Enforcement agencies (such as ACCC and ASIC in Australia, CMA and ASA in the UK, and FTC in the US) are using significant amounts of resources to increase their actions against corporations engaging in greenwashing behavior.

The UK Supreme Court in *Vedanta v Lungowe* has provided clarification on the principles of parent company liability for environmental harms caused by their subsidiaries. A parent company can be found to owe a duty of care for the actions of its subsidiaries, provided it can demonstrate that its own actions meet the definitions for establishing such a duty. The parent company's actions must demonstrate that it has issued environmental and safety guidelines on a national scale and has taken measures to supervise and manage the activities of its subsidiaries.

The successful operationalisation of ecologically responsible, sustainable corporate behaviour will depend upon all aspects of internal corporate governance. A board will create a dedicated committee to develop a company's sustainability strategy (e.g., Sustainability Committee or expanded Risk Committee) using a formal written charter. Studies indicate that there is a positive relationship between dedicated sustainability committees and the quality of non-financial disclosure, as well as a reduced incidence of superficial or abnormal reporting.

## **11. Integrating ERM, climate scenarios, and risk appetite**

Consider climate change along with nature-related decline not only as an externally driven corporate responsibility issue, but also as an anticipated and important economic risk. Integrate these types of risks into ERM systems, which should include the use of scenario analysis, stress testing, and risk appetite statements that have quantifiable numbers.

### **11.1 Establish a framework for establishing picture frames of documented control and assurance**

Create the internal controls, systems for collecting data, and processes for reporting required to meet emerging mandatory disclosure requirements. This may require a gap analysis against these standards, followed by planning for the phased-in requirement for independent assurance from third parties on sustainability reporting.

### **11.2 Incentives: link more than 20 percent of long-term incentives (LTI) to verified climate key performance indicators (KPIs)**

To establish accountability internally and show stakeholders your commitment to their investment in your company, tie a meaningful share of executive compensation (specifically, long-term incentives) to attaining specific, measurable, and independently verified climate performance goals.

## **12. From Soft to Hard Law - The Role of Norms Setting the Standard of Care**

There are numerous examples of soft-law instruments, including but not limited to the United Nations Guiding Principles on Business and Human Rights, OECD Guidelines for Multinational Enterprises, the Paris Accord, and IPCC scientific reports that are significantly and continuously impacting, through litigation efforts, corporate ecological accountability. Increasingly, courts are utilizing these non-binding international norms not as formal sources of law, but rather as overriding interpretive tools to give specific meaning to the wide breadth of existing domestic legal standards.

### **Emerging Liability Theories - Mitigation First Where the Law is Shifting**

Five developing theories will define current liability; each has specific methods of control.

Theory	Legal Basis	Jurisdictions	Status/Trajectory	Key Mitigation
<b>Parent Duty of Care</b>	Negligence (Vedanta)	UK/EU	Established	Align policy/control; audit subsidiaries
<b>Scope 3 Liability</b>	Tort duty (Shell)	NL/EU	Evolving	Scope 3 plan; product-use risk management
<b>Vigilance/Due Diligence</b>	Statute (FR, CSDDD)	EU	Expanding	UNGP-aligned HREDD/EREDD
<b>Greenwashing</b>	Consumer/curities laws	US/UK/AU/EU	High activity	Substantiation workflow; claim audits
<b>Caremark Climate Oversight</b>	Duty of loyalty	US (DE)	Narrow but growing	Board systems; red-flag logs

*Summary:* More than ever, liability is extending past the direct control a company has to include all of the value chain impacts related to their products, as well as what they are producing for the public at large. Effective risk mitigation is achieved through thorough alignment between how a company presents itself publicly, how they oversee their company operations, and what can be controlled.

### **13. Strategic Playbook: 12 - 18 Month Board Agenda: Transition from Compliance > Defensibility**

As they work through the complex and rapidly changing legal landscape of ecological accountability, corporate boards and their legal advisors need to take a proactive and integrated approach to this issue.

#### **Q1-Q2: Governance and Risk-Based**

Assign Responsibility at the Board Level

Assign and formally communicate responsibility to the Board of Directors or a dedicated Board Committee to oversee the environmental and climate risk areas of the company.

Incorporate climate/environmental risks into the Enterprise Risk Management (ERM) framework across all risk categories.

#### **Q3-Q4: Proactive Data Control and Assurance**

Proactive creation and structure of the internal controls, data collection systems, and reporting systems necessary for compliance with the new and emerging mandatory disclosure systems.

Ensure that all communications made public on behalf of the Corporation are accurate, specific, and have been substantiated with verifiable evidence.

### **Year 2: Credibility of completion timelines and conducting due diligence throughout the value chain**

Build out detailed, scientifically supported transition plans for short (1-2 year), medium (2-5 year), and longer-term (5+ years) actions. Establish a risk-based process for conducting Due Diligence pursuant to the Corporate Sustainability Due Diligence Directive and the UN Guiding Principles and link this process to the short-term, medium-term, and longer-term transition plans.

What can be learned from recent cases that caught people off guard? Motherhood is no excuse for bad service. Weak processes, lack of limits, and lack of control are becoming increasingly problematic for the courts, particularly where no evidence exists to prove the issue. An excellent example of this can be found in *Client Earth V Shell*; this case goes far beyond just showing how difficult it is to bring a successful derivative claim to prove the plaintiff's case. By reiterating that section 172's duty is subjective and requires a prima facie case to be put forward together with appropriate admissible expert evidence by the claimant, this case provides valuable guidance on the difficulty of achieving such a result.

Similar themes can be found in the *Milieudefensie Appeals Returning Point*. In this case, the Hague Court of Appeal held that the courts do not have a role in determining reasonable operational targets - specifically relating to Scope F emissions. In addition, the commitment to set a general parent company to establish a policy for health or environment, and then failing to ensure either commitment or risk resulted in direct liability under the Company's Parent Policy Trap. Finally, based upon past developments regarding corporate liability, it is likely to see an increased integration of ecological responsibility within both commercial and other areas of law.

### **14. What do future developments look like? - Policy recommendations**

The future path of corporate law is moving towards an ever greater and closer integration of ecological responsibility into all areas of law; however, there will be significant variations in the timeframe and methodologies in doing this across different jurisdictions.

Anticipated convergence around global disclosure baselines (e.g., ISSB standards) for investor-focused reporting will occur, along with increasing complexity in companies' navigation

through stakeholder-focused regimes (such as EU CSRD). International norms will increasingly be treated as legal standards of care by courts and regulators, and will also become de facto “hard law”. There will be a shift in focus from whether a company has a climate commitment to the credibility and execution of its corporate transition plan.

Identified research gaps include the need for more information on: comprehensive empirical studies of the actual effects of enforcement on new regulations; economic modeling of how broader duties are affected by enforcement actions; and a comparative analysis of the transposition of CSDDD across EU Member States.

## *Appendices*

### **Glossary: Core terms**

- 1. Ecological Accountability:** A comprehensive jurisprudential concept focusing on legally enforceable duties and direct environmental harms, distinct from general ESG
- 2. Double Materiality:** Disclosing both how sustainability issues affect the company and how the company impacts society and the environment
- 3. DNSH:** "Do No Significant Harm" to environmental objectives

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