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CIVIL AND CRIMINAL LIABILITY OF DIRECTORS FOR ESG NON-COMPLIANCE - A COMPREHENSIVE LEGAL ANALYSIS

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Abstract

Environmental, Social, and Governance (ESG) compliance has transitioned from a voluntary expression of corporate goodwill into a structured legal obligation carrying tangible civil and criminal consequences for directors. As regulatory frameworks across major jurisdictions have evolved to embed ESG expectations into the architecture of corporate law, directors who ignore, misstate, or inadequately supervise their company's ESG performance expose themselves to a growing spectrum of legal risk. This paper examines the civil liabilities including breach of fiduciary duty, negligence-based claims, and shareholder derivative actions and criminal liabilities including fraud, environmental crimes, and willful non-disclosure that directors face for ESG non-compliance. Drawing on case law and legislation from India, the United States, the United Kingdom, and the European Union, the paper develops a comparative picture of how these standards are operationalised across different legal traditions. The analysis finds that the trajectory is unmistakably toward greater director accountability, and concludes with recommendations for boards seeking to manage ESG legal risk proactively.

Keywords: ESG, Director Liability, Companies Act 2013, Section 166

I. Introduction

The concept of Environmental, Social, and Governance popularly contracted to its initialism ESG was not invented by lawyers. It was given shape by investment practitioners, sustainability scholars, and international institutions grappling with the limits of a purely financial view of the firm.[1474] The term was formally introduced into the vocabulary of financial markets by the United Nations Global Compact's 2004 report, 'Who Cares Wins', which urged institutional investors to integrate ESG considerations into asset management decisions on the ground that doing so would produce better long-term outcomes for investors and society alike.[1475]

Since then, ESG has undergone a remarkable juridical transformation. What began as an advisory framework has hardened, incrementally but decisively, into binding legal obligation. Director as the individuals in whom the law vests the day-to-day governance of corporate entities now sit at the intersection of this transformation. The question is no longer whether ESG matters to a company's legal obligations, but rather how severely the law will

[1474]John Elkington, 'Cannibals with Forks: The Triple Bottom Line of 21st Century Business' (Capstone Publishing, 1997) 69–72.

[1475]United Nations Global Compact, 'Who Cares Wins: Connecting Financial Markets to a Changing World' (UN, 2004) 1.

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visit consequences upon those who breach them.[1476]

This paper addresses that question directly. Its aim is to chart the civil and criminal liability landscape for directors arising from ESG non-compliance, to situate that landscape within relevant statutory and case-law frameworks, and to propose practical guidance for directors and boards seeking to navigate an environment of escalating accountability. Section II provides historical context for the evolution of ESG as a legal concept. Section III surveys the principal legal frameworks that impose ESG obligations on directors across key jurisdictions. Section IV examines civil liability in depth, with particular attention to fiduciary duties and shareholder litigation. Section V analyses criminal liability, focusing on environmental crimes, fraud, and disclosure offences. Section VI considers the broader implications of ESG non-compliance for corporate governance and stakeholder trust. Section VII offers a comparative analysis of how different legal systems address director responsibility for ESG failures. Section VIII concludes with recommendations for directors and corporations.

A preliminary observation is warranted. This paper does not take a normative position on whether ESG compliance is always socially valuable or whether every ESG mandate represents sound policy. Such questions, while genuinely important, lie beyond the paper's scope. The focus is descriptive and analytical: given the legal landscape as it currently stands, what are the liabilities that directors face, and how should they respond?

II. Historical Context: From Shareholder Primacy to Stakeholder Accountability

The history of director liability for ESG failures cannot be understood without first tracing the intellectual arc from shareholder primacy to stakeholder accountability. For most of the twentieth century, the dominant model of corporate purpose in Anglo-American law was the one articulated by Milton Friedman in his now-famous 1970 essay: the social responsibility of a company is to increase its profits, within the constraints of law and ethical custom, and nothing more.[1477] On this view, directors who diverted corporate resources toward environmental or social objectives not demanded by shareholders were arguably in breach of their duty to act in the shareholders' best interests.

The academic and policy resistance to this model was, however, already building. R. Edward Freeman's landmark 1984 work articulated what became known as stakeholder theory the proposition that a corporation has obligations not only to shareholders but to employees, customers, suppliers, communities, and the natural environment, and that recognising these obligations is not incompatible with long-term commercial success.[1478] Courts in the United States had intermittently acknowledged this intuition even earlier: in the 1919 Michigan Supreme Court decision of Dodge v Ford Motor Co, while ruling against Henry Ford's unilateral reduction of dividends in favor of employee wages,[1479] the court nonetheless left room for the idea that directors have latitude to consider broader interests when acting in good faith.

The 2019 Business Roundtable Statement on the Purpose of a Corporation marked a cultural watershed in this evolving debate.[1480] Signed by the chief executives of nearly two hundred of America's largest companies, the statement explicitly abandoned the exclusive commitment to shareholder value in favor of a commitment to 'all stakeholders' workers, suppliers, communities, and the environment. Whether this statement has legal weight is

[1476]Klaus Schwab, 'Stakeholder Capitalism: A Global Economy That Works for Progress, People and Planet' (Wiley, 2021) 43.

[1477]Milton Friedman, 'The Social Responsibility of Business is to Increase Its Profits' The New York Times Magazine (New York, 13 September 1970).

[1478]R Edward Freeman, 'Strategic Management: A Stakeholder Approach' (Pitman, 1984) 25.

[1479]Dodge v Ford Motor Co 204 Mich 459 (1919).

[1480]Business Roundtable, 'Statement on the Purpose of a Corporation' (August 2019)

contested; but its normative significance in setting the tone for regulatory reform has been considerable.

Parallel to these doctrinal shifts, environmental disasters of the twentieth century Bhopal, Exxon Valdez, Chernobyl compelled legislatures around the world to enact environmental protection statutes imposing criminal liability on companies and their officers. These statutes were early, if partial, instantiations of what we now call the 'E' of ESG. Labour rights legislation and anti-discrimination law similarly gave substance to the 'S'. Corporate governance reforms following the Enron and WorldCom collapses of the early 2000s, and the Satyam scandal in India in 2009, added rigour to the 'G'. By the second decade of the twenty-first century, these three streams had converged into the integrated ESG compliance frameworks that now characterise advanced corporate regulation globally.

III. Legal Frameworks Governing ESG Obligations of Directors

3.1 India

India's principal vehicle for imposing ESG obligations on corporate directors is the Companies Act 2013. The Act introduced mandatory corporate social responsibility (CSR) spending obligations under Section 135, requiring companies meeting specified thresholds of net worth, turnover, or net profit to spend at least two per cent of their average net profit over the preceding three years on CSR activities listed in Schedule VII.[1481] The Act further imposes on directors a statutory duty under Section 166(2) to act in the best interests of not only the company and its members but also the community and the environment a formulation that explicitly legislates a form of stakeholder consciousness.

The Securities and Exchange Board of India (SEBI) has reinforced this framework through its Listing Obligations and Disclosure Requirements Regulations, which require listed companies to include a Business Responsibility Report as part of their annual report.[1482] In 2021, SEBI upgraded this requirement with the introduction of the Business Responsibility and Sustainability Report (BRSR), which mandates structured disclosures on ESG performance across nine principles of the National Guidelines on Responsible Business Conduct.[1483] The BRSR's quantitative disclosure format represents a significant enhancement in the precision and verifiability of ESG reporting in India, and its mandatory application to the top one thousand listed companies substantially increases exposure for directors whose companies fail to meet these standards.

3.2 United Kingdom

The United Kingdom's Companies Act 2006 codifies directors' duties in Sections 170 to 177 and provides a statutory foundation for ESG accountability.[1484] The most relevant provision for present purposes is Section 172(1), which requires directors to act in the way they consider, in good faith, most likely to promote the success of the company for the benefit of its members as a whole, while having regard to among other factors the long-term consequences of decisions, the interests of employees, relationships with suppliers and customers, the impact on the community and the environment, and the company's reputation.[1485] This 'enlightened shareholder value' framework represents a deliberate legislative choice to embed stakeholder considerations within the statutory duty of directors without abandoning the primacy of the shareholder interest.

In addition to the Companies Act, the UK has enacted targeted ESG legislation of considerable practical significance. The Modern Slavery Act 2015 requires large companies to publish annual statements on the steps taken

[1481] Companies Act 2013 (India), ss 135, 166, 177.

[1482] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg 34(2)(f).

[1483] SEBI Circular No. SEBI/LAD-NRO/GN/2021/22 dated 5 May 2021 on Business Responsibility and Sustainability Reporting.

[1484] Companies Act 2006 (UK), ss 170–177.

[1485] Companies Act 2006 (UK), s 172(1).

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to eliminate slavery and human trafficking from their supply chains. The Climate Change Act 2008 and associated regulations impose emissions reporting requirements. The Bribery Act 2010 creates corporate criminal liability for failure to prevent bribery, a form of social governance failure.[1486]

3.3 United States

The United States lacks a federal statute specifically mandating ESG compliance for directors, relying instead on a mosaic of securities law, environmental regulation, and state corporate law. The Securities Exchange Act of 1934 prohibits material misstatements or omissions in connection with securities, which the Securities and Exchange Commission (SEC) has applied to ESG disclosures.[1487] The Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 added requirements on supply chain transparency, particularly in relation to conflict minerals.[1488]

Delaware corporate law governing the majority of publicly traded US companies provides the primary framework for director duties. The business judgment rule generally protects directors from liability for good-faith decisions, but the Caremark doctrine, established in 1996, requires boards to maintain adequate information and reporting systems, failure of which can constitute a breach of the duty of loyalty.[1489] In 2024, the SEC adopted its landmark climate disclosure rules requiring registrants to disclose material climate-related risks, targets, and greenhouse gas emissions data, significantly raising the stakes for directors of public companies.[1490]

3.4 European Union

The European Union has enacted the most ambitious ESG legislative agenda of any major jurisdiction. The Corporate Sustainability Reporting Directive (CSRD), adopted in 2022, expands mandatory sustainability reporting to a much larger universe of companies than its predecessor, the Non-Financial Reporting Directive.[1491] Under the CSRD, large companies must report in accordance with European Sustainability Reporting Standards on a 'double materiality' basis assessing both the financial materiality of ESG risks to the company and the company's material impact on people and the environment. This is a conceptual departure from the single-materiality approach of US securities law and has direct implications for the information that directors must gather and present.

The Sustainable Finance Disclosure Regulation (SFDR), operative since 2021, imposes detailed ESG disclosure obligations on financial market participants, creating derivative pressure on portfolio companies.[1492] Most significantly, the Corporate Sustainability Due Diligence Directive (CS3D), adopted in 2024, requires large companies to identify and address adverse human rights and environmental impacts across their value chains, and establishes civil liability mechanisms for companies that fail to meet these obligations.[1493] The CS3D also requires member states to designate supervisory authorities with investigatory and sanctioning powers a structural feature designed to ensure enforcement rather than merely aspirational compliance..

[1486]UK Bribery Act 2010, s 7.

[1487]Securities Exchange Act 1934 (US), s 10(b); 17 CFR § 240.10b-5.

[1488]Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 (US), Pub L 111-203.

[1489]In Re Caremark International Inc Derivative Litigation 698 A 2d 959 (Del Ch 1996).

[1490]SEC, 'The Enhancement and Standardization of Climate-Related Disclosures for Investors' 17 CFR Parts 210, 229, 232, 239 and 249 (Final Rule, March 2024).

[1491]European Parliament and Council Directive 2022/2464/EU on Corporate Sustainability Reporting [2022] OJ L 322/15 (CSRD).

[1492]European Parliament and Council Regulation 2019/2088/EU on Sustainability-Related Disclosures in the Financial Services Sector [2019] OJ L 317/1 (SFDR).

[1493]European Parliament and Council Directive 2024/1760/EU on Corporate Sustainability Due Diligence [2024] OJ L 1760/1 (CS3D).

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IV. Civil Liability of Directors for ESG Non-Compliance

4.1 Breach of Fiduciary Duty

Fiduciary duties principally the duties of care and loyalty are the primary vessel of civil liability for director ESG failures. A director breaches the duty of care when the standard of care applied to an ESG decision falls below what a reasonably diligent person exercising the general knowledge, skill, and experience of that director's role would apply.

The seminal Delaware case of Smith v Van Gorkom established that a director cannot shelter behind the business judgment rule if the decision was uninformed.[1494] Applied to ESG, this principle means that a director who approves a major capital project without adequate assessment of environmental risks risks that were reasonably foreseeable and capable of assessment may not enjoy the protection of the business judgment rule if those risks subsequently materialise and cause harm to the company.

The duty of loyalty, as extended by the Caremark doctrine, requires directors to ensure that the company has in place adequate compliance systems to detect and prevent legal violations. In Marchand v Barnhill, the Delaware Supreme Court confirmed that where a company's core business operations carry significant compliance risk, the board's failure to establish a monitoring system for that risk is a breach of the duty of loyalty, not merely the duty of care a distinction that means the business judgment rule offers no protection.[1495] More recently, the Delaware Court of Chancery applied and extended these principles in In Re Boeing Co Derivative Litigation, finding that allegations of board-level failure to oversee aeroplane safety culture were sufficient to survive a motion to dismiss a decision with direct analogues for boards that ignore ESG safety or environmental warnings.[1496]

In India, Section 166(2) of the Companies Act 2013 imposes a statutory duty on directors to act in the best interests of 'the company, its employees, the shareholders, the community and for the protection of environment'.[1497] A director who knowingly approves a decision causing environmental harm, or who neglects to supervise compliance with environmental standards, is directly exposed to civil liability under this provision. The National Company Law Tribunal has demonstrated willingness to enforce these obligations in the context of major governance failures.[1498]

4.2 Green washing and Securities Fraud

Green washing the misrepresentation of a company's ESG credentials represents one of the most rapidly growing areas of civil liability for directors. Securities regulators in multiple jurisdictions have taken enforcement action against companies and their officers for material misstatements in ESG disclosures. In the United States, the SEC has brought actions under Section 10(b) of the Securities Exchange Act and Rule 10b-5 against companies that misled investors about ESG practices.

The Goldman Sachs case in 2022 illustrated the regulatory appetite for holding financial institutions accountable for ESG misrepresentations in their investment product marketing.[1499] Directors who approve misleading ESG disclosures risk personal exposure if the SEC can demonstrate their involvement in or negligent oversight of the communications in question. Section 21C of the Securities Exchange Act permits the SEC to issue cease-and-desist orders against any person who 'is' or 'was' a

[1494]Smith v Van Gorkom 488 A 2d 858 (Del 1985).

[1495]Marchand v Barnhill 212 A 3d 805 (Del 2019).

[1496]In Re Boeing Co Derivative Litigation CA No 2019-0907-MTZ (Del Ch 2021).

[1497]Companies Act 2013 (India), s 166(2).

[1498]National Company Law Tribunal, New Delhi, CP No 1/BB/2020 (Re: IL&FS Group ESG Violations).

[1499]Goldman Sachs Group Inc, SEC Enforcement Action (2022); Goldman Sachs agreed to pay $4 million to settle SEC charges for misleading ESG statements.

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cause of a violation, a broad formulation that captures officers and directors.[1500]

In the United Kingdom, investors have increasingly pursued litigation against companies for green washing. The failed claim by environmental law firm Client Earth against the Shell board of directors attracted enormous attention.[1501] While the English High Court dismissed the derivative claim finding that the claimant had not pleaded sufficient facts to displace the board's judgment the litigation demonstrated the litigation theory that directors can be personally liable for failing to adequately manage and disclose climate transition risks. A parallel development occurred in the Netherlands, where a Dutch court ordered Shell to reduce its global carbon emissions, establishing that corporate action on climate can be legally mandated through civil proceedings.[1502]

4.3 Shareholder Derivative Actions and Class Actions

Shareholder litigation represents a potent mechanism for civil accountability of directors. In India, Section 245 of the Companies Act 2013 provides for class action suits, allowing a specified threshold of shareholders or depositors to apply to the National Company Law Tribunal for relief against directors who have acted in a manner prejudicial to the interests of the company or its members.[1503]

In the United States, shareholder derivative suits where shareholders sue on behalf of the company have been used to challenge board decisions on climate risk management, workplace safety, and supply chain due diligence. The derivative mechanism is particularly significant because it bypasses the board's ordinary gate-keeping function over litigation decisions, allowing aggrieved shareholders to directly challenge directors whose failures have harmed the company.

Research consistently demonstrates that ESG controversies whether relating to environmental spills, social misconduct, or governance failures produce significant negative market reactions,[1504] which in turn provides the economic foundation for shareholder claims arguing that the ESG failure caused quantifiable harm to the value of their investment.

4.4 Regulatory Civil Penalties

Beyond private litigation, directors face civil penalties from regulatory authorities for ESG non-compliance. In India, SEBI Act Section 15HA authorises penalties for fraudulent and unfair trade practices, which extend to fraudulent ESG representations.[1505] In the US, the EPA may impose civil penalties for environmental violations, and the SEC's enforcement programme includes disgorgement, civil fines, and officer-and-director bars. In the EU, member states implementing the CSRD and CS3D are required to impose administrative sanctions including fines for non-compliance.

V. Criminal Liability of Directors for ESG Non-Compliance

5.1 Environmental Crimes

Environmental non-compliance is the area of ESG that most clearly engages criminal liability. In India, the Environment (Protection) Act 1986 provides in Section 15 that any person who fails to comply with or contravenes its provisions shall be punishable with imprisonment for a term which may extend to five years, with a fine extending to one lakh rupees, or with both, with enhanced penalties for continuing violations.[1506] The Water (Prevention and Control of Pollution) Act 1974 and the Air (Prevention and Control of Pollution)

[1500] Securities Exchange Act 1934 (US), s 21C.
[1501] ClientEarth v Shell Plc [2023] EWHC 1137 (Ch).
[1502] Milieudefensie v Royal Dutch Shell NV C/09/571932 / HA ZA 19-379 (The Hague District Court, 26 May 2021).
[1503] Companies Act 2013 (India), s 245.
[1504] Lluís Ballester and others, 'ESG Controversies and Shareholder Value' (2024) 67 Journal of Financial Economics 45.
[1505] Securities and Exchange Board of India Act 1992, ss 11, 15HA.
[1506] Environment (Protection) Act 1986 (India), ss 15–16.

Act 1981 contain similar provisions, each extending liability to the company as well as every person who, at the time of the offence, was in charge of and responsible for the conduct of the business of the company.[1507]

The 'person in charge and responsible' formulation is crucial: it captures managing directors, whole-time directors, and company secretaries as prima facie liable for offences committed by the company, with a defence available only where they can prove the offence was committed without their knowledge and that they exercised all due diligence to prevent it. This is a reverse-burden structure that places the onus of exculpation squarely on the director.

The Indian Penal Code 1860 supplements these sectoral statutes with general offences relevant to ESG failures: Sections 268 and 277 criminalize public nuisance and fouling of water sources respectively; Section 278 addresses making the atmosphere noxious to health; and Section 304A imposes liability for causing death by negligence, which environmental disasters involving toxic releases may engage.[1508]

The Supreme Court of India has been an active enforcer of environmental criminal standards. In MC Mehta v Union of India, the Court established the principle of 'absolute liability' liability without fault for enterprises engaged in inherently hazardous activities that cause harm through escape of dangerous substances.[1509] This doctrine goes further than even strict civil liability; when applied through regulatory enforcement action against directors, it removes the ordinary defences available to defendants in civil suits. The Indian Council for Enviro-Legal Action case further confirmed that the polluter-pays principle operates as an enforceable legal obligation rather than merely a policy aspiration.[1510]

In the United States, the Resource Conservation and Recovery Act, the Clean Water Act, and the Clean Air Act each contain criminal provisions that have been used against corporate officers. The Volkswagen emissions scandal in which company engineers and executives conspired to install software defeating emissions tests resulted in a criminal plea agreement with the Department of Justice involving penalties of $4.3 billion and individual prosecutions of company executives.[1511] The case is a paradigmatic illustration of how environmental fraud squarely an 'E' of ESG failure can escalate from regulatory non-compliance into serious criminal conduct.

5.2 Fraud and Misrepresentation

Where ESG non-compliance is accompanied by deliberate misrepresentation the classic case of green washing involving dishonest intent directors face criminal liability for fraud. In India, Section 447 of the Companies Act 2013 criminalises fraud with a sweeping definition that captures any act, omission, concealment of any fact, or abuse of position committed by any person with the intent to deceive, to gain undue advantage from, or to injure the interests of the company or its shareholders, creditors, or public, whether or not there is any wrongful gain or wrongful loss.[1512] The punishment under Section 447 is imprisonment for a term of not less than six months and up to ten years, together with a fine of not less than the amount involved in the fraud.

In the United States, the Sarbanes-Oxley Act 2002 imposes criminal liability on company officers who certify financial statements they know to contain false or misleading material information.[1513] As ESG metrics become increasingly integrated into financial statements and SEC-mandated disclosures, this provision becomes directly relevant to directors who certify filings that misrepresent the

[1507] Water (Prevention and Control of Pollution) Act 1974 (India), s 47.
[1508] Indian Penal Code 1860, ss 268, 277, 278, 304A.
[1509] MC Mehta v Union of India AIR 1987 SC 1086.
[1510] Indian Council for Enviro-Legal Action v Union of India (1996) 3 SCC 212.

[1511] Volkswagen AG, DOJ Settlement Agreement (2017); Volkswagen pleaded guilty and agreed to a $4.3 billion settlement.
[1512] Companies Act 2013 (India), s 447.
[1513] Sarbanes-Oxley Act 2002 (US), ss 802, 906.

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company's ESG performance. United States v Ebbers confirmed the stringency with which courts apply criminal fraud provisions to corporate officers who exploit their positions to mislead investors.[1514]

The US Department of Justice's principles for prosecuting business organisations include consideration of whether the company had an adequate compliance programme a factor directly relevant to ESG.[1515] A company with no ESG compliance infrastructure, whose directors have approved misleading sustainability disclosures, presents a prosecutorial profile far more vulnerable than one that can demonstrate genuine institutional commitment to accurate ESG reporting.

5.3 Social Governance Failures: Labour , Human Rights, and Bribery

Criminal liability for ESG non-compliance extends beyond the environmental domain to failures in the 'S' and 'G' components. In the United Kingdom, the Corporate Manslaughter and Corporate Homicide Act 2007 imposes liability on organizations and, derivatively, on the senior managers whose gross breach of duty caused a death.[1516] This provision, applicable where a company's senior management has played a substantial element in the gross breach of the duty of care that caused death, connects directly to the 'S' of ESG: health and safety at work is a core social governance obligation.

The UK Bribery Act 2010 creates a strict liability corporate offence of failure to prevent bribery committed by persons associated with the company. A director cannot simply assert ignorance of bribery occurring within the corporate group; the company must demonstrate that it had in place adequate bribery-prevention procedures. This 'adequate procedures' defence incentivises directors to invest in anti-corruption compliance systems a governance function squarely within the 'G' of ESG.

VI. Implications for Corporate Governance and Stakeholder Trust

6.1 Board Composition and ESG Expertise

The expanding civil and criminal liability landscape for ESG non-compliance has direct implications for how boards are constituted and how they operate. Institutional investors, responding to the insights of the TCFD framework[1517] and the advocacy of figures like Larry Fink of BlackRock,[1518] have increasingly pressed for boards to include directors with expertise in climate science, sustainability, human rights, and related disciplines. The legal justification for this pressure is the duty of care: a board that lacks the expertise to assess material ESG risks is arguably a board that cannot meet the standard of informed decision-making required by corporate law.

The OECD Principles of Corporate Governance explicitly recommend that boards possess the collective skills and information necessary to exercise oversight of management, including oversight of ESG-related risks.[1519] Directors who resist ESG competence-building, or who allow ESG reporting to be delegated entirely to management without board-level review, are increasingly exposed to the argument that they have failed to exercise the oversight that their fiduciary position demands.

6.2 ESG Committees and Oversight Infrastructure

Beyond individual director competence, the structural design of board oversight has become a site of legal risk. Companies that establish board-level ESG or sustainability committees, with clear terms of reference and

[1514] United States v Ebbers 458 F 3d 110 (2d Cir 2006).
[1515] US Department of Justice, 'Principles of Federal Prosecution of Business Organizations' (DOJ Criminal Resource Manual, 2020).
[1516] Corporate Manslaughter and Corporate Homicide Act 2007 (UK), s 1.
[1517] Task Force on Climate-related Financial Disclosures, 'Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures' (TCFD, 2017).
[1518] Larry Fink, 'A Fundamental Reshaping of Finance' (Annual Letter to CEOs, BlackRock, 2020).
[1519] OECD, 'G20/OECD Principles of Corporate Governance' (OECD Publishing, 2023) 48.

reporting lines from management, are better positioned to demonstrate that the board exercised the requisite oversight. The Caremark standard, which requires boards to maintain 'good faith' monitoring systems, has been applied in ESG contexts to require precisely this kind of structural commitment.

KPMG's 2022 survey of sustainability reporting found that more than ninety-six per cent of the world's largest two hundred and fifty companies now report on sustainability.[1520] The prevalence of reporting, however, should not be mistaken for quality; regulators and litigants are increasingly scrutinising whether reported ESG data is accurate, comparable, and verified. Directors bear responsibility for the integrity of the ESG information their companies publish, and the growing mandatory verification requirements in the CSRD and proposed analogues elsewhere increase the visibility of any gap between reported and actual performance.

6.3 Stakeholder Trust and Reputational Risk

Legal liability and reputational harm are related but distinct consequences of ESG non-compliance, and boards that focus exclusively on managing legal risk may underestimate the reputational dimension. Research consistently demonstrates that stakeholder trust of customers, employees, investors, and communities is significantly eroded by ESG failures.[1521] The reputational consequences of a major environmental violation or a supply chain labour scandal typically exceed the direct financial cost of regulatory fines, and are harder to reverse.

The Edelman Trust Barometer's annual surveys confirm that trust in business is closely tied to perceptions of responsible conduct, and that trust once lost is difficult to rebuild. Directors who treat ESG compliance as a box-checking exercise, rather than as an integral component of the company's long-term strategy, expose the company to a trust deficit that can compound the legal and financial costs of non-compliance. The growing phenomenon of ESG-motivated employee activism employees publicly criticising or resigning from companies with poor ESG records adds a human capital dimension to this risk.

Critics of the ESG movement including voices from within the investment industry itself have raised legitimate concerns about whether ESG disclosures reliably track actual corporate behaviour, or whether they merely represent sophisticated investor-relations management.[1522] This scepticism reinforces the case for robust legal enforcement: where voluntary commitment is insufficient, legal liability provides the structural incentive for genuine compliance.

The Satyam Computer Services case in India illustrated, in the governance domain, what ESG failures in reporting can ultimately cost a company: the discovery of systematic financial fraud destroyed market value, eroded stakeholder trust, and resulted in criminal prosecution of the company's directors.[1523] ESG misreporting, while not always fraudulent, carries the same potential to unravel corporate reputation when the gap between disclosed and actual conduct becomes public knowledge.

VII. Comparative Analysis Across Jurisdictions

A comparative survey of how different legal systems address director liability for ESG non-compliance reveals both convergence on core principles and meaningful divergence in enforcement mechanisms and cultural context.

[1520] KPMG, 'KPMG Survey of Sustainability Reporting 2022' (KPMG International, 2022) 10.
[1521] Edelman, 'Trust Barometer 2024: Trust and AI' (Edelman Trust Institute, 2024) 6.
[1522] Tariq Fancy, 'The Secret Diary of a Sustainable Investor' (2021) Medium <https://medium.com/@sosofancy/the-secret-diary-of-a-sustainable-investor-part-1-70b6987fa139> accessed 20 January 2025.
[1523] Satyam Computer Services Ltd v Venture Global Engineering LLC 2010 AIR SC 3371.

7.1 The Anglo-American Approach: Duty-Based Accountability

Both the United States and the United Kingdom situate director ESG accountability primarily within the framework of fiduciary duties, supplemented by securities law disclosure obligations. The key difference lies in the statutory formulation of the duty to promote company success: the UK's Companies Act Section 172(1) explicitly names the environment and community as factors directors must have regard to, while US Delaware law relies on judge-made doctrine principally the Caremark line of cases to derive oversight obligations from the duty of loyalty.

Both systems rely heavily on private litigation as an enforcement mechanism, supplemented by securities regulatory action. This characteristic distinguishes them from the EU's more prescriptive administrative enforcement model. The US approach is characterised by high litigation risk for directors of public companies, driven by an active plaintiffs' bar and a regulatory agency with demonstrated willingness to bring high-profile enforcement actions.

7.2 The European Model: Prescriptive Mandates and Administrative Enforcement

The European Union's approach is more directive-led than duty-led, establishing detailed substantive obligations through the CSRD, SFDR, CS3D, and Carbon Border Adjustment Mechanism rather than relying primarily on general fiduciary duty principles.[1524] The CS3D's civil liability provision is particularly notable in its prescriptiveness: member states must ensure that companies can be held liable for damages caused by failures to prevent adverse human rights or environmental impacts in their value chains, provided the impact occurred in a causal nexus with the company's failure to meet due diligence obligations.

This value-chain liability concept extends director accountability beyond the company's own operations to the practices of suppliers and business partners a significant expansion that creates complex information and oversight challenges for boards. Directors of European companies must now think about ESG governance not merely for their own entity but for the entire supply chain over which they exercise influence.

7.3 India: A Hybrid Framework with Growing Enforcement Vigour

India's approach is best described as a hybrid: the Companies Act 2013's explicit statutory duty on directors to consider environmental and community interests reflects a stakeholder-conscious legislative philosophy, while the SEBI's BRSR framework imports a structured ESG disclosure architecture more characteristic of the European model. The environmental criminal statutes with their reverse-burden structure and personal liability for persons in charge reflect a vigorous enforcement tradition in environmental law, supported by an activist Supreme Court.

Scholars have observed that ESG litigation against directors in India remains less developed than in the US or UK, partly due to structural barriers in class action litigation and partly due to the relative newness of the BRSR framework.[1525] However, the direction of travel is clear: SEBI's enhanced disclosure requirements, the NCLT's willingness to engage with corporate governance failures, and the growing interest of Indian institutional investors in ESG performance all point toward increasing legal exposure for directors who neglect ESG obligations.

7.4 Other Notable Jurisdictions: Germany, Australia, Singapore

Germany's two-tier board system, with its supervisory board and management board, distributes ESG oversight responsibilities across both levels: the supervisory board is responsible

[1524] Regulation (EU) 2023/956 of the European Parliament and of the Council establishing a Carbon Border Adjustment Mechanism [2023] OJ L 130/52.

[1525] Rangarajan Raghunathan, 'ESG and the Indian Director: Emerging Legal Risks' (2023) 55 Journal of the Indian Law Institute 310, 327.

for overseeing management's ESG strategy, while the management board bears operational responsibility for ESG compliance. The German Federal Court of Justice has confirmed that supervisory board members can be personally liable for negligent oversight failures.[1526]

Australia's National Greenhouse and Energy Reporting Act 2007 imposes criminal liability for false or misleading greenhouse gas reports, with officers of corporations treated as having committed the offence in defined circumstances.[1527] Singapore has progressively strengthened its corporate governance code and exchange-mandated sustainability reporting requirements, with the Companies Amendment Act 2017 strengthening director duties in ways that support ESG accountability.[1528]

Across all these jurisdictions, a consistent pattern emerges: the legal trajectory is toward greater director personal accountability for ESG outcomes, with criminal liability reserved for the most egregious failures deliberate fraud, environmental crimes, and willful safety violations while civil liability encompasses the broader range of negligent or inadequately supervised ESG non-compliance. Legal developments in Asia-Pacific jurisdictions are increasingly aligned with this direction.[1529]

The comparative picture also reveals a convergence of persuasion over accountability mechanism. The concept of 'adequate procedures' first established in the UK Bribery Act 2010 as a defence to the corporate failure-to-prevent offence has influenced thinking in multiple jurisdictions as a model for due diligence-based safe harbours. A director who can demonstrate that the company had in place genuine, well-resourced, and regularly reviewed ESG compliance systems is in a structurally better position across all jurisdictions than one who cannot.

VIII. Conclusion and Recommendations

The legal analysis presented in this paper leads to a clear conclusion: the exposure of directors to civil and criminal liability for ESG non-compliance is growing, and structurally embedded in the corporate law of all major jurisdictions. Directors who treat ESG obligations as peripheral, as public relations concerns rather than legal ones, or as capable of being managed by delegation to lower levels of the corporate hierarchy without board-level accountability, are exposed to a liability profile that was simply not present a generation ago.

Civil liability arises most acutely from three vectors: breach of fiduciary duty through inadequate oversight of ESG risks; material misrepresentation in ESG disclosures giving rise to securities fraud claims; and shareholder derivative actions challenging board decisions that ignore foreseeable ESG risks. Criminal liability is concentrated in environmental crimes where reverse-burden statutes make personal liability for directors the default rather than the exception and in ESG fraud, where deliberate misrepresentation of ESG credentials can engage fraud provisions under securities and corporate statutes.

The implications for corporate governance are systemic. Boards must restructure to acquire ESG competence, whether through director appointments, training, or external advisory engagement. ESG reporting must be treated with the same rigour as financial reporting subject to internal controls, external verification, and board-level review and approval. ESG compliance infrastructure must be designed and documented in ways that can withstand regulatory scrutiny, producing a contemporaneous record of the board's engagement with ESG risk.

[1526] Bundesgerichtshof [BGH] (German Federal Court of Justice), II ZR 175/12 (15 January 2013).
[1527] National Greenhouse and Energy Reporting Act 2007 (Australia), s 74.
[1528] Companies Amendment Act 2017 (Singapore), s 163.
[1529] Lian Soh, 'ESG Litigation Trends in Asia-Pacific: Directors in the Crosshairs' (2023) 35 Singapore Academy of Law Journal 421, 438.

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Against this backdrop, this paper proposes the following recommendations for directors and corporations:

First, directors should treat ESG risk as a board-level agenda item, not merely a management responsibility. Board oversight of ESG risks including climate transition risk, social compliance in supply chains, and governance integrity must be demonstrably active and ongoing, not episodic or delegated entirely downward.

Second, the integrity of ESG disclosures must be treated with the same seriousness as financial disclosures. Directors who certify annual reports, sustainability reports, or investor communications containing ESG representations must satisfy themselves that those representations are accurate and not misleading. Internal processes for verifying ESG data analogous to those that support financial audits should be established and maintained.

Third, companies should develop and document ESG compliance programmes that include clear identification of applicable regulatory requirements, designated responsibility for compliance, training programmes for relevant personnel, mechanisms for reporting concerns without fear of retaliation, and periodic review and testing of the programme's effectiveness. Such programmes serve both as genuine risk management tools and as evidence of good faith in any subsequent enforcement or litigation context.

Fourth, companies with significant supply chain exposure should implement value-chain due diligence processes commensurate with the nature and scale of their supply chain ESG risks. This is required as a matter of law under the EU's CS3D and UK Modern Slavery Act for companies of sufficient size, and represents best practice for all companies seeking to manage 'S' and 'G' liability.

Fifth, and perhaps most fundamentally, boards should resist the temptation to see ESG compliance as primarily an investor relations or reputation management exercise. The legal landscape surveyed in this paper makes clear that the consequences of ESG non-compliance extend well beyond reputational harm to encompass civil judgments, regulatory sanctions, and in serious cases, personal criminal liability for directors. The investment of resources in genuine ESG compliance is, on any rational analysis of the risk-adjusted return, warranted.

The evolution of ESG law is far from complete. Mandatory human rights due diligence legislation is expanding globally; biodiversity disclosure requirements are emerging; social inequality metrics are being incorporated into sustainability frameworks. Directors who establish cultures of genuine ESG accountability within their organisations will be better positioned to navigate this evolving landscape and better insulated against the liability it generates for those who do not.

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