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The Expansion and Boundaries of Directors' Fiduciary Duties Under Mandatory ESG Disclosure: A Judicial Review Perspective from the Duty of Care

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Abstract. The global shift from voluntary to mandatory ESG disclosure is reshaping corporate accountability, challenging the traditional boundaries of directors' duty of care. This article examines how mandatory rules expand this duty and how courts define its limits. Using comparative case analysis of litigation in the UK and EU, it traces the evolution of judicial review of directors' ESG oversight. The study finds courts increasingly asked to rule whether ESG failures breach the duty of care, moving beyond traditional deference to business judgment. It concludes that an emerging judicial framework seeks to balance corporate autonomy with stronger accountability for sustainability. This legal evolution is vital both for effective ESG regulation and for the future of global corporate governance.

Keywords: Mandatory ESG Disclosure, fiduciary obligations of directors, duty of care, judicial review, Comparative corporate governance

1. Introduction

Growing climate risks and social demands have made ESG vital to corporate governance. Regulators worldwide have introduced strict mandatory ESG disclosure rules, including the EU's Corporate Sustainability Reporting Directive (CSRD) and the UK's Sustainability Disclosure Requirements (SDR).

It raises a key legal issue: how mandatory ESG disclosure interacts with directors' fiduciary duties, especially duty of care. Existing studies focus on disclosure rules but lack discussion on directors' personal liability and judicial supervision standards.

This paper fills such gaps from a judicial review view. It first introduces global mandatory ESG disclosure trends, then analyses the expansion of directors' duty of care. Through a comparative case study and legal document analysis, it explores how courts exercise judicial review over directors' conduct in relation to ESG matters.

Addressing this gap, this article examines the expansion and boundaries of directors' duty of care in the context of mandatory ESG disclosure through the lens of judicial review. The analysis proceeds in three parts. First, it outlines the global trend towards mandatory ESG disclosure and its intended governance effects. Second, it analyses the traditional legal content of the duty of care and the pressures for its expansion created by new sustainability mandates. Third, and central to the

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study, it employs a comparative case study approach to examine how courts in leading jurisdictions are beginning to scrutinise directors' ESG-related actions and potentially establish new liability benchmarks. The research adopts a qualitative legal analysis of statutes, case law, and regulatory guidance. By moving beyond policy description to examine the core legal mechanisms of enforcement, this study provides valuable insights for directors, legal practitioners , and policymakers seeking to understand the emerging landscape of director liability and the judiciary's role in shaping effective sustainable governance.

2. Mandatory ESG disclosure: Regulatory framework, global trends and substantive governance implications

New regulatory requirements: mandatory ESG disclosure and its governance implications.

The global shift from voluntary to mandatory ESG disclosures is not just a technical change to reporting standards; It represents a profound reinvention of a company's responsibilities to broader stakeholders, including the environment and society. Regulatory frameworks such as the EU's Corporate Sustainability Reporting Directive (CSRD) and the UK's Sustainability Disclosure Requirements (SDR) establish detailed and legally binding obligations for companies to identify, assess, manage, and report on their sustainability impacts and risks. This wave of regulation has created a new "accountability infrastructure" that has fundamentally changed the information environment in which boards operate [1].

2.1. Global trends in mandatory disclosures

The shift towards mandatory disclosure stems from the need to combat greenwashing, ensure that sustainability data is comparable to investors, and align corporate activities with international climate goals such as the Paris Agreement. These regulations often adopt a "double materiality" perspective, requiring companies to report on both how sustainability issues affect their financial performance (financial materiality) and how the company affects people and the planet (impact materiality). This extended perspective legally requires directors to oversee issues that were previously considered externalities [2, 3].

2.2. From disclosure to substantive responsibility: Pressure on directors to be held accountable

Although they take the form of disclosure rules, these requirements nonetheless have substantial governance effects. The compliance process – conducting due diligence on the value chain, developing climate transition plans, establishing internal controls over ESG data – requires active oversight at the board level. Failure to establish adequate ESG governance processes itself can lead to regulatory penalties. More importantly, the disclosed information creates a public record against which the board's strategic decisions and oversight can be benchmarked, which sets the stage for potential lawsuits by shareholders or other stakeholders alleging poor ESG performance or misrepresentations stemming from breaches of fiduciary duty [4].

3. The evolution of the duty of care in the ESG era: Connotation and expansion pressure

Directors' duty of care (or the duty of skill, care, and diligence) has traditionally required them to act in good faith, exercise the care expected of a reasonably prudent person, and act in the best interests of the company. The application of this obligation in the context of ESG is where legal boundaries are tested and expanded.

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3.1. Asylum that challenges the principles of business judgment

The principle of business judgment has historically provided broad respect for directors' business decisions. However, this respect is not absolute; It assumes that the decision-making process is informed. In the context of ESG, a plaintiff may argue that directors failed to make reasonable efforts to understand material ESG risks (for example, climate-related physical risks, regulatory transition risks, and human rights violations in the supply chain), thereby forfeiting the protection of this rule. As a result, the duty of care is expanding to include a positive obligation to ensure that robust systems are in place to identify and monitor these non-traditional but increasingly important risks [5].

3.2. Expansion of the connotation of 'prudence'

The connotation of "prudence" is being redefined by justice and regulation to include ESG capabilities. This expansion is manifested in several dimensions: 1) Supervisory obligations: The obligation to establish monitoring and reporting systems now explicitly extends to significant ESG risks. Continued failure to monitor such risks may constitute a breach of obligation. 2) Obligation to access information: Directors must take reasonable steps to obtain and understand information about the company's ESG status and its strategic impact. 3) Decision-making context: ESG factors must be part of the overall consideration of a company's long-term viability and best interests, beyond short-term shareholder supremacy [6].

3.3. ESG integration and the art of balancing in director decision-making

The expanded duty of care also penetrates directors' core business decision-making. Many ESG issues, including carbon reduction goals, supply chain labour standards and data ethics, often conflict with short-term financial profits.Under evolving regulatory expectations, directors are required to appropriately account for such non-financial factors as essential components of the company's long-term value

It does not require prioritising ESG over shareholder interests. Instead, directors need to realise that ignoring ESG threats damages corporate sustainable development. Accordingly, the duty of care forms a balancing obligation: directors need to coordinate conflicting interests between short-term shareholder returns, environmental risks and social operations. Documented decision processes are required to prove they act for corporate best interests. The exercise of such balanced judgment has become a key standard against which directors' discharge of their duty of care is assessed.

4. Judicial review in practice: Case studies and emerging legal boundaries

The ultimate arbiter of this expansion is the judiciary. Emerging litigation provides the clearest window into how courts can strike a balance between enforcing new norms of sustainable governance and respecting director discretion. The comparative analysis reveals an evolving, albeit cautious judicial attitude.

4.1. UK perspective: ClientEarth v. Shell board of directors

The currently high-profile derivative lawsuit against Shell's directors, although initially dismissed on procedural grounds, is a landmark in constructing a legal argument. This case is not only an attempt to establish specific substantive standards for directors' duty of care in climate strategy, but also tests

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the applicability and limitations of the shareholder-derived litigation process in addressing systemic, long-term ESG risks. The shareholder, ClientEarth, alleged that the board failed to adopt and implement a climate strategy aligned with the Paris Agreement and thereby breached its duties of care and diligence under the UK Companies Act 2006. While the lawsuit faces high procedural hurdles, it sends a signal to the board that its climate governance strategy will be reviewed. The court even participated in the discussion of the merits of the litigation during the preliminary hearing, indicating its willingness to consider such arguments, setting a precedent for more substantive cases in the future. The case establishes a preliminary threshold for the adjudicability of such climate litigation and outlines the future arguments that plaintiffs need to meet, such as the need to provide evidence of the 'unreasonableness' of the board's decisions, not just differences in strategic choices, thus providing a critical roadmap for subsequent litigants [7].

4.2. Commonwealth perspective: McVeigh v. retail employees super annuity trust

In this Australian case, a member of a superannuation fund sued its trustee for failing to disclose and manage climate-related financial risks. While directed at trustees, federal court rulings have direct implications for directors. The court's reasoning directly transposes the core principle of directors' fiduciary duty into the trustee context: both must manage assets in the best long-term interests of their beneficiaries. Since climate change is identified as a 'significant and foreseeable financial risk', ignoring it constitutes a potential breach of core management responsibilities as ignoring any other traditional financial risk. The court held that climate change is a significant, foreseeable financial risk that trustees (and, by strong analogy, directors) must consider, actively manage and disclose. This case specifically establishes that ignoring climate change, a well-documented systemic risk, may violate fiduciary obligations, and provides strong judicial recognition of the importance of ESG factors. In doing so, McVeigh marks a decisive conceptual shift in judicial thinking: ESG is no longer merely a matter of ethics or reputation, but a core element of fiduciary duty. This provides a compelling legal foundation for holding directors globally accountable for climate governance failures as potential breaches of fiduciary duty [8].

4.3. Delineate boundaries: Process is more important than results

Current judicial trends suggest that courts are more likely to find breaches of duty of care based on process failures rather than criticism of specific business outcomes. Has the board established an ESG oversight committee? Did the board seek expert advice? Does the board regularly review ESG risk indicators? Is the board aware of relevant regulatory developments? A documented and rigorous ESG consideration process, along with detailed meeting minutes, expert report review trails, discussion of alternatives, and citations of risk quantification models, will be key evidence of directors' duty of care in such litigation. This essentially internalizes the transparency of the board's deliberations and decision-making rigor itself as part of legal compliance. Even if the resulting strategic decisions are disputed, they are likely to be protected by the principles of business judgment. As a result, the legal boundaries of directors' duties are being drawn around the quality of their oversight systems and review processes, rather than the commercial success of any particular sustainability initiative.

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4.4. Inherent challenges and future directions of judicial review

While the current judicial review framework provides certainty, it also faces inherent challenges. First, the problem of proving causality: when a company suffers losses due to ESG risks (e.g., climate disasters, sanctions), how can shareholders prove that the loss is directly due to a specific supervisory failure by the board of directors a few years ago, rather than complex market systemic factors? This sets up a high barrier to proof for the plaintiff. Second, the ambiguity of the "reasonableness" standard: in the rapidly evolving ESG field, what is the scope of "reasonable" that directors should know? Should the court follow the cutting-edge scientific consensus, or should it be based on the general lagging practice of the industry? This leaves a huge amount of discretion for judges. Looking ahead, judicial review is likely to develop along two lines. First, through the accumulation of precedents, the specific elements of a "sound governance process" may be refined, transforming it from a set of abstract principles into a verifiable checklist. Second, courts may dive deeper into specific types of risks for which a scientific and policy consensus has formed—climate change being a prime example—setting a de facto floor for the duty of care in these areas, while maintaining a higher degree of judicial restraint toward other ESG issues, such as social matters. This evolutionary process will be the stage for the continuous game of judicial initiative and restraint.

5. Conclusion

This article argues that the global transition to mandatory ESG disclosure is catalyzing a significant but well-defined expansion of corporate directors' duty of care. The new disclosure regime transforms ESG from a voluntary concern into a core component of director oversight, creating a substantive obligation to identify, manage and report on sustainability risks. As demonstrated by groundbreaking cases in the United Kingdom and other Commonwealth jurisdictions, judicial review is actively shaping the boundaries of this new legal landscape. Courts are establishing that deliberately ignoring material ESG risks, or failing to establish a basic governance system to address them, may constitute a breach of duty of care that goes beyond the protection of traditional business judgment principles. However, this expansion has its limits: courts remain focused on regulatory decision-making processes, ensuring they are informed and prudent, rather than imposing specific environmental or social outcomes.

This study has some limitations and points out future research directions. First of all, it is mainly theoretical and conceptual analysis; Large-scale empirical studies are needed on the practical impact of these legal developments on board behavior in different industries. Second, the analysis focuses on common law jurisdictions; A comparative study with civil law systems (e.g., Europe under the CSRD) will present a more complete global picture. Third, the law in this area is developing rapidly. Future research must track ongoing lawsuits, such as those against fossil fuel companies or boards accused of "social whitewashing," to see how the principles discussed in this article are applied and refined.Ultimately, judicial clarification of ESG-related duties of care will be crucial in determining whether mandatory disclosure drives genuine corporate transformation or remains largely procedural in effect.

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