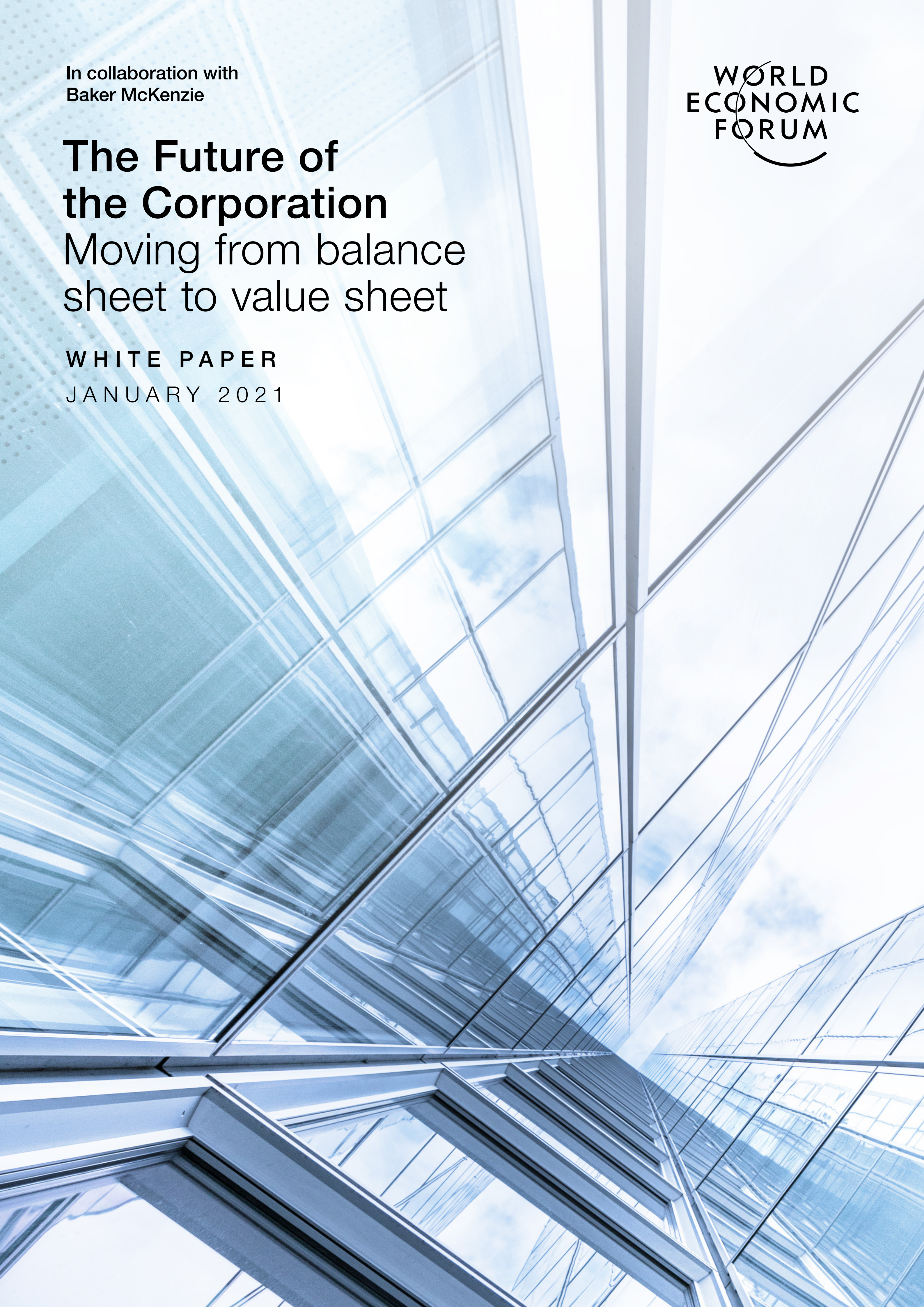
In collaboration with
Baker McKenzie

WORLD ECONOMIC FORUM

The Future of the Corporation
Moving from balance sheet to value sheet

WHITE PAPER

JANUARY 2021



Cover: Getty Images/Olaser

Inside: Getty Images/Ipopba

Contents

Preface

Klaus Schwab
Founder and Executive Chairman,
World Economic Forum

The challenges the world faces from the COVID-19 pandemic, and the underlying trends of worsening inequality and climate crisis, are presenting leaders with some of the most severe business, economic and social challenges in decades. The depth of these challenges has forced business leaders to question the most foundational aspects of how they operate: who they serve, and how they create value for these constituents. Leaders are increasingly recognizing that for a business to succeed over the long term, it must provide profitable solutions that positively affect all stakeholders. This fundamental approach to decision-making in the boardroom, through connecting value creation and stakeholder outcomes, is the heart of stakeholder capitalism.

Advancing stakeholder capitalism from promises to improved and resilient business practices requires a new approach to corporate governance that enables the alignment of value and stakeholder outcomes at the boardroom level. To fulfil this objective, this report examines stakeholder-oriented governance practices from leading businesses, and offers practical guidance for investors, boards and management on how to make their own governance more stakeholder-oriented. The need to do so has never been more urgent.

This report, produced by the Forum's Platform on Shaping the Future of Investing, incorporates insights shared by our constituents throughout 2020 via interviews and community events. They reflect the disruption of the pandemic and the collective efforts needed from business to rebalance the global economy for the benefit of all stakeholders.

The multistakeholder nature of the Forum's platform is uniquely suited to developing stakeholder-oriented governance practices, and I would like to thank the chairpersons from bp and Ørsted, the Chief Executive Officer of Fidelity and the Director of the Cambridge Institute for Sustainability Leadership for their time and energy. This report was prepared in partnership with Baker McKenzie and I would like to thank them for their expertise and dedication to this work.

Stakeholder-oriented corporate governance underlies how a business treats its people, the manner in which it affects the planet and how it enables prosperity for all. I encourage all leaders to continue engaging with the Forum's work on stakeholder capitalism, as it is essential for implementing the Great Reset.

Introduction

Beatriz Araujo
Partner, Head of Corporate Governance, Baker McKenzie

Julia Hayhoe
Managing Director, Hayhoe Consulting; former Chief Strategy Officer, Baker McKenzie

Maha Eltobgy
Head of Shaping the Future of Investing, Member of the Executive Committee
World Economic Forum

Adam Robbins
Head of Future of Investing Initiatives, Shaping the Future of Investing
World Economic Forum

In March 2019 the World Economic Forum published the white paper *The Modern Dilemma: Balancing Short- and Long-Term Business Pressures*.[1] One of its conclusions was that corporate governance is undergoing changes arising from shifts in the balance of power, responsibility and accountability – and that investors, regulators, society and business were being swept into the era of stakeholder capitalism.

In the 18 months since, a great deal has happened in terms of the speed at which stakeholder capitalism has taken hold and in the world more generally. The COVID-19 pandemic has accelerated the shift in business norms that stakeholder activism pursues and the imperative of moving from words to actions. There has not only been unprecedented change in a short time, but also more time for all to reflect. There is a clear step change in ambition as to what is achievable by all parties – governments, non-governmental organizations, the investor community, business and society.

The talk now is of building back better, the Great Reset. Good governance is a journey of continuous improvement that needs to evolve constantly to meet and shape the context in which it operates and the associated opportunities and responsibilities placed upon an organization both internally and externally. This paper puts forward recommendations for companies to achieve effective stakeholder governance to assist them in dealing with the impact that stakeholder capitalism might have. Insights on implementing stakeholder governance came from interviews with the Cambridge University Institute for Sustainability Leadership, bp, Fidelity and Ørsted.

1 The journey to a value-based set of financials

A clear consensus is emerging. For a company to enjoy sustainable value creation and long-term success, it must clearly understand who its key stakeholders are, engage with them and bring their voice into decision-making. The global trend over the past couple of years has without doubt been *stakeholder activism*.

- Investors have increasingly made public commitments that they are looking more and more to companies for long-term value creation rather than short-term returns and they understand that for companies to achieve this, better stakeholder engagement – particularly in the area of environmental, social and governance (ESG) – is needed.

- The pandemic has made employees, customers, suppliers and communities engage with companies in a more activist manner.

- Societal activism has centred squarely on the increasing need for companies to have a sustainable approach to business and the expectation that companies should contribute as much to society or the planet as they take out.

- Indeed, the planet has become more of a focus in the boardroom over past years. Not paying attention to climate change, water shortage or diminishing biodiversity can bring much risk to companies, but responding to such issues is also an opportunity.

How can companies address often conflicting and confusing theories (legal, economic and scholarly) and market forces?[2] Is the purpose of the corporation simply to deliver profits to its shareholders, or is it instead to act in a way that builds sustainable value with its broader stakeholders, namely, employees, customers, suppliers, its communities, the environment and others (such as creditors and regulators)? Or is it something else? How can we synthesize all of this, break it down into its key constituents? What are the key ingredients for a corporation's success?

Essential to a corporation's survival is maintaining its licence to operate. To do this, it must gain and retain the trust of its material stakeholders: those (1) who can reasonably be expected to be significantly affected by its activities, products and services; and (2) whose actions can reasonably be expected to affect the ability of the corporation to implement its strategies and achieve its objectives.[3]

> **"The real test is whether the pandemic has done enough to shock the system into delivering that change. Policy-makers, investors and companies will need to recognize that the system failures that were destroying the natural world and human well-being have to be corrected in a meaningful and lasting way to create a genuine shift towards stakeholder capitalism.**
>
> Cambridge Institute for Sustainability Leadership

FIGURE 1 | **Winds of change**

What are the megatrends, the tailwinds and headwinds, that have swept the world over the past months, affecting stakeholder capitalism?

The pandemic has understandably been at the forefront of people's minds, but sitting beneath are deep macro megatrends that the pandemic has accelerated, and which have served to advance stakeholder capitalism.

Tailwinds

- Social and environmental change agenda empowered by social media, enabling real-time, rapidly scaled public scrutiny, as exemplified by the Black Lives Matter and Climate Action movements
- Business mindset shift to longer-term stakeholder considerations. During the pandemic, business has in the main shifted to adopt a longer-term horizon approach, particularly to resilience and safeguarding its employees, customers and supply chain
- Growth in investor mainstream activism, engagement and funding, enabling both longer-term value creation and greater levels of accountability
- Technological advances that enable scale, speed and transformation, particularly in renewable energy, e-commerce, hybrid working and learning.

> "We have seen a compression of time horizons and a step change of ambition. The challenge now is whether we slip back to the old habits – or seek to build a bridge to the new future in the post-COVID landscape.
>
> Fidelity

Headwinds

- Extent to which acute financial business and economic stress drives overly short-term decision making
- Uncertainties about how the multilateral role of government to drive policy and trade will unfold
- Extent to which existing inequalities are entrenched by the macro forces, such as the disproportionate adverse effect on women and minorities of the shift to virtual/hybrid working
- Inherent data and AI algorithm, ethics, ownership and security issues

Across these megatrends, stakeholder capitalism emphasizes the significance of stakeholder governance as a key enabler to advancing how business can create longer-term value with all material business stakeholders – customers, employees, suppliers, communities and the planet – as well as shareholders.

Source: Baker McKenzie, 2020

FIGURE 2 | **Four critical questions the board should ask itself**

Source: Baker McKenzie, 2020

The essential ingredients for building trust and retaining a licence to operate, for claiming corporate citizenship, are: purpose, strategy, culture, values and governance. The impact on and of material stakeholders of the corporation permeates each of these ingredients and cannot be ignored when answering the above questions.

The idea of purpose will be considered in the context of governance, focusing on practical considerations for effective stakeholder governance. "Governance", as noted in a recent World Economic Paper, "is foundational for a company in setting purpose and provides oversight for a company's activities that contribute to a prosperous, sustainable society. Without good governance, companies lack the supportive context within which to make progress on planet, people and prosperity."[4]

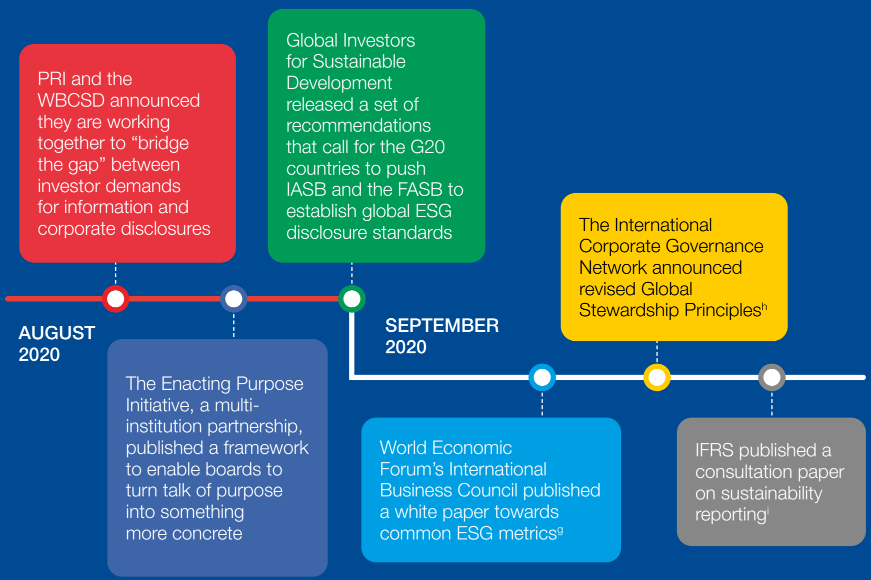
The ultimate guardian of the company's purpose, strategy, culture, values and governance is the board. At the heart of this comment is the fact that a director's fiduciary duty in most countries of the world is, primarily, to act in the best interests of the company. There are then additional nuances as to whether boards also owe duties to shareholders (such as in the United States) and others and whether any of these have priority in decision-making.[5] While the legal duty is to act in the best interests of the company, which arguably presupposes ensuring its long-term sustainable success, the preponderance of economic and other studies show that understanding the needs and expectations of those stakeholders who have been identified as material to the company's success is critical. One of the most influential trends over the past two or three years in stakeholder activism has been the increasingly loud voice of, and the greater number of, investors and shareholders who look to companies for long-term value creation rather than extracting maximum returns on a short-term basis. Certainly, the pandemic has changed the rhetoric from "returns" to "value creation". Investors and shareholders are also demanding more transparency and more meaningful engagement with boards as regards environmental, social and governance (ESG) issues.

> **The COVID-19 pandemic has focused minds – giving society a vision of a different world with less pollution, less traffic and cleaner skies. It has led to inspiring stories of companies using their resources, capabilities and technology to help communities deal with an unprecedented problem. This will hopefully act as a catalyst in bringing companies and society together in the effort to rebuild trust.**
>
> bp

A recap of the past 18 months highlights how stakeholder capitalism has firmly established itself.

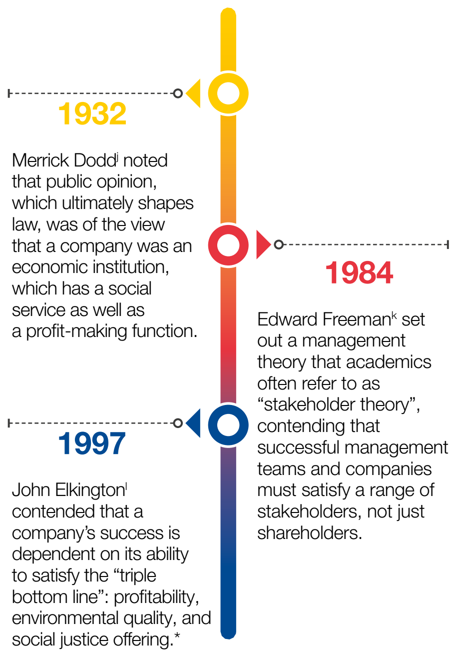
The spotlight on such issues has recently intensified in the business community. The Business Roundtable changed its statement on the purpose of a corporation in August 2019 to commit to promote "an Economy that serves all Americans".[a] Large funds such as Blackrock, State Street and Vanguard have begun publicly to endorse the importance of sustainability; the most prominent example is perhaps Blackrock Chairman and Chief Executive Officer Larry Fink's open letter to chief executive officers in January 2019 urging companies to balance profit with purpose.[b] The 2020 World Economic Forum Davos manifesto was dominated by stakeholder capitalism and "purpose", providing a set of ethical principles to guide companies.[c]

Public pressure to rethink capitalism has also grown. Greta Thunberg inspired global climate strikes, becoming the *Time* 2019 Person of the Year and making the *Forbes* list of the World's 100 Most Powerful Women.[d] The COVID-19 pandemic led to greater scrutiny of how companies treated their stakeholders, covered regularly by media outlets.[e] Similarly, the Black Lives Matter movement renewed focus on profound inequalities in society, adding to public demand for a fairer society. *The New York Times* suggested that, according to academics and crowd-counting experts, the movement was the largest in US history.[f] This impetus on environmental, social and governance matters has led to a plethora of recent guidance, principles and initiatives:



PRI = Principles for Responsible Investment
WBCSD = World Business Council for Sustainable Development
IASB = International Accounting Standards Board
FASB = Financial Accounting Standards Board
IFRS = International Financial Reporting Standards

Stakeholder capitalism has foundations in long-standing management, philosophical and economic theories. For instance:



** More recently he notes that it needs to operate on the lines of responsibility, resilience and regeneration*

These are just a few examples of seminal theories that inspired the proliferation of stakeholder and sustainability-focused concepts found in modern business management, investment, accounting and corporate reporting.

> **"The interesting thing for bp is that while we think of different and distinct sets of stakeholders – staff, society and shareholders – they increasingly want the same things: companies that can create returns and solve problems at the same time in order to provide long-term value.**
>
> bp

[a] https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans
[b] https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter; https://www.forbes.com/power-women/#1fb3636a5e25
[c] https://www.weforum.org/agenda/2019/12/davos-manifesto-2020-the-universal-purpose-of-a-company-in-the-fourth-industrial-revolution
[d] https://time.com/person-of-the-year-2019-greta-thunberg/
[e] https://www.ft.com/content/7ef426a8-964f-11ea-af4b-499244625ac4
[f] https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html
[g] https://www.weforum.org/reports/measuring-stakeholder-capitalism-towards-common-metrics-and-consistent-reporting-of-sustainable-value-creation
[h] https://www.icgn.org/sites/default/files/00.08%20Revised%20Global%20Stewardship%20Principles.pdf
[i] https://cdn.ifrs.org/-/media/project/sustainability-reporting/consultation-paper-on-sustainability-reporting.pdf?la=en
[j] Merrick Dodd, E., "For Whom Are Corporate Managers Trustees?", 1932, *Harvard Law Review*.
[k] Freeman, E., *Strategic Management: A Stakeholder Approach*, 1984, Cambridge University Press.
[l] Wiley, J., *Cannibals with Forks: The Triple Bottom Line of 21st Century Business*, 1997, New Society Publishers.

Source: Baker McKenzie, 2020

2 Practical considerations for implementing a stakeholder governance framework

Three practical initial steps are recommended for each company in advance of considering stakeholder governance improvements:

FIGURE 4 **Stakeholder governance journey – recommended initial steps**

Source: Baker McKenzie, 2020

A first step is to identify which stakeholders are material[6] for the company to succeed in its purpose. It is likely that employees, clients or customers, suppliers, providers of capital, the environment and the communities in which those companies operate will form a key part. However, each company must undertake its own assessment of which stakeholders it needs to deliver on its purpose and identify in its strategy how it will engage with them, and whether this presents risks and/or opportunities for the company. This is not a "one-size-fits-all" undertaking. In doing so, it is important for the board to look not only at the stakeholder group as a whole but also at any voices within the relevant group that might not be heard to ensure that they are. For example, the board should consider whether there are particular minority groups whose members are unheard. As the business expands into different markets, how does the cultural context change? What are the different cultural stakeholder nuances?

Once stakeholders are identified and integrated into the key aspects of a company's strategy, the board needs to assess whether the governance framework in place (from board composition to the company's organization, risk controls, incentives, transparency and accountability) is fit for delivering on that strategy. The board will need to decide where responsibility will lie for ensuring delivery of the stakeholder aspects of the strategy. The board will also need to consider whether the company has the right values and culture to do so.

In tables 1–4 below are some suggested considerations for chairs, boards and management looking to improve stakeholder governance practices. As mentioned elsewhere, there is not a "one-size-fits-all" approach to stakeholder governance. Instead, each company must embark on its own stakeholder governance journey, guided by its purpose – the information below will hopefully provide some useful pointers. For companies just embarking on this journey, consideration should be given to creating a stakeholder committee to do the preliminary work (see the three practical initial steps enumerated above), with a view to making recommendations to the board. As stakeholder governance becomes part of the board's DNA and gets integrated into the company's strategy, the need for such a committee will decline.

> **"It needs to become an embedded set of behaviours that takes into consideration the lives not just of those stakeholders who are in their direct line of sight, but of those who are far out of sight. This includes those in their supply chains, or indeed future generations, and creates meaningful and long-term value for society and the environment.**
>
> Cambridge Institute for Sustainable Leadership

TABLE 1 | **Purpose**

Considerations for chair/board	Ask whether the company has a clear and well-understood purpose. Consider to what extent the company's purpose is regularly on the board agenda and used in strategic decision-making as a guiding star. When articulating the company's purpose, consideration should be given to the following: (1) should it be articulated as simply solving a particular problem for society; or (2) should it in addition state that it will be pursued in a sustainable manner and without a negative impact on society; or (3) should it go even further and commit the company to having a positive impact, creating public benefit and sustainable value? Consider the appointment of a genuinely influential subject-matter expert/external advisory boards, comprising scientific experts and civil society representatives.	**Purpose**: Purpose is returning to centre stage as an enabler for long-term sustainable value creation for corporate success. A clear purpose enables a board to define its strategy and agenda. Who sets the purpose of the company? Is it the shareholders or is it the board on behalf of the company? This question perhaps still needs answering in the context of the Great Reset. The original companies, set up under common law, were set up with a purpose (in England this was referred to as the company's "objects") – shareholders decided what the activities of the company would be as this was set out in the company's constitutional documents. Boards continually felt the constraint of the purpose/objects clause in companies as they wished to take the companies into new business lines, new countries and the like. A practice developed whereby objects clauses became so long that, in effect, they became meaningless, allowing companies to conduct whatever business the board wished. So both in the US and the UK the legislator eventually dispensed with them. Boards are, basically, free to take the company in any direction they feel appropriate in the context of the changing world. It is for them to set the purpose of the company; in doing so, they must of course ensure that such purpose attracts capital and engages material stakeholders. A trend we see is companies seeking to entrench in their constitutional documents their ambition to act in a positive way for society. The law allows for this in, for example, Italy and France – the so-called "raison d'être" law was recently introduced in the latter whereby listed companies may become "entreprises à mission" – while in the US the possibility of registering as a Delaware Public Benefit Corporation is being touted as an option. Alternatively, companies are applying for certification as B Corps from B Lab, a non-profit company. Danone struck a first among global companies when it announced in June 2020 that it would become the first listed company in France to adopt the "entreprise à mission" model created by French law in 2019. At the same time, Danone announced its ambition to obtain worldwide B Corp certification within five years. Its largest subsidiary, Danone North America, was in turn formed as a public benefit corporation in 2017. In 2018 Danone obtained B Corp certification, the largest company in the world to do so. The historical context of purpose thus reinforces the view that a company's purpose should be articulated with reference to the societal need it is there to fill or serve, its raison d'être. One outcome of a company's pursuit of its purpose should be, assuming it is a for-profit company, long-term value creation that not only enables dividends to be paid to providers of capital but also ensures that the value of their capital is protected and increased. How much of the profit is paid out to shareholders will depend on the company's purpose, strategy, culture and values. The choice a board should be considering today is whether its purpose will be a simple raison d'être, whether such raison d'être will be articulated in such a way that the company will strive not to have a negative impact on society or whether it will additionally commit to creating public benefit. In the second category, for example, more and more companies are looking at their impact on the environment and making net-zero commitments.
Considerations for executive	Corporate form – make recommendation to the board on whether to adopt public benefit corporation status/equivalent to entrench stakeholder focus and accountability.[7] Communication and engagement plan to ensure the purpose and strategy of the company is known, understood and tangibly evidenced throughout the company and by its stakeholders.	

TABLE 2 | **Strategy**

Considerations for chair/board	Ensure the company's strategy is robust in the changing environment and designed to deliver on the company's purpose. Undertake periodic ESG risk and opportunity assessments in light of changing externalities and stakeholder feedback. Various tools exist to facilitate this exercise.[8] Consider whether the strategy identifies who the company's material stakeholders are. Good stakeholder governance (see below) should be seen both as a value creation and as a risk mitigation strategy (and indeed is seen by investors as creating resilience). Look at whether the strategy identifies its ecosystem and the key public/private and other partnerships required to deliver on strategy in today's complex operating context.
Considerations for executive	Review strategic implementation plans to ensure appropriate capital, assets, budgets and expertise are allocated to deliver on the strategy set by the board. In such a strategic implementation plan, specifically address investment strategy for stakeholder engagement and impacts.

USE CASE | **Ørsted**

Reflections on stakeholder governance and success drivers for sustainable business transformation:

Once largely a coal, oil and gas business, Ørsted has transformed itself and is acknowledged today as the world's leading sustainable business, focused entirely on renewables, having reduced its carbon emissions by 86% over the past decade. By 2025, it will reach net-zero emissions in scope 1 and 2,[9] one of the first global energy companies to reach that milestone.

Thomas Thune Andersen is the chairperson of Ørsted and gave these reflections on stakeholder governance and the success drivers for sustainable business transformation, which requires both taking the long-term view to lead with vision and purpose, and taking action today consistent with executing on that vision and purpose. "**Be firm on the vision of where you want your future to be and firm on what you need to do on Monday.**"

Lead with vision and purpose

Context counts

A decade ago, Ørsted recognized that a business model based on fossil fuels was not sustainable and required a radical rethink. Today the market data is even clearer: The deployment of renewable energy will continue to accelerate, the associated technology will continue to go down in cost, and companies in the renewable energy space will increase in size. Success in this operating context means that companies need to invest in creating a credible, long-term, sustainable business.

Courageous choices required

Ørsted faced competing stakeholder pressures: from within the business to remain focused on fossil fuels due to its then core competence and retain a sense of pride in being among the world's best at running and building coal-fired power plants; and externally from societal stakeholders, science and governments to turn towards renewable energy. This required early visionaries at Ørsted to make courageous strategic choices.

Be clear and transparent

Visionary leadership was required for a transformation of Ørsted's magnitude – in this case, the vision was to help create a world that runs entirely on green energy. This meant: being clear and transparent about the journey; setting out concrete actions, complete with milestones; and communicating that vision to all stakeholders.

Take action today

Adopt science-based targets

Adopting science-based targets now bakes in action, transparency and accountability for today. It guards against complacency, against waiting for fuller harmonization of ESG metrics, and differentiates which companies are truly transforming their business models rather than simply introducing reporting as window dressing.

Active investor stewardship is vital

Investors have an important stakeholder role to play in endorsing and holding businesses to account – for example, by voicing endorsement of green transitions at AGMs and asking companies to adopt science-based targets or similar third-party benchmark methods.

Decarbonize the supply chain

The next frontier for Ørsted is to decarbonize beyond its own operations and drive full decarbonization in the supply chain. While the target is set for 2040, strategic top suppliers are being asked to begin the journey now by setting targets, taking immediate action and setting plans to decarbonize no later than 2040.

Director duties	**Considerations for chair/board**	To what extent do directors understand their fiduciary duties at law? Is up-to-date training regularly provided as part of induction and on an ongoing basis?	**Director duties** – How should directors of multinational companies address their fiduciary duties – is their duty above all to deliver as high a return as possible to shareholders? This is a dilemma directors of US companies perhaps face more starkly than directors of other jurisdictions. In all of the jurisdictions reviewed (and likely in many not reviewed) directors owe their primary duty to the company and to its success – in the US that duty is owed to the company and its shareholders. In the UK, that duty is owed primarily to the company, for the benefit of present and future shareholders, but with an additional requirement to have regard for a number of other factors, including the interests of stakeholders and the impact of operations on the environment and the community. The articulation of the US duty supports proponents of shareholder primacy, while the UK duty is more nuanced and referred to as *enlightened shareholder value*. In civil law jurisdictions, stakeholder capitalism is more entrenched: There is a clearer link between duties owed to the company and a focus on stakeholders leading to increased shareholder value. In most jurisdictions, however, there are concepts such a "business judgement rule" (US), a "reasonable standard of care" (UK, India and Singapore, for example), "honesty, integrity and loyalty" (civil law countries), *gapponshuggi* or ethical capitalism (Japan), which would allow (if not require) directors to consider and address the impact on their companies of stakeholder capitalism. In its current consultation on sustainable corporate governance, the EU asks how it can help businesses further embed sustainability into the corporate governance framework.[10] More specifically, the EU Commission focuses its questions about directors' duties on whether and how directors should balance the interests of various stakeholders in exercising their duty of care and whether these stakeholders, which may include employees, civil society organizations etc., should play a role in enforcing directors' duties.
	Considerations for executive	Consider director fiduciary duties when preparing papers seeking board decisions. For example, include information on the expected impact of board decisions on relevant stakeholders as well as the impact that stakeholders identified in the strategy have on the company and its operations.	
Board composition and effectiveness	**Considerations for chair/board**	Based on the company's purpose, strategy, values and culture, assess the skills needed to oversee delivery of the strategy and determine whether these skills are present in the current board and senior executives; ensure effective board learning and development so that the board as a whole has an understanding of the key trends and considerations for a sustainable business; consider appointing a nominations committee. Develop a board education and learning development programme on macro existential threats and their implications for the business and its stakeholders. Consider undertaking periodic board effectiveness evaluations (with external support if appropriate) and address issues raised. Ensure there is sufficient independence on the board to achieve effective oversight of and challenge to the executive.	**Oversight role** – To achieve effective oversight, there should be clear roles and responsibilities for each board member, as well as for the board as a whole, including any committees of the board; the board sets the risk appetite of the company and the guardrails and mechanisms to hold management to account. Boards must also keep their eye on the long-term view – the challenges the company might face in the medium to longer term and what opportunities may arise in the future. They may fail in their oversight duty if such a long-term view does not take stakeholder interests into account. **Board composition** – Board composition (diversity and having the right skill sets across the board) and good board dynamics are essential to effective decision-making and oversight. Diverse and inclusive boards (whether in terms of, say, race, skill set, sexual orientation or gender) will be better able to demonstrate that stakeholder impacts have been taken into account in decision-making. Given that the role and responsibilities of the board differ from those of management, a certain amount of independence on the board is generally accepted as good governance practice. The ultimate manifestation of this is the separation of the role of chief executive officer and the chair/senior independent director. The board has responsibility for setting the strategy and having oversight of its delivery, while management is tasked with delivering on that. A culture of challenge and supervision is critical.

Stakeholder engagement	**Considerations for chair/board**	Consider nominating individual board members with responsibility for oversight of each material stakeholder (stakeholder ombudsman) on the board, or appointing stakeholder representatives (as already occurs in some jurisdictions, notably Germany, Denmark and Sweden). The chair should retain responsibility for engagement with shareholders and investors on purpose, culture and values, governance and long-term prospects. Request that management bring the voice of stakeholders to the board at each board meeting. Task management with developing policies to ensure that effective stakeholder governance is achieved throughout the whole company. Monitor and oversee the effectiveness of such policies.
	Considerations for executive	Regularly evaluate stakeholder engagement practices to ensure they inform on the impact of actions taken (or omissions made) on material stakeholders. Stakeholder engagement mechanisms – what are these; how might technology be employed? Ensure that board-approved policies and procedures are in place – for example, subsidiary governance policies to ensure that the stakeholder governance agenda is not only a "top" board deliverable, but a deliverable across the group. Escalate the voice of the stakeholder to the boardroom – provide regular updates; stakeholder feedback/impact dashboards; board papers and agendas.
Engagement with shareholders/ investor	**Considerations for chair/board**	Ensure a programme of direct and regular engagement by the chair and board with material investors to demonstrate the strategic commitment and oversight on ESG matters. Appoint someone in the investor relations team to support the chair/board as spokesperson for ESG matters. Ensure that shareholders and investors understand and endorse the company's purpose. Share with investors/shareholders improvements made or planned in the organization's governance framework to progress stakeholder governance. Ensure that shareholders and investors are kept informed about the company's approach to ESG and the nature of the board's oversight role, with special attention paid to the expectations of particular investors. Discuss plans for ESG reporting with investors, identifying risks and opportunities presented for value creation or protection.
	Considerations for executive	Support the chair in investor/shareholder engagement as regards effectiveness and improvements in stakeholder governance. Discuss with investors/shareholders capital allocations made to support stakeholder governance implementation.

TABLE 4 | **Culture and values**

Incentives	**Considerations for chair/board**	Tone from the top is key. Do incentives for senior management (and for that matter the board) support the strategy, culture and values of the company and its short-, medium- and long-term ambitions? Now is the time to review this aspect of the board's responsibility and oversight role. Consider the adequacy of incentives across the organization, with particular consideration of the appropriateness of differentials in place as regards seniority, ethnicity and gender.	**Incentives** – It is clear that what constitutes good performance is changing. Remuneration schemes have for too long been overly complicated and opaque. COVID-19 has underlined the need for alternative metrics, including non-financial ones, such as how a company treats its suppliers. Appropriate structures, including share-based pay with stretching targets, are vital. Vague goals are against the interests of all stakeholders and make it impossible for investors to hold remuneration committees to account. Benchmarking, too, is critical. Boards need to show that their proposals are in line with those of their company's peer group. Poorly structured packages that reward executives regardless of performance are bad for society and investors alike.
	Considerations for executive	Review incentive compensation and performance management procedures across the company to assess whether it is consistent with: (1) ESG accountabilities; (2) ESG key performance indicators (KPIs); and (3) material stakeholder expectations.	

<table>
<tr><td rowspan="2">ESG KPIs</td><td>Considerations for chair/board</td><td colspan="2">Consider the ESG targets and goals of competitors and industry to benchmark the company's sustainability ambitions.

For each stakeholder group, set KPIs for use by management in reporting stakeholder engagement activities to the board. These ESG KPIs should be aligned with the stakeholder capitalism metrics (SCMs)[11] chosen for reporting purposes (see below).</td></tr>
<tr><td>Considerations for executive</td><td colspan="2">Ensure that management tools are in place to embed ESG KPIs across the organization.

Ensure that appropriate data (including incentives) is available to report to the board periodically on progress against ESG KPIs.</td></tr>
<tr><td rowspan="2">Transparency and reporting</td><td>Considerations for chair/board</td><td>ESG reporting is a critical matter for boards to address now, notwithstanding that in most countries non-financial reporting is not mandatory. Getting ready for mandatory reporting will take some time and effort:

Set and consider which reporting standards to use. The United Nations Sustainable Development Goals and the World Economic Forum's Measuring Stakeholder Capitalism paper[12] provide a useful starting point. This will require a risk and opportunity assessment for each core SCM and impact assessment for advanced SCMs. Does the board have the data it needs to undertake this exercise? Use learnings from the approach taken for climate pursuant to the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD) to inform the approach regarding other stakeholder groups.

Undertake any risk and opportunity scenario planning, as well as any necessary impact assessments, to identify gaps in preparedness for reporting, not just as regards climate, but also in terms of other material stakeholders identified in the strategy (for example, diversity, supply chain resilience, approach to tax planning and community concerns).

The work in the Measuring Stakeholder Capitalism paper should be addressed, and reporting against the core metrics tested in the organization, so that any gaps can be tackled over the coming years.</td><td rowspan="2">Transparency – Companies will continue to be pressed particularly by investors to provide more comprehensive ESG information as well as to address more subjects in their public reports. Investment and capital flows will be influenced by ESG disclosures. Inaccurate or incomplete disclosures will create risks. Requests for independent third-party verification will increase. In short, reporting matters such as ESG performance and disclosures will influence company sustainability and valuation. Boards are ultimately responsible for the statements the company makes publicly, both in its annual returns and elsewhere. Most aspects of stakeholder capitalism, from a reporting perspective, are currently classed as "non-financial" and generally voluntary. The EU's Non-Financial Reporting Directive, published in 2014,[13] introduced mandatory reporting for large companies and financial institutions – they are required to disclose certain information on the way they operate and manage social and environmental challenges. The directive gives companies significant flexibility to disclose relevant information in the way they consider most useful. The EU sought views on the directive between February and June 2020, in particular, on matters such as the application of the materiality principle in non-financial reporting; the assurance of non-financial information; the knock-on effect of the reporting requirements on SMEs in the value chain; and the role of sustainability rating agencies and data providers as intermediaries between preparers and users of non-financial information. A Biden administration in the US is expected to favour improvements in corporate reporting on ESG.

A myriad of measurements and standards can currently be used. However, all this is rapidly changing; non-financial reporting is being "standardized" and is becoming increasingly mandatory; where it is not mandatory, it is increasingly becoming a condition of access to capital or finance. Ahead of the pack are the recommendations for more effective climate-related disclosures of the Task Force on Climate-Related Financial Disclosures (TCFD). These are the most-used climate-related standards for reporting on climate risk and opportunity and are used by countries wishing to introduce mandatory climate disclosure (such as New Zealand, the UK and the European Union). Further, the International Financial Reporting Standards (IFRS) Foundation has recently indicated its intention to take ownership of oversight for ESG reporting globally and is seeking views on its approach. It has indicated that it will likely use existing standards. This makes it more compelling for boards to consider adopting the measurements identified in the measuring stakeholder capitalism paper.</td></tr>
<tr><td>Considerations for executive</td><td>Set up cross-functional teams to identify and manage ESG risks and opportunities to ensure all interdependencies are identified and addressed.

Seek out expert support to assist in preparing SCM reporting, especially reliable third-party assurance.

Consider data that will be required to support SCM disclosures and whether it is sufficient, reliable and robust enough.

Undertake periodic stakeholder impact assessments to support SCM reporting.

Begin to prepare a narrative for reporting. In particular why particular stakeholders are material to the company, and the impact on the company's business and operations from engagement with them, as well as the company's responses to such impacts.</td></tr>
</table>

Note: Technology/AI/data – AI will not be covered as a stakeholder here because the Forum has done in-depth work on this elsewhere. In particular, we would refer to the governance module on AI in the document *Empowering AI Leadership – An Oversight Toolkit for Boards of Directors*. In summary, board-level AI governance requires attention because: (1) artificial intelligence creates new technology governance challenges and amplifies existing ones; (2) the regulatory landscape is changing; and (3) there is a need to align AI with values and ethics. Explicability, transparency, accountability, fairness, handling data responsibly, guarding against criminal misuse, aligning AI with values and being mindful of the societal implications of AI are all essential pillars of ensuring the responsible use of data and AI.[14]

3 Reflections on stakeholder governance: catalysing sustainable value creation

Baker McKenzie and the World Economic Forum interviewed the Director of the University of Cambridge Institute for Sustainability Leadership, the Chair of bp and the Chief Executive Officer of Fidelity. Below are summaries of their views on implementing stakeholder governance within their organizations and how to bring the voices of key stakeholders more effectively into the boardroom. Each interviewee was asked to provide comments in light of the COVID-19 pandemic and through the lens of sustainable value creation.

The University of Cambridge Institute for Sustainability Leadership (CISL)

Background
The University of Cambridge Institute for Sustainability Leadership (CISL) is a globally influential institute developing leadership and solutions for a sustainable economy. The CISL Rewiring the Economy framework demonstrates how the economy can be "rewired" through collaboration between business, government and finance institutions, to deliver positive outcomes for society and the planet in line with the UN Sustainable Development Goals. Its Rewiring Leadership framework also sets out a model for the individual and organizational leadership approaches needed to accelerate the path to a sustainable economy.

Dame Polly Courtice is the Founder Director of CISL. She is also the Founder of the Prince of Wales's Business and Sustainability Programme and Academic Director of Cambridge University's Master of Studies in Sustainability Leadership. Courtice commented on the impact of COVID-19, the role of the board and the need for structural change in our social, political and economic systems.

How has the COVID-19 pandemic affected the move towards stakeholder governance?
The pandemic has laid bare fissures and frailties in our political, social and economic systems, revealing some of the inherent consequences of global interconnectedness that we have so often discounted and that have now emerged to test our resilience at an existential level. It has compelled us to take a fresh look at how our systems work and posed some fundamental questions about what really matters in society – to debate at an intensely personal and intergenerational level questions such as "Whose needs have greater priority?", "What is the right balance between individual liberties and collective interests?" and "What is the relationship between economic and human health?"

It remains to be seen whether the plans to Build Back Better will be effective in addressing these debates – many of which have led to deep polarizations within society – and at the same time build an economy that addresses inequality and climate change, and protects and restores nature.

The scale of these challenges will require a more fundamental transformation of our systems than "building back" implies. In reality, many of the most powerful and influential individuals and organizations have a vested interest in returning to the status quo. But for millions of others – often those with the least power and influence – the old system was profoundly unsatisfactory and they are looking for – demanding – profound change.

The real test is whether the pandemic has done enough to shock the system into delivering that change. Policy-makers, investors and companies will need to recognize that the system failures that were destroying the natural world and human well-being have to be corrected in a meaningful and lasting way to create a genuine shift towards stakeholder capitalism.

In short, the pandemic has acted as a wake-up call and provided an opportunity to do things differently. The real question is: Will we stay awake?

Who are the main critics of stakeholder capitalism?

Despite all the talk of stakeholder capitalism, there are still plenty of advocates for shareholder primacy. Arguments continue about stakeholder capitalism reducing accountability and market efficiency. Others claim it is little more than PR. But in reality, stakeholder capitalism – done well – can actually increase accountability and deliver positive outcomes. In the face of rising societal expectations and compelling scientific evidence that things need to change, more and more companies understand that they need to be advocates for a new form of capitalism that puts profitability and financial performance alongside the non-financial contribution.

The response of many companies to the pandemic in supporting employees and communities has sent some really positive signals, giving companies an opportunity to show their socially responsible and more human side, which has resonated with employees and the public alike. What is needed now is for this to become a normal, permanent feature of how they behave, not just a one-off response to a crisis in their local communities. It needs to become an embedded set of behaviours that takes into consideration the lives not only of those stakeholders who are in their direct line of sight but also of those who are far out of sight. This includes those in their supply chains, or indeed future generations, and creates meaningful and long-term value for society and the environment. So, encouraging as the recent commitment of the Business Roundtable in the US to stakeholder capitalism is, companies need to commit to going beyond supporting employees and local communities and call for profound systems-level change – for legislative reforms that reflect the fact that, ultimately, a company's fundamental purpose should be to benefit society.

What is the role of the board in progressing stakeholder capitalism?

Many of these stakeholder-based strategies have been driven by the vision and business insight of executives who are close to the business action and can see clearly that positive stakeholder impact is directly in the interests of the business.

The board has an equally important role to play, not only in giving the executive the mandate and supporting and encouraging these strategies but also in ensuring that a clear and compelling purpose is the guiding star of the business. Without full board backing, and without a driving purpose, it can be exceptionally hard for executives to take a proactive stance rather than remain on the back foot and take a reactionary approach to the changing external context.

Many boards still lack a deep understanding of the true context within which they are operating – of the full implications of the existential threats of climate change and the destruction of ecosystems, and the real significance of social injustice as a force that will increasingly need to be reckoned with. Without this understanding of the structural pressures and trends that will, with increasing urgency, affect society as a whole – they will not be best placed to position the company for long-term success. Armed with this understanding, they are better placed to make good decisions, to take responsibility for the company's direction of travel and to own with confidence their full impact on society and the environment.

Purpose-oriented companies think about these ultimate end goals of the business. In many ways, this defines their social contract and often requires a fundamental rethink of the old norms – of their relationships with customers, suppliers and communities, with existing business and economic models, and with the natural world. To take a single example: Integrating meaningful, purpose-driven non-financial measures into compensation structures often requires measures that many companies simply do not currently have available. The fact that a growing number of companies are grappling with these issues and developing new metrics and tools to enable them to do so is an encouraging sign, and one that needs full board support.

What can directors do differently to bring stakeholder voices to the boardroom?

Bringing stakeholder voices into the boardroom is increasingly being called for. In reality it requires real determination on the part of the board to do this in a way that goes beyond tokenism, and a willingness to take some risks. Progress can be slow, particularly in formal board appointments, but there are some good examples of where companies have experimented, sometimes cautiously, in bringing in these voices. As a minimum, a growing number of boards have made a start by appointing genuinely influential external advisory boards, comprising scientific experts and civil society representatives who expect to be listened to, and who have been shown to have had significant influence, not least in setting ambitious targets for net zero by 2050 or sooner, and addressing issues of social justice. But real change will come when the stakeholder voice is seen as a normal part of the decision-making process of a board.

Faced with the consequences of our reckless experiment with nature and the moral burden of social injustice, the progress being made by the corporate sector is woefully inadequate. But we have to build on positive signs and encourage the efforts made by those companies that, through their purpose, seek to be part of a form of capitalism that is more inclusive, restorative of nature and ultimately, sustainable, in the full and literal sense of the word.

Fidelity International

Background
Fidelity International is an asset management firm offering investment and retirement solutions to institutions, individuals and their advisers. As of 5 November 2020, Fidelity was responsible for total client assets of $605 billion for more than 2.5 million clients globally.

Anne Richards, Chief Executive Officer at Fidelity, has 28 years' experience in the asset management industry and is a strong proponent of ESG investing. She is also an ambassador for "Women on Boards UK", which provides information, networking and encouragement to ensure more women are appointed to board and senior leadership positions.

In a wide-ranging conversation, Richards discussed the impact of Fidelity's new proprietary ESG ratings system. These forward-looking ratings produce data for portfolio managers that can be aggregated to the fund or sectoral level, increasing the quality of metrics available on non-financial performance.

Richards also commented on the impact of the COVID-19 pandemic on stakeholder capitalism, the working environment and the changing nature of communities.

How has the COVID-19 pandemic affected the move towards stakeholder governance?
The pandemic created a level of social, political and economic uncertainty that business is learning how to navigate. The scale and scope of the response required from governments and companies today is akin to the scale of the reform and restructuring efforts after the First and Second World Wars – which resulted in female suffrage and the adoption of a more robust welfare state, respectively. There could be similarly deep upheavals this time, and since the pandemic broke early this year, we have seen a compression of time horizons given the need for rapid deployment of people and other resources in response. We have also seen a step change in ambition with regards to what is achievable. The challenge now is whether we slip back to old habits – or seek to build a bridge to a new future in the post-COVID-19 landscape. Discussions in the boardroom are influenced by these questions.

The business world is currently locked in a debate about prioritizing stakeholders over shareholder capitalism. This is a false distinction in some respects, as the wider social ecosystem has always been important to business. Companies are dependent on stakeholders more than they realize. But it has been a gradual process to acknowledge, for example, that it is often the least well paid who carry out some of the most critical roles in society. This has pricked our collective conscience and we have seen business step forward and act more responsibly and listen more intently, rather than remain deaf to the public's concerns, which was perhaps sometimes the case during the financial crisis.

Shareholder interests are also more dependent on a wider stakeholder approach. In some ways this is now an easier conversation to have in the COVID-19 era, as COVID-19 provides a real test case for aligning shareholder and stakeholder interests. Given the huge and rapid displays of central bank activity and fiscal support, businesses arguably have more flexibility to take a broader and longer-term approach. We are at a unique moment, one that reinforces the business case for good stakeholder management.

What role will technology and artificial intelligence (AI) play in the move towards stakeholder capitalism?
AI is only intelligent if it is used in an intelligent way. An autonomously driven car is only as safe and efficient as the data inputs on which it relies – the best-designed algorithms also need to be paired with accurate and real-time information on traffic and driving conditions, for example. The ethics of artificial intelligence, of how machines process and evolve this data to make the same decisions and judgements as a human in the same circumstances might do – that is also a topic that is going to grow in importance in the coming years.

Staying with the topic of new technologies, are you adapting to virtual ways of working?
I used to dislike working from home and telephone or videoconferencing, but my views on this have changed radically this year. Remote working has had both positive and negative affects on how we work. Taking employees as an example, proximity bias has been reduced. The remote environment has acted as a great leveller and reduced hierarchies, making it easier for those with a weaker voice to engage, as well as allowing senior managers to realize they can reach staff far junior to them without intermediary levels of management.

How has this affected stakeholder engagement?

In Fidelity, working from home has roughly doubled the level of capacity for client engagement, meaning it has experienced a significant productivity increase as employees no longer grapple with daily commutes and travel to meetings. Its investment teams report the same: In the past they might have travelled to the other side of the world to meet an investee company executive, but now they can meet the entire board in a series of meetings on the same day. Those executives are also more available because they're not travelling either.

Thinking more broadly about engagement with the stakeholder community, the picture is less certain. The ecosystem of small businesses that are based on urban populations in large cities is struggling. The potential shift towards a more disbursed business environment might also make it more difficult for companies to identify and engage with community stakeholders. For example, as a company's physical presence becomes less dominant, there may be a change in who the company identifies as its community.

The pandemic has also emphasized economic and health disparities. This has touched people's emotions and brought the purpose of diversity and inclusion to life. Fidelity recently announced equal parental leave, regardless of who wants to take it or how the child entered the family. In the wake of the Black Lives Matter movement, Fidelity announced a clear action plan with detailed targets and broad ambitions to address racial and cultural diversity at all levels of the company. As a company with operations across five continents, this is challenging to address in a meaningful way at the local level given differing social and business traditions.

However, with the social inequalities laid bare by the pandemic and equality movements, these spotlights have enabled more and better conversations than might otherwise have happened. It is crucial to have these difficult discussions and leverage that goodwill to address inequality. Not only is it the right thing to do, but it is also ultimately good for business.

What else has changed from the investor perspective?

Conversations on ESG have accelerated because companies have been reminded that neither longevity nor indeed survival is a given. Only 50 or so of the companies in the Fortune 500 in 1957 are still on the list today.

The pandemic has challenged companies and entire industries in a way that they perhaps could not have imagined before. Company shares were in free fall before government stimulus was applied, yet Fidelity found that companies with strong ESG scores awarded by their analysts generally fared better during the rout. Or to put it another way, those that were the most resilient had the best ESG credentials, even when accounting for sectoral effects. The findings support Fidelity's view that ESG makes financial sense.

There is also a nascent but growing conversation based on the idea of using "green strings" to help drive systemic change, whether that is attaching environmental provisions to government fiscal measures or support for things like emergency rights issues or debt raisings. In the wake of COVID-19, these conversations are becoming much more usual compared to even a year ago. If we can embed sustainable conditions into the broader allocation of capital, it may make these "green transitions" much more feasible.

bp

Background

bp is an integrated energy business with operations in Europe, North and South America, Australasia, Asia and Africa. The company delivers a diverse range of energy products and services to customers around the world, including operations in the refining, distribution and trading of oil and gas, as well as renewable energy interests in wind power, biofuels, smart grid and solar technology.

bp recently announced a new purpose and a new strategy: It is transforming its business model and aiming to be a net-zero company by 2050 or sooner.

Helge Lund is the board's chairman and leads the nomination and governance committees. He also regularly attends the safety, environment and security assurance, remuneration, geopolitical and audit committees.

Lund commented on the energy transition, the role of investors, and the role of governments in solving the climate change problem.

What is influencing the rise of stakeholder capitalism at the moment?

For large European companies, this stakeholder journey is not a new concept. For many years, there has been a disconnect between societal aspirations and capitalism that has brought an increased distrust of corporations. Companies are now attempting to regain that trust by focusing on the positive impact they can have on society.

Increased public interest in corporate behaviour, a changing regulatory landscape and finite resources mean that satisfying stakeholders is not just about "doing good" – companies also have a strong commercial self-interest in rebuilding the trust.

Tell us about how bp is meeting this challenge?
In February 2020, bp changed its purpose to "reimagining energy for people and the planet". Purpose must drive strategy and your strategic choices, otherwise it remains just a tagline. During 2019 the energy transition and associated challenges and opportunities featured in every board meeting, but also in town halls and leadership meetings, where younger members of the workforce were particularly active. Employees wanted to know how bp could do more to step up to the climate challenge and help society deal with the big issues. It became clear that the company would lose touch with its employees and communities if it did not make stronger commitments to change.

On 4 August 2020, bp announced an ambitious new strategy to deliver long-term value for shareholders. The strategy focuses on the pivot to an integrated energy company delivering solutions for customers. This includes a shift to low-carbon energy, in support of its ambition to achieve net-zero emissions by 2050 or sooner as well as helping the world get to net zero, with a number of equally ambitious climate-related aims for 2030. For example, the company plans to increase low-carbon investment tenfold by 2030, with no oil and gas exploration in new countries.

What changes have you made to your approach to stakeholder governance to support your new purpose and strategy?
In formulating the strategy behind this new purpose, bp reached out to a variety of external stakeholders including local communities, NGOs, academics and industry associations, bringing some of bp's harshest critics into discussions about shaping the future of the company, and drawing on their external expertise, input and challenge. That's something we are continuing to do as we've gone on to develop our new sustainability frame and the elements that sit within it – from our new biodiversity position to our updated human rights policy.

Engagement, collaboration and transparency will be at the heart of how we deliver on these elements going forward.

What role have investors helped to play?
We've been engaging extensively with our investors too, of course. Many investors are now taking a much firmer stance on stakeholder issues, particularly on climate change and the energy transition. Their scrutiny and challenge has helped to accelerate companies' actions and performance on these issues over the past few years. We believe continued engagement and transparency are going to be key as we transition the company while retaining the support of our investors, both current and new. Investors and capital therefore have a very important role in making positive changes.

Have investors taken up the role of speaking on behalf of other stakeholder groups?
Increasingly, investors are coming under pressure to align themselves with the needs and expectations of society, in part because large funds and investors have so much capital invested that they have a strong self-interest in building credibility into the capitalist system. The interesting thing for bp is that while we think of different and distinct sets of stakeholders – staff, society and shareholders – they increasingly want the same things – companies that can create returns and solve problems at the same time in order to provide long-term value.

What impact has the COVID-19 pandemic had on this journey, if any?
The COVID-19 pandemic has focused minds – giving society a vision of a different world with less pollution, less traffic and cleaner skies. It has led to inspiring stories of companies using their resources, capabilities and technology to help communities deal with an unprecedented problem. This will hopefully act as a catalyst in bringing companies and society together in the effort to rebuild trust. People will remember which companies stepped up during the crisis, so the reaction to the pandemic is important. That commitment to build trust will allow businesses more room for manoeuvre. If you have trust, then you will be presented with more opportunities, which can create improved, long-term value.

The future energy market will also be more complex, so collaboration not only with other companies but with society at large is important. Public-private collaboration and partnerships will be key to addressing the climate issue because it is inconceivable that we can solve such a complex problem without leveraging the support of the public and governments. To solve these problems, society can use companies' ability to innovate, allocate capital, take risks and drive efficiency. But to do so most effectively, governments must provide incentives for companies to solve these issues. The EU is showing leadership on this, with a strong political commitment to the European Green Deal. We hope it will contribute to a broader, more coordinated effort from governments globally.

bp is serving the citizens of Aberdeen as strategic planning and technical adviser, helping to shape solutions for the city's net-zero path. A similar decarbonization collaboration with the city of Houston is also in place. This represents progress towards the pivot from being an international oil company focused on producing resources to an integrated energy company focused on delivering solutions for customers. By 2030, bp is aiming to work with 10–15 cities, helping them meet the demand for bespoke energy, mobility and decarbonization solutions.

How has bp sought to bring the planet into strategy and stakeholder considerations?
It is absolutely at the core of what we do. It's embedded in our purpose – to reimagine energy for people and our planet. And it is one of the three focus areas of our new sustainability frame that links our purpose to our strategy. We call this focus area "care for our planet" and it brings in issues including biodiversity, circular economy principles and sustainability in our supply chains.

The stakeholder journey involved a deep analysis of some of the key trade associations where we are a member to identify those with climate-related policies and activities not aligned with bp's positions. After the review, bp left three associations and communicated its differences with several others that were only partially aligned.

Significant resources are also being redeployed from public relations campaigns into stepping up our advocacy work in favour of policy that supports net zero, such as advocacy in favour of carbon pricing.

The reduction of greenhouse gas emissions was also introduced as a component of bonus scorecards for approximately 37,000 employees, connecting bonus outcomes directly with the progress towards the low carbon transition.

More recently, during the COVID-19 pandemic, bp reported a $6.7 billion quarterly loss due to a review of the long-term price environment, informed by the expectation of the enduring impact of COVID-19 on demand for hydrocarbons. This resulted in a write-down of assets. And as part of our new financial frame and investor proposition we took the difficult decision to halve the dividend to support bp's balance sheet and provide the flexibility required to invest in the energy transition at scale. Short-term change of this nature puts shareholder commitment to the test. Some investors focus more on the short-term direct return that the dividend provides.

Conversely, many investors are coming to the realization that something has to give in order to rebalance the company, grasp the opportunity the energy transition offers and create long-term value. The pandemic has perhaps reinforced the realization among shareholders that change is needed and their feedback has been mostly positive.

Have investors become better at assessing a company's stakeholder impact or ESG disclosures?

There has been a dramatic development in ESG disclosures in the past couple of years. In discussions with investors, good stakeholder governance prevails as a key topic, even in jurisdictions where there are few ESG-orientated portfolio managers. Investors are, however, increasingly focusing on a company's overall environmental, social and governance attributes. For energy companies, the energy transition needs to be a core part of strategy rather than a sideshow. For example, climate-related considerations about oil and gas have driven stronger engagement by investors. And while oil and gas will continue to play an important role in the energy mix over the next few decades, the relative proportions in the mix will become more challenged. So, we need a focus on these ESG issues in order to support investors' understanding of how ESG fits with the strategy, the actions we are taking and how it supports the creation of long-term value.

However, a common frustration for large corporates is the multitude of reporting methods and KPIs. Sometimes that can feel like a paperwork exercise rather than a real analysis of long-term sustainability and the economic impact of the company's performance on these issues. And while comparability is of course important, I think in the ESG area investors need to guard against an over-reliance on metrics and come to grips with the substance of a company's plans, its strategies and the positive contributions they make. There is room to align how we communicate these initiatives so that they provide the valuable information that investors need, without becoming a distraction.

4 Legal summary

Below is a summary of the legal framework in the surveyed jurisdictions, namely, China, France, Germany, India, Japan, the Netherlands, Switzerland, the UK, the US, Brazil, Saudi Arabia, South Africa, Singapore and Mexico.

The areas covered relate to the extent of, if any, director duties to shareholders and other stakeholders, best practice in the role of shareholders as stewards, ESG reporting requirements, company purpose and incorporation structures.

1. Do boards of directors owe fiduciary (or other legal) duties to shareholders?
In most jurisdictions surveyed, a director on the board of a company primarily owes fiduciary (or other analogous) duties to the company, and does not, by virtue of being a director, owe any direct duties to the company's shareholders.

2. In exercising their duties towards the company, are directors required to take into account stakeholders' interests?
Yes, in many jurisdictions, in exercising their duties towards the company, directors are required to take into account various stakeholder interests. These include, but are not limited to: company shareholders (US, Saudi Arabia); the environment (Brazil, France, India, the UK); employees (Brazil, France, India, the UK, Saudi Arabia, Singapore); the community, or society as a whole (Brazil, France, India, the UK, Saudi Arabia); and suppliers, customers and others (Brazil, the UK, Saudi Arabia).

The UK recently introduced a requirement for certain larger companies to include a statement in their annual report that describes how the directors have had regard to the interests of their stakeholders when performing their duty to promote the success of the company for the benefit of their members as a whole.

In other jurisdictions, such as the US, the only stakeholder group that directors are currently required to take into account are the shareholders. There are some further jurisdictions in which only directors of companies with shares admitted to trading are required to take account of wider stakeholder interests in order to comply with a relevant corporate governance code. For example, the German Corporate Governance Code (which operates on a "comply or explain" basis) provides that directors should take account of the interests of shareholders, employees and certain other company stakeholders. Similarly, China's Code of Corporate Governance for Listed Companies provides that directors of relevant companies should take account of the interests of certain stakeholders, including creditors, employees, consumers, suppliers and the community.

3. Has there been, or is there being considered, regulatory/best practice change to the role of shareholders as company stewards?
In the EU, the Shareholder Rights Directive II (SRD II)[15] requires EU member states to establish rules that promote shareholder rights at the general meetings of companies whose shares are traded on a regulated market situated (or operating) in the EU ("traded companies"). Among other things, SRD II requires EU member states to ensure that, in respect of traded companies, shareholders may: (1) put items on the agenda of their general meetings; (2) ask questions about items on the agenda of their general meetings; and (3) vote on material, related-party transactions (though member states have the option to require board approval only). SRD II also requires member states to implement legislation requiring: (1) traded companies to publish a directors' remuneration report that is subject to an annual advisory shareholder vote, and a remuneration policy that is subject to a binding (or advisory) vote at least once every four years; (2) institutional investors and asset managers to establish and publish a

shareholder engagement policy and to disclose annually how they have implemented that policy, as well as how they have voted at general meetings of companies in which they hold shares; and (3) proxy advisers to disclose the code of conduct with which they comply, or an explanation of why they do not comply with a code of conduct.

Stewardship codes or guidelines are used in several jurisdictions (Brazil, India, Japan, Netherlands, the UK, the US). Typically, compliance is voluntary and the entities expected to comply with these codes and guidelines are asset owners and asset managers (e.g. large institutional investors and pension funds). In the UK a new UK Stewardship Code applies as of 1 January 2020 that focuses on the activities and outcomes of stewardship, not just policy statements; compliance remains voluntary. It now requires investors who sign up to it to engage with boards on ESG topics and to report on the outcomes of such engagement.

In the other jurisdictions surveyed (Saudi Arabia, Singapore, South Africa, Mexico), there are no formal stewardship codes or guidelines.

4. Are companies required to report on ESG risks and opportunities?

Each EU member state was required (under the Non-Financial Reporting Directive (NFRD)[16] to implement legislation requiring certain large public interest entities[17] with more than 500 employees to produce a "non-financial statement" for inclusion in their annual report containing certain information, including the principal risks associated with the following: environmental matters; social and employee matters; respect for human rights; and anti-corruption and anti-bribery matters. Each EU member state had discretion regarding exactly how the NFRD was implemented. The EU is currently consulting on amendments to the NFRD, including expanding the scope of the companies to which it applies. Some European jurisdictions (for example, the UK and France) have gone further in their requirements for ESG-type disclosures in legislation and/or in their respective corporate governance codes for companies with shares admitted to trading on certain markets. Significantly, the UK government has announced that it intends for the UK to become the first country in the world to make Task Force on Climate-related Financial Disclosures (TCFD)-aligned disclosures fully mandatory across the economy by 2025, going beyond the "comply or explain" approach.

Outside Europe, the picture is similar, with large companies and/or companies with shares admitted to trading generally having to comply with the most onerous ESG reporting requirements. Reporting is often on a voluntary basis, or as a result of compliance with the respective corporate governance codes, or regulations on traded companies (Brazil, India, China, Mexico, Singapore, Japan). In the US, the Securities and Exchange Commission (SEC) enforces comprehensive requirements and disclosure obligations on companies with shares admitted to trading on a relevant market, albeit that these are largely focused on governance issues.

5. Are companies required to state their purpose in their constitutional documents in your jurisdiction?

The UK, South Africa, China and Singapore do not require a company to state its purpose in its incorporation documents. However, companies in these jurisdictions may nevertheless choose to do so and, if a company is required to adhere to a relevant corporate governance code, or further regulations, by virtue of having its shares admitted to trading on a particular market, that company may be required to state its purpose in order to comply with the corporate governance code or regulations. For example, the UK Corporate Governance Code requires relevant companies to establish their purpose (i.e. the reason for which they exist, or their raison d'être), values, strategy and culture.

In other jurisdictions, companies are required to state their purpose in their constitutional documents, and purpose tends to mean providing a definition of what the company has the legal capacity to do, rather than its raison d'être. Companies are therefore often concerned about drafting their "purpose" broadly enough so that it does not unnecessarily restrict the scope of their operations.

6. Are there any bespoke legal/incorporation structures for companies that wish to serve stakeholders in your jurisdiction?

A number of jurisdictions do provide bespoke legal structures for companies that wish to serve stakeholders in the jurisdiction (France, India, Japan, South Africa, Singapore, the UK, the US). These structures generally allow companies to define their own social, cultural or environmental aims, but they sometimes: (1) place restrictions on distributions to shareholders; and/or (2) benefit from preferential tax treatments. Germany and the Netherlands are currently discussing the introduction of alternative legal structures for public-interest companies.

Brazil, China, Saudi Arabia, Mexico and Switzerland do not specifically provide for these types of bespoke incorporation structures. However, in many of these jurisdictions, it may be possible to use existing structures to achieve a similar outcome, for instance, by amending their constitutional documents.

TABLE 5 | **Legal background: summary of findings**

Country	Do boards of directors owe fiduciary (or other legal) duties to shareholders?	Are directors required to take into account other stakeholders' interests (e.g. environment, employees, customers, suppliers, etc.)?	Has there been or is there being considered regulatory/best practice change to the role of shareholders as company stewards?	Are companies[a] required to report on ESG risks and opportunities?	Are companies required to state their purpose in their constitutional documents in your jurisdiction?	Are there any bespoke legal/incorporation structures for companies that wish to serve stakeholders in your jurisdiction?
China	No	Yes	No	Yes, in accordance with China's Code of Corporate Governance for Listed Companies	No[b]	No
France	No	Yes	Yes	Yes. Some rules only apply if certain size thresholds are met	Yes	Yes
Germany	No	No[c]	Yes	Yes, if thresholds are met and are "capital market orientated"	Yes	No[d]
India	No	Yes	Yes	Yes	Yes	Yes
Japan	No[e]	No[f]	Yes	Yes, in accordance with Japan's Corporate Governance Code	Yes	Yes
Netherlands	No	Yes	Yes	Yes, if certain size thresholds are met	Yes	No[g]
Switzerland	No	No	Yes	No	Yes	No
UK	No	Yes	Yes	Yes	No[h]	Yes
USA	Yes	No	Yes	Yes[i]	Yes	Yes
Brazil	No	Yes	Yes	Yes	Yes	No
Saudi Arabia	Yes	Yes	No	No	Yes	No
South Africa	No	No	No	No	No	Yes
Singapore	No	Yes	No	Yes	No	Yes
Mexico	No	No	No	Yes	Yes	No

[a] For the purpose of this question, we have assumed that the company is a company with shares admitted to trading on the main local market for shares. This is because most countries impose few ESG reporting requirements on private companies but do impose more stringent ESG reporting requirements on companies with shares admitted to trading on the main local market for shares. Companies that have shares admitted to trading may also need to comply with a relevant corporate governance code, and this may also require them to disclose certain ESG issues on a "comply or explain" basis.

[b] Companies with shares admitted to trading on certain markets are required to state their business purpose in their articles of association in order to comply with relevant guidelines issued by the China Securities Regulatory Commission.

[c] Germany's Corporate Governance Code (which applies on a "comply or explain" basis to companies with shares admitted to trading on certain markets in Germany) requires directors to take into account the interests of certain stakeholders, including the shareholders, the workforce and certain other groups related to the company.

[d] Plans for a GmbH in Verantwortungseigentum (responsible ownership) are currently out for consultation.

[e] Japan's Corporate Governance Code (which applies on a "comply or explain" basis to companies with shares admitted to trading on certain markets in Japan) provides that directors owe fiduciary duties to the shareholders.

[f] Japan's Corporate Governance Code (which applies on a "comply or explain" basis to companies with shares admitted to trading on certain markets in Japan) requires directors to exercise their leadership in establishing a corporate culture where the rights of certain stakeholders (including employees, customers, business partners, creditors and local communities) are respected.

[g] Plans for a Maatschappelijke BV (a new purpose-focused legal entity) are currently out for consultation.

[h] Companies with shares admitted to trading on the premium segment of the Main Market of the London Stock Exchange are required to establish their purpose, values, strategy and culture in order to comply with the UK Corporate Governance Code, which applies on a "comply or explain" basis.

[i] These generally apply to the governance aspects of ESG reporting. There are few social or environmental reporting requirements.

Contributors

This white paper supports the Future of the Corporation initiative at the World Economic Forum and its platform on Shaping the Future of Investing. As corporate leaders face unprecedented challenges from an array of emerging health, economic, environmental and social challenges, new approaches for governance are needed to enable transformative change and business success.

The hope is that the insights in this report may serve to drive meaningful change, and the Forum is grateful for assistance from bp, the Cambridge Institute for Sustainability Leadership, Fidelity and Ørsted in the development of the case studies and analysis.

The project team includes:

Baker McKenzie

Beatriz Araujo
Partner, Head of Corporate Governance

Julia Hayhoe
Former Chief Strategy Officer

Brent Esler
Associate

Laura Bentham
Knowledge Lawyer

Keir Burbidge
Trainee Solicitor

Roma McCool
Trainee Solicitor

World Economic Forum

Maha Eltobgy
Head of Shaping the Future of Investing, Member of the Executive Committee

Adam Robbins
Head of Future of Investing Initiatives, Shaping the Future of Investing

William Hoffman
Platform Lead, Shaping the Future of Investing

Katerina Labrousse
Platform Lead, Shaping the Future of Investing

Acknowledgements

With thanks for additional contributions from:

Baker McKenzie

Sarah Belahcen
Associate

Steven Canner
Partner

Rico Chan
Partner

Matthias Courvoisier
Partner

Robert Eastwood
Partner

Raymundo E. Enriquez
Partner

Gaspar Gutiérrez-Centeno
Partner

Seishi Ikeda
Partner

Helgard Janse van Rensburg
Senior Associate

Kenny Kwan
Partner

Anna Mello
Partner

François-Xavier Naime
Partner

Karim Nassar
Partner

Takuya Nomura
Associate

Lara Schwartzmann
Partner

Sana Sheikh
Associate

Kim Tan
Partner

Peter Tomczak
Partner

Morne van der Merwe
Partner

Reynaldo Vizcarra-Mendez
Partner

Christian Vocke
Partner

Shardul Amarchand Mangaldas

Akshay Chudasama
Partner

Endnotes

1. World Economic Forum, “The Modern Dilemma Balancing Short- and Long-Term Business Pressures”, 12 March 2019, https://www.weforum.org/whitepapers/the-modern-dilemma-balancing-short-and-long-term-business-pressures (link as of 8/12/20).
2. See “A Look Back at the Stakeholder Journey” section of this paper; and WBCSD and Baker McKenzie, "Board Directors’ Duties and ESG Considerations in Decision-Making", November 2020, https://www.wbcsd.org/Programs/Redefining-Value/Business-Decision-Making/Governance-and-Internal-Oversight/Resources/Board-directors-duties-and-ESG-considerations-in-decision-making (link as of 22/12/20).
3. Global Reporting Initiative, "GRI101: Foundation", 2016, https://www.globalreporting.org/media/55yhvety/gri-101-foundation-2016.pdf?page=23 (link as of 22/12/20).
4. World Economic Forum, “Measuring Stakeholder Capitalism: Towards Common Metrics and Consistent Reporting of Sustainable Value Creation”, 22 September 2020, https://www.weforum.org/reports/measuring-stakeholder-capitalism-towards-common-metrics-and-consistent-reporting-of-sustainable-value-creation (link as of 8/12/20).
5. See in “Legal Summary” section of this paper; and WBCSD and Baker McKenzie, "Board Directors’ Duties and ESG Considerations in Decision-Making", November 2020, https://www.wbcsd.org/Programs/Redefining-Value/Business-Decision-Making/Governance-and-Internal-Oversight/Resources/Board-directors-duties-and-ESG-considerations-in-decision-making (link as of 22/12/20).
6. European Union, “Directive 2014/95/EU of The European Parliament and of the Council”, Official Journal of the European Union, 22 October 2014, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095; Jean Rogers and George Serfeim “Pathways to Materiality: How Sustainability Issues Become Financially Material to Corporations and Their Investors”, Harvard Business School, 4 December 2019, https://hbswk.hbs.edu/item/pathways-to-materiality-how-sustainability-issues-become-financially-material-to-corporations-and-their-investors (links as of 8/12/20).
7. Another option companies are choosing is to seek B Corp certification from not-for-profit B Labs, which is based in part on a company’s verified performance on the B Impact Assessment.
8. See, for example, World Business Council for Sustainable Development, “Applying Enterprise Risk Management to Environmental, Social and Governance-Related Risks”, 22 October 2018, https://www.wbcsd.org/Programs/Redefining-Value/Business-Decision-Making/Enterprise-Risk-Management/Resources/Applying-Enterprise-Risk-Management-to-Environmental-Social-and-Governance-related-Risks (link as of 8/12/20).
9. That is, they will reach net-zero emissions by 2050 based on the direct emissions from their own operations and energy consumption, but not their value chain.
10. European Commission, “Sustainable Corporate Governance”, 26 October 2020, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/public-consultation (link as of 8/12/20).
11. World Economic Forum, “Measuring Stakeholder Capitalism: Towards Common Metrics and Consistent Reporting of Sustainable Value Creation”, 22 September 2020, https://www.weforum.org/reports/measuring-stakeholder-capitalism-towards-common-metrics-and-consistent-reporting-of-sustainable-value-creation (link as of 8/12/20).
12. World Economic Forum, “Measuring Stakeholder Capitalism: Towards Common Metrics and Consistent Reporting of Sustainable Value Creation”, 22 September 2020, https://www.weforum.org/reports/measuring-stakeholder-capitalism-towards-common-metrics-and-consistent-reporting-of-sustainable-value-creation (link as of 8/12/20).
13. European Union, “Directive 2014/95/EU of The European Parliament and of the Council”, Official Journal of the European Union, 22 October 2014, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095 (link as of 8/12/20).
14. World Economic Forum, “Governance Empowering AI Leadership”, https://spark.adobe.com/page/3MEmZh5EprOXJ/ (link as of 8/12/20).
15. European Union, “Directive 2017/828/EU of The European Parliament and of the Council”, Official Journal of the European Union, 17 May 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L0828 (link as of 8/12/20).
16. European Union, “Directive 2014/95/EU of The European Parliament and of the Council”, Official Journal of the European Union, 22 October 2014, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095 (link as of 8/12/20).
17. This includes banks, insurers and companies with transferable securities admitted to trading on certain EU-regulated markets.

COMMITTED TO
IMPROVING THE STATE
OF THE WORLD

The World Economic Forum, committed to improving the state of the world, is the International Organization for Public-Private Cooperation.

The Forum engages the foremost political, business and other leaders of society to shape global, regional and industry agendas.

World Economic Forum
91–93 route de la Capite
CH-1223 Cologny/Geneva
Switzerland

Tel.: +41 (0) 22 869 1212
Fax: +41 (0) 22 786 2744

contact@weforum.org
www.weforum.org