Corporate Social Responsibility

Mikhail Reider-Gordon, T. Markus Funk, Uche Ewelukwa, Ira Feldman, and Constance Wagner*

I. Introduction

Expectations of what constitutes corporate social responsibility (CSR) were clarified in 2012, with countries, institutions, and regulators offering insight into what the future likely holds for companies around the world.[1] The codification of CSR reporting and mandatory compliance requirements provided a strong indicator of the groundswell of support that is driving the adoption of CSR standards beyond wishful thinking or corporate feel-good campaigns.

For example, lawmakers and regulators in the United States put force behind what had hitherto been mere guidelines and best practices. Three significant new developments, discussed in further detail below, changed the legal landscape for companies across the country: (1) the California Transparency in Supply Chains Act; (2) President Barack Obama's Executive Order, aimed at combating human trafficking by making all federal contractors comply with regulations once applicable only in defense-related settings; and (3) new rules adopted by the Securities and Exchange Commission (SEC) regarding conflict minerals.

Closely related to these developments in the United States, on the international stage, the World Federation of Exchanges paid increased attention to the need to induce capital markets to include environmental, social, and corporate governance (ESG) data in investment decision-making. Following prior decisions by the Johannesburg Stock Exchange, India's Securities and Exchange Board, and the Stock Exchange of Thailand to promote ESG and CSR disclosure, China and Spain were added to the growing list of countries that have now codified some form of mandatory annual CSR reporting for companies.

* Mikhail Reider-Gordon is a Director in Disputes & Investigations, Navigant and an Adjunct Professor of Law at Thomas Jefferson School of Law, San Diego, California.

1. This article surveys developments during 2012. For developments during 2011, see Uche Ewelukwa Ofodile et al., *Corporate Social Responsibility*, 46 Int'l Law. 181 (2012).

II. U.S. Developments

A. Laws and Regulations

1. *California Transparency in Supply Chains Act*

Effective January 1, 2012, the California Transparency in Supply Chains Act requires companies covered by the statute to publicly disclose the nature and scope of their efforts to eradicate human trafficking, slavery, child labor, and forced labor from their worldwide supply chains.[2] The Act applies to (1) all retail sellers and manufacturers with (2) more than $100 million in annual global gross receipts who (3) "do business" in California (defined as having more than $50,000 in assets in California or spending more than the same amount in wages in the state).[3] The Act does not provide for damages or criminal enforcement, but it allows for injunctive relief via the California Attorney General.[4] On or before November 30, 2012, however, the California Franchise Tax Board must provide to the Attorney General a (confidential) list of businesses required to comply with this legislation, as determined from a company's tax return from the previous year.[5] Present estimates are that this list will include over 6,000 names.[6]

The Act requires the substance of the required disclosures to be detailed, broad, and public. Qualifying companies must, on their company website's homepage, provide a "conspicuous and easily understood link" to their disclosure.[7] This disclosure must, in turn, set forth the extent to which the company:

- "[e]ngages in verification of product supply chains to evaluate and address risks of human trafficking and slavery," and whether the verification was conducted by a third party;
- "[c]onducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains," and whether such verification was conducted through independent, unannounced audits;
- "[r]equires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business;"
- "[m]aintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking;" and
- "[p]rovides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products."[8]

---

2. Cal. Civ. Code § 1714.43(a)(1) (West 2012).
3. *Id.*; Cal. Rev. & Tax Code § 23101(a)(2)-(4) (West 2012).
4. Cal. Civ. Code § 1714.43(d) (West 2012).
5. Cal. Rev. & Tax Code § 19547.5(a) (West 2012).
6. Peter M. Menard, *California Transparency in Supply Chains Act*, Bus. L. News (Cal. State B. Ass'n, CA), Aug. 2011, at 17.
7. Cal. Civ. Code § 1714.43(b) (West 2012).
8. Civ. § 1714.43(c).

2. *Executive Order to Combat Human Trafficking*

On September 25, 2012, President Obama signed a landmark Executive Order announcing several safeguards to ensure that the U.S. government does not contribute tax dollars to human trafficking.[9] The Order requires federal contractors and subcontractors to certify, before receiving an award (and annually thereafter during the terms of the contract or subcontract), that it has taken proactive steps to prevent trafficking in its supply chain. The contractor must certify that, to the best of its knowledge and belief, neither it nor any of its subcontractors have engaged in any such activities. If abuses are detected, the contractor or subcontractor is obligated to make a referral or self-reporting action and take the appropriate remedial action. Furthermore, the Executive Order requires that contractors and their subcontractors agree to cooperate with enforcement authorities and to remediate the problem.[10] These self-disclosure and remediation standards are, indeed, notable in their sweep.

To achieve its goals, the Executive Order also prohibits federal contractors from using misleading or fraudulent practices to recruit employees; charging employees recruitment fees; destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity documents (such as passports or driver's licenses); and failing to pay certain return transportation costs upon the end of employment.[11]

The Executive Order imposes additional stringent requirements on contracts to be performed outside of the United States involving an estimated value of supplies or services of more than $500,000.[12] For the portion of the contract or subcontract to be performed outside of the United States, the contractor or subcontractor must maintain a written compliance plan, which, at a minimum, includes:

- an anti-trafficking awareness and training program;
- a process for employees to report trafficking activities without fear of retaliation;
- a recruiting and wage plan limiting the use of employee recruitment companies to those with trained employees, prohibiting the charging of recruitment fees to employees, and ensuring that wages meet applicable host country legal requirements (or sufficiently explaining any variance);
- a housing plan, if the contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host country housing and safety standards or explains any variance; and
- procedures to prevent subcontractors at any tier from engaging in trafficking in persons.[13]

---

9. *See* Exec. Order No. 13,627, 77 Fed. Reg. 60,029 (Sept. 25, 2012).
10. *Id.* at 60,030.
11. *Id.* at 60,029-31.
12. *Id.* at 60,030-31.
13. *Id.* at 60,031.

3. *SEC's Rule Regarding Conflict Minerals Under Dodd-Frank*

On August 22, 2012, the SEC issued the final rule accompanying section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[14] This new rule requires companies to publicly disclose their use of conflict minerals that originate in the Democratic Republic of the Congo (DRC) or adjacent countries. The rule applies to any issuer that files reports with the Commission under section 13(a) or section 15(d) of the Exchange Act who use "conflict minerals" (defined to include cassiterite, columbite-tantalite, gold, wolframite, tantalum, tungsten, and tin, as well as minerals that are "necessary to the functionality or production" of any product "manufactured or contracted to be manufactured by the company").[15] The final rule requires a company to provide the disclosure on a new form to be filed with the SEC (Form SD) and applies to both foreign and domestic issuers. The rule applies to:

> any issuer for which conflict minerals are necessary to the functionality or production of a product contracted by that issuer to be manufactured, including conflict minerals in a component of a product. In general, the question of whether an issuer contracts to manufacture a product will depend on the degree of influence exercised by the issuer on the manufacturing of the product based on the individual facts and circumstances surrounding an issuer's business and industry. The final rule does not define when an issuer contracts to manufacture a product.[16]

Not included in the qualifications for influence over manufacturing are those companies that service, maintain, or repair products manufactured by a third party, or merely affix their label, brand, or logo to a generic product manufactured by a third party. Additionally, an issuer will not be viewed as contracting to manufacture a product if its actions involve no more than

> specifying or negotiating contractual terms with a manufacturer that do not directly relate to the manufacturing of the product, such as training or technical support, price, insurance, indemnity, intellectual property rights, dispute resolution, or other like terms or conditions concerning the product, unless the issuer specifies or negotiates taking these actions so as to exercise a degree of influence over the manufacturing of the product that is practically equivalent to contracting on terms that directly relate to the manufacturing of the product.[17]

The final rule does not include a de minimis exception and the statute itself does not contain a de minimis exception.[18]

The final rule does require that a company that uses any of the designated minerals is required to conduct a reasonable "country of origin" inquiry reasonably designed to determine whether any of its minerals originated in the covered countries or are from scrap or recycled sources, dependent on the available infrastructure at a given time.

---

14. *See* Conflict Minerals, Exchange Act Release No. 34-67716, 77 Fed. Reg. 56,274, 56,365 (Sept. 12, 2012) (to be codified at 17 C.F.R. 240, 249b).
15. Securities Exchange Act of 1934, § 13(p)(1)(A)(ii), (2)(B), 15 U.S.C. § 78m(p)(1)(A)(ii), (2)(B) (2006).
16. Conflict Minerals, 77 Fed. Reg. at 56,290.
17. *Id.* at 56,291.
18. *Id.* at 56,298.

> If (i) an issuer determines that, based on its reasonable country of origin inquiry, its necessary conflict minerals did not originate in the Covered Countries or did come from recycled or scrap sources, or (ii) based on its reasonable country of origin inquiry, the issuer has no reason to believe that its conflict minerals may have originated in the Covered Countries or the issuer reasonably believes that its conflict minerals are from recycled or scrap sources, the issuer is not required to exercise due diligence on its conflict minerals' source or chain of custody or file a Conflict Minerals Report with respect to such conflict minerals. Instead, the issuer only is required, in the body of its specialized disclosure report, to disclose its determination and briefly describe the reasonable country of origin inquiry it undertook in making its determination and the results of the inquiry it performed.[19]

Companies must also make available a description of their inquiry on their websites and provide the Internet address of that site in the Form SD.[20]

A Conflict Minerals Report must be filed as an exhibit to the Form SD, however, if:

> based on its reasonable country of origin inquiry, the issuer has reason to believe that its necessary conflict minerals may have originated in the Covered Countries (and may not have come from recycled or scrap sources), [and] the issuer must also exercise due diligence on the source and chain of custody of its conflict minerals.[21]

The company must also make publicly available the Conflict Minerals Report on its Internet website and provide the Internet address on Form SD. Companies required to file a Conflict Minerals Report must conduct due diligence regarding the source and chain of custody of their conflict minerals. The due diligence measures must conform to a nationally or internationally recognized due diligence framework, such as standards consistent with the Organization for Economic Co-operation and Development (OECD) guidance.[22] Additionally, there are third-party audit requirements that companies must obtain, certifying that their products are "DRC Conflict Free." In addition to the audit and certification requirements, if the products are not DRC Conflict Free, the company must disclose that the minerals are Conflict Minerals, identify "the facilities used to process [the] conflict minerals" in those products, list the "country of origin of [the] conflict minerals" in those products, and specify what efforts were undertaken "to determine the mine or location of origin with the greatest possible specificity."[23]

B. Shareholder Proposals in Corporate Proxies

The 2012 proxy season in the United States saw a continuation of the growing trend among activist shareholders to seek a higher level of CSR in the companies in which they invest. The primary route for achieving this goal is through use of the shareholder proposal mechanism under SEC Rule 14a-8.[24] Rule 14a-8 permits shareholders meeting certain eligibility and procedural requirements to use the proxy process to submit a resolution for

19. *Id.* at 56,313.
20. *Id.* at 56,315.
21. *Id.* at 56,313.
22. *Id.* at 56,326.
23. *Id.* at 56,320.
24. *See* Shareholder Proposals, 17 C.F.R. § 240.14a-8 (2011).

consideration at an annual or special meeting of shareholders.[25] Such proposals recommend or require the company or board to take certain action, subject to the right of management to seek to exclude the proposal on one of the grounds set forth in the Rule.[26]

Proposals falling into these categories were voted on at approximately 369 S&P 500 companies in 2012.[27] The largest number of proposals, and those that received the highest level of shareholder support, related to corporate governance issues, including separation of the roles of chief executive officer and board chairman, the right of shareholders to call special meetings and to act by written consent, the removal of classified boards, the adoption of majority (rather than plurality) voting in director elections, and the elimination of supermajority voting provisions to remove directors.[28] A new type of shareholder proposal introduced in 2012 related to proxy access, which is the right of shareholders to include their own director nominees in the proxy materials.[29]

The second most common category of shareholder proposals was related to ESG issues.[30] Shareholder advocates continued their proactive approach on these issues during the 2012 proxy season, although the number of proposals filed was somewhat smaller than in 2011.[31] Although the level of shareholder support for such proposals is significantly lower than for proposals on corporate governance issues—reaching 20 percent at most—such support has increased in recent years.[32] The chief proponents responsible for filing over half of these proposals in 2012 were socially responsible investors, including Walden Asset Management, Calvert Investments, and Trillium Asset Management; pension funds, including the New York State Common Retirement Fund; with the balance filed by faith-based institutions, special interest groups, individuals, labor unions, and foundations.[33]

The largest number of proposals in the ESG category in 2012 related to the environment and sustainability.[34] These proposals focused on actions on climate change, like cutting greenhouse gas emissions, better natural resource management relating to coal and hydraulic fracturing, and corporate reporting on broadly defined sustainability issues.[35] The sustainability proposals have been influenced by guidance from Ceres, a U.S. coalition of investors and public interest groups, which issued a paper in 2011 entitled "Proxy Voting for Sustainability." The paper sets forth model resolutions that encompass

---

25. *Id.*

26. *Id.*

27. *See* James Morphy, *2012 Proxy Season Review: Overall Trends in Shareholder Proposals*, HARV. LAW SCH. F. ON CORP. GOVERNANCE & FIN. REG. (July 21, 2012, 8:40 AM), http://blogs.law.harvard.edu/corpgov/2012/07/21/2012-proxy-season-review-overall-trends-in-shareholder-proposals/.

28. *See id.*

29. *See* James Morphy, *Proxy Access Proposals: Review of 2012 Results and Outlook for 2013*, HARV. LAW SCH. F. ON CORP. GOVERNANCE & FIN. REG. (June 28, 2012, 10:07 AM), http://blogs.law.harvard.edu/corpgov/2012/06/28/proxy-access-proposals-review-of-2012-results-and-outlook-for-2013/.

30. *See* Morphy, *supra* note 27.

31. *See* HEIDI WALSH & MICHAEL PASSOFF, AS YOU SOW FOUNDATION, PROXY PREVIEW 2 (2012), http://asyousow.org/publications/2012/ProxyPreview2012_20120319.pdf.

32. *Id.* at 11.

33. *Id.* at 6-8.

34. *Id.* at 5.

35. *Id.* at 28-43.

not just environmental, but also social and corporate governance issues, referred to collectively as the "ESG factors that define and inform sustainable business."[36]

In addition to these two large categories of shareholder proposals relating to corporate governance issues and ESG issues, a smaller number of proposals were filed relating to executive compensation and a wide variety of miscellaneous issues.[37] Proposals on executive compensation declined in number due to the availability of the "say on pay" mechanism for a shareholder advisory vote on such compensation under the Dodd-Frank Act.[38]

With the growth in the number of shareholder proposals filed in 2012, the SEC remained active in fielding requests for exclusion from affected companies under Rule 14a-8. In response to several issues that came up during the 2012 proxy season, including proof of ownership, defects in notices sent to shareholders regarding holding period problems, and exclusion of proposals that reference websites as vague and indefinite under rule 14a-8(i)(3), the SEC issued Staff Legal Bulletin No. 14G.[39] In addition, the SEC issued several noteworthy no-action letters relating to shareholder proposals on proxy access by shareholders, the ordinary business exception, and political and lobbying activity.[40]

C. U.S. Enforcement Actions

On November 28, 2012, the Environmental Protection Agency (EPA) announced the suspension of BP from bidding on any new government contracts and disqualifying it indefinitely from winning new leases to drill on taxpayer-owned lands, citing a "lack of business integrity" by the company in the wake of the 2010 Deepwater Horizon catastrophe.[41] The EPA said the move was triggered by BP's agreement on November 15, 2012 to plead guilty to a series of felony charges as a result of the 2010 catastrophe, which killed eleven people and resulted in significant environmental damage from millions of barrels of oil pouring into the Gulf of Mexico, marking the largest oil spill in U.S. history.[42] The suspension is temporary and did not affect existing contracts. BP is the top supplier of fuel to the U.S. Department of Defense, representing hundreds of millions of dollars to the company and its affiliates. BP still faces criminal proceedings and massive civil claims related to environmental damage.[43]

---

36. Kirsten S. Spalding & Jackie Cook, Ceres Guidance, Proxy Voting for Sustainability 5 (2011), http://www.ceres.org/resources/reports/proxy-voting-for-sustainability/at_download/file (pdf. download available).

37. *See* Morphy, *supra* note 27.

38. *See id.*; *see also* Securities and Exchange Act of 1934 § 14A, 15 U.S.C. § 78n-1 (2006).

39. *See* SEC Staff Legal Bulletin No. 14G (Oct. 16, 2012), http://www.sec.gov/interps/legal/cfslb14g.htm.

40. *See* John Olson, *SEC Staff Guidance on Shareholder Proposals During 2012 Proxy Season*, Harv. Law Sch. F. on Corp. Governance & Fin. Reg. (June 18, 2012, 10:21 AM), http://blogs.law.harvard.edu/corpgov/2012/06/18/sec-staff-guidance-on-shareholder-proposals-during-2012-proxy-season/.

41. Suzanne Goldenberg & Terry Macalister, *BP Suspended From New U.S. Federal Contracts Over Deepwater Disaster*, The Guardian (Nov. 28, 2012, 5:34 PM), http://www.guardian.co.uk/environment/2012/nov/28/epa-suspends-bp-oil-spill.

42. *See Times Topics: Gulf of Mexico Oil Spill (2010)*, Times Topics, N.Y. Times (last updated Jan. 3, 2013), http://topics.nytimes.com/top/reference/timestopics/subjects/o/oil_spills/gulf_of_mexico_2010/index.html.

43. *See* Josh Lederman, *BP Barred From New U.S. Gov't Contracts, Land Leases*, Associated Press (Nov. 28, 2012, 4:58 PM), http://finance.yahoo.com/news/bp-barred-us-govt-contracts-land-leases-215327535.html.

III. International Developments

A. Africa

1. *Kenya*

On May 11, 2012, Kenya's Ministry of Energy released the third draft of a National Energy Policy.[44] "The overall objective of the energy policy is to ensure affordable, sustainable and reliable supply to meet national and county development needs, while protecting and conserving the environment."[45] One specific objective of the Energy Policy is to "[e]nsure that prudent environmental, social, health and safety considerations are factored in energy sector developments."[46] Regarding upstream petroleum exploration, one part of the policy provides an action plan (Short Term 2012–2016) to review Kenya's "Petroleum (Exploration and Production) Act (Cap. 308) and formulate guidelines in the new legislation to provide for" inter alia, "[c]ompensation, windfall profits, royalties and corporate social responsibility."[47] Chapter 6 of the Policy is titled "Land, Environment, Health and Safety" and addresses "energy supply side environmental concerns,"[48] 'demand side environmental concerns,"[49] "climate change issues,"[50] "disaster preparedness and mitigation,"[51] as well as "land and socio-economic impacts."[52]

2. *Senegal*

On October 12, 2012, the President of Senegal and the Prime Minister of Canada announced a new regional corporate social responsibility initiative. The initiative will operate out of Canada's mission in Senegal and "will link existing CSR networks in Senegal, Burkina Faso, Cote d'Ivoire and Guinea."[53] As conceived, the initiative "will facilitate dialogue on standards and best practices among stakeholders in industry, government and civil society."[54] The initiative builds on Canada's CSR Strategy for the Canadian International Extractive Sector, Building the Canadian Advantage, which the Government of Canada announced in 2009.[55]

---

44. *See* Ministry of Energy, Republic of Kenya, National Energy Policy, Third Draft (May 11, 2012), *available at* http://www.kplc.co.ke/fileadmin/user_upload/Documents/05-2012/Media/National_Energy_Policy_-_Third_Draft_-_May_11_2012.pdf.
45. *Id.* ¶ 1.2(1).
46. *Id.* ¶ 1.2(2)(f).
47. *Id.* ¶ 2.2.15(1), (8).
48. *Id.* ¶ 6.2.
49. *Id.* ¶ 6.4.
50. *Id.* ¶ 6.5.
51. *Id.* ¶ 6.6.
52. *Id.* ¶ 6.7.
53. Press Release, Prime Minister of Can., *PM Announces New Initiatives To Strengthen Cooperation with Senegal* (Oct. 12, 2012), http://pm.gc.ca/eng/media.asp?id=5086.
54. *Id.*
55. Press Release, Prime Minister of Can., *Promoting Corporate Social Responsibility (CSR) in Senegal and West Africa*, (Oct.12, 2012), http://pm.gc.ca/eng/media.asp?id=5089.

3. *Sierra Leone*

On January 19, 2012, Sierra Leone launched the country's first online mining database in an effort to increase accountability and transparency in the country's natural resources industries. The database is a joint initiative between the government, the World Bank, the United Nations Development Programme and a number of other NGOs and donors. The Government of Sierra Leone Online Repository System[56] was created in part to help the country attain compliance with the Extractive Industries Transparency Initiative,[57] which mandates "the timely publication of payments made by mining companies to governments, as well as revenues generated from the projects."[58] In an effort to help the country shed its long association with "blood diamonds" and the unregulated trade that fed a lengthy civil war, the new database collects, records, and publishes for public consumption, information on revenue data, including payments for licenses, royalties, and contributions to local chiefdoms.

4. *South Africa*

a. South African Development Community (SADC) Model Bilateral Investment Treaty Template

In June 2012, Member States of the South African Development Community (SADC), an inter-governmental organization made up of fifteen African nations,[59] completed work on a Model Bilateral Investment Treaty Template and Commentary (Model BIT).[60] It is hoped that the Model BIT will guide member states in future investment treaty negotiations. The Model BIT departs from traditional BITs in several respects, particularly by addressing investor rights as well as investor obligations. Regarding investor obligations, some issues covered include: Common Obligation against Corruption (Article 10), Compliance with Domestic Law (Article 11), Provision of Information (Article 12), Environmental and Social Impact Assessment (Article 13), Environmental Management and Improvement (Article 14), Minimum Standards for Human Rights, Environment and Labour (Article 15), Corporate Governance Standard (Article 16), Investor Liability (Article 17), and Transparency of Contracts and Payments (Article 18). The Model BIT also addresses the rights of states and specifically addresses the Right of States to Regulate (Article 20) as well as the Right to Pursue Development Goals (Article 21).

---

56. *See Government of Sierra Leone, GoSL Online Repository*, MINISTRY MINES & MIN. RESOURCES, http://sierraleone.revenuesystems.org/login/auth (last visited Jan. 12, 2013, 1:55 PM).

57. *See The Extractive Industries Transparency Initiative Principles and Criteria*, EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE, http://eiti.org/eiti/principles (last visited Jan. 12, 2013, 1:56 PM).

58. Dumbuya Mustapha & Damon Van der Linde, *Sierra Leone launches online mining database to increase transparency, Guardian development network*, THE GUARDIAN (Feb. 1, 2012 8:03 AM), http://www.guardian.co.uk/global-development/2012/feb/01/sierra-leone-online-mining-data-transparency/print.

59. *See About SADC*, SOUTH AFRICAN DEVELOPMENT COMMUNITY, http://www.sadc.int/about-sadc/ (last visited Jan. 12, 2013).

60. SOUTH AFRICAN DEVELOPMENT COMMUNITY, SADC MODEL BILATERAL INVESTMENT TREATY TEMPLATE (2012), *available at* http://www.iisd.org/itn/wp-content/uploads/2012/10/SADC-Model-BIT-Template-Final.pdf.

b. Group of 'Friends of Paragraph 47'

On June 20, 2012, South Africa joined with Brazil, Denmark, and France in an "initiative to commit to corporate sustainability reporting."[61] As part of the measures, companies listed on South Africa's Johannesburg Stock Exchange must "report on their environmental, economic, social as well as governance performance."[62] The goal of the newly formed group—a group of "friends of paragraph 47"—is to advance corporate sustainability reporting as called for in paragraph forty-seven of the U.N. Conference on Sustainable Development "Rio+20" outcome document, which states:

> We acknowledge the importance of corporate sustainability reporting and encourage companies, where appropriate, especially publicly listed and large companies, to consider integrating sustainability information into their reporting cycle. We encourage industry, interested governments and relevant stakeholders with the support of the United Nations system, as appropriate, to develop models for best practice and facilitate action for the integration of sustainability reporting, taking into account experiences from already existing frameworks and paying particular attention to the needs of developing countries, including for capacity-building.[63]

c. Bilateral Investment Treaties: Towards a New Era?

South Africa has decided not to renew some existing bilateral investment treaties (BITs) about to expire and is refraining from entering into future BITs, except for compelling economic and political circumstances.[64] These decisions result from a three-year BIT policy framework review by South Africa's Department of Trade and Industry (DTI) that was concluded in 2010. Because of the review, South Africa is looking at how to balance investor rights with investor responsibilities. In a July 26, 2012 speech, Dr. Rob Davis, South Africa's Minister of Trade and Industry, noted that going forward,

> [k]ey considerations would be to codify BIT-type protection into South African law and clarify their meaning in line with the South African Constitution. We would also seek to incorporate legitimate exceptions to investor protection where warranted by public policy considerations such as, for example[,] for national security, health, envi-

61. *Brazil, Denmark, France & South Africa Join in Commitment to Sustainability Reporting*, U.N. Envtl. Program (Jun. 20, 2012), http://www.unep.org/newscentre/default.aspx?DocumentID=2688&ArticleID=9190&l=en.

62. *Id.*

63. Rio+20 United Nations Conference on Sustainable Development, June 20–22, 2012, *Outcome of the Conference: The Future We Want*, ¶ 47, U.N. Doc. A/CONF.216/L.1 (June 19, 2012).

64. The notice of termination was reportedly contained in a September 7, 2012 letter entitled, "Termination of the Bilateral Investment Treaty with the Belgo-Luxembourg Economic Union," from Maite Nkoana-Mashabane, Minister of International Relations and Co-operation, to the Ambassador of the Kingdom of Belgium to South Africa, Johan Maricou. *See* Peter Leon, et al., *South Africa: South Africa Declines To Renew Bilateral Investment Treaties with European Union Member States*, Webber Wentzel (Oct. 5, 2012), http://www.mondaq.com/x/199586/international+trade+investment/South+Africa+Declines+To+Renew+Bilateral+Investment+Treaties+With+European+Union+Member+States.

ronmental reasons or for measures to address historical injustice and or promote development.[65]

B. Brazil

In January 2012, the São Paulo stock exchange (BM&FBOVESPA) announced that it had adopted a "report or explain" sustainability reporting model for all listed companies, effective immediately. BM&FBOVESPA stated that it believed the model would encourage listed companies to report on ESG issues, leading to improved sustainabiity actions and creating greater transparency for investors.[66]

C. China

The Chinese government's State-owned Assets Supervision and Administration Commission (SASAC) issued a directive in early January 2012 requiring sustainability reporting by state-owned enterprises (SOEs). The SASAC has yet to specify a regime or framework for the companies to follow, but the agency went on record stating that the government expects all SOEs to publish CSR reports by the end of 2012.[67]

In January 2012, in what appears to be the first of its kind in China, a group of civil society organizations have been permitted to file a lawsuit on behalf of a group of civilians in environmental court.[68] The lawsuit alleges that the Yunnan Luliang Peace Technology Company (LPTC), manufacturer of chromium and sodium dichromate, illegally dumped two chemicals in the environment in southwestern Yunnan province, causing cancer in some of the residents of the affected area. In the past, lawsuits had only been brought by agencies with tacit approval from the government. In September 2012, the local government arrested five people they accused of instigating the dumping of the toxic run-off and ordered LPTC to halt production of the chemicals.[69]

In August 2012, the Hong Kong Stock Exchange announced that it will make ESG reporting a recommended best practice for listed companies starting at the end of 2012.[70]

---

65. Minister of Trade and Industry Dr. Rob Davies, Speech delivered at the South African launch of the United Nations Conference on Trade and Development (UNCTAD) Investment Policy Framework for sustainable development at the University of The Witwatersrand (July 26, 2012), *available at* http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=29391&tid=77861.

66. Press Release, BM&FBOVESPA, BM&FBOVESPA Recommends Listed Companies Publish a Sustainability Report or Explain Why They Do Not (Jan. 4, 2011), *available at* http://www.bmfbovespa.com.br/novo-valor/en-us/news/2012/BMFBOVESPA-recommends-listed-companies-publish-a-Sustainability-Report-20120104.asp.

67. *See* Xinhua, *Central Firms To Issue Social Responsibility Report*, China Daily (Mar. 15, 2012, 4:48 PM), http://www.chinadaily.com.cn/bizchina/2012-03/15/content_14844090.htm.

68. Sui-Lee Wee, *Cancer Village Lawsuit Tests China's Pollution Lawsuit Climate*, Ins. J. (Jan. 17, 2012), http://www.insurancejournal.com/news/international/2012/01/17/231282.htm.

69. *See id.*

70. Hong Kong Exchanges and Clearing Ltd., Consultation Paper: Environment, Social and Governance Reporting Guide, ¶ 10 (Dec. 2011), http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201112.pdf; *see also Hong Kong Stock Exchange to Amend Listing Rules for ESG Reporting*, KPMG (Sept. 25, 2012), http://www.kpmg.com/cn/en/issuesandinsights/articlespublications/pages/hkex-listing-rules-esg-reporting-201209.aspx.

D. ECUADOR

On January 3, 2012, Chevron appealed a February 2011 ruling by an Ecuadorian court against the company, which ordered it to pay US $8.6 billion in damages and clean-up costs associated with an environmental contamination class action lawsuit that dates back to 2003.[71] The 2011 ruling included an additional penalty that would increase the damages to US $18 billion if Chevron failed to issue a public apology. The class action in 2003 was brought against Texaco (acquired by Chevron in 2001), with the plaintiffs alleging the contamination had led to increased rates of cancer as well as other serious health problems for the residents of the region. In September 2010, following appeals by Chevron, the plaintiffs submitted a new assessment of damages for the claims stating that the cost would be between US $90 and US $113 billion. Chevron appealed the decision to Ecuador's National Court of Justice, but the damage ruling was upheld.

In March 2012, Chevron asked the Provincial Court of Justice for the fourth time to block the Ecuadorian Government from enforcing the US $18 billion judgment against it, but the court ruled that the company "was not entitled to use an order from the international arbitration tribunal, which asked Ecuador's Government to suspend the litigation and to block the plaintiffs from enforcing the judgment."[72] In an effort to enforce the judgment, the Ecuadorian plaintiffs filed a lawsuit in Canada in May 2012 and one in Brazil in June 2012 targeting Chevron's assets in those countries.[73] On August 6, 2012, the Ecuadorian court ruled that Chevron had until the end of the day to pay the US $19 billion judgment. The award was increased in July 2012, after the Judge in the case calculated various mandatory costs required by Ecuadorian law. In October 2012, the Ecuadorian court issued an order permitting the plaintiffs to seize about US $200 million of Chevron's assets located in the country, in an effort to collect on the judgment against the company.[74]

71. *See* Chevron Corp. v. Naranjo, 667 F.3d 232 (2d Cir. 2012).

72. Jessica M. Karmasek, *Ecuadorian panel again squashes Chevron motion to block judgment*, LEGAL NEWSLINE (Apr. 2, 2012, 10:35 PM), http://legalnewsline.com/class-action/235698-ecuadorian-panel-again-squashes-chevron-motion-to-block-judgment.

73. *See* Terry Baynes, et al., *Chevron Fails to Block $18 Billion Ecuador Judgment*, REUTERS (Oct. 9, 2012), http://www.reuters.com/article/2012/10/09/us-usa-court-ecuador-idUSBRE8980UQ20121009.

74. *Naranjo*, 667 F.3d at 235; *see also* Eduardo Garcia, *Ecuador Court Deals Chevron Fresh Blow in Pollution Case*, REUTERS (Oct. 16, 2012, 6:50 PM), http://www.reuters.com/article/2012/10/16/ecuador-chevron-idUSL1E8LGMYO20121016; Paul Barrett, *Chevron Fails to Squelch $19 Billion Ecuador Verdict*, BLOOMBERG BUSINESSWEEK (Oct. 9, 2012), http://www.businessweek.com/articles/2012-10-09/chevron-fails-to-squelch-19-billion-ecuador-verdict; Eduardo Garcia, *Ecuador Plaintiffs Target Chevron's Assets in Brazil*, REUTERS (June 28, 2012, 6:48 AM), http://in.reuters.com/article/2012/06/28/ecuador-chevron-idINL2E8HRJX920120628; Eduardo Garcia, *Ecuador Plaintiffs File Lawsuit in Canada Against Chevron*, REUTERS (May 30, 2012, 9:58 PM), http://www.reuters.com/article/2012/05/31/ecuador-chevron-idUSL1E8GV09B20120531; *Chevron Faces Midnight Deadline in $19 Billion Ecuador Judgment*, ENVIRONMENT NEWS SERVICE (Aug. 6, 2012, 3:03 PM), http://ens-newswire.com/2012/08/06/chevron-faces-midnight-deadline-in-19-billion-ecuador-judgment/; Karen Gullo & Mark Chediak, *Chevron Bid to Dismiss $18 Billion Award Rejected in Ecuador*, BLOOMBERG (Jan. 4, 2012, 2:02 PM), http://www.bloomberg.com/news/2012-01-04/chevron-loses-bid-to-throw-out-18-billion-award-in-ecuador-pollution-case.html.

E. France

Commencing in January 2012, listed companies in France falling under the 2010 Grenelle Act, Article 225,[75] one of the most comprehensive CSR reporting regimes to date, were obligated to obtain third-party verification of information provided in their reports. The Act, passed in 2010, updated Law No. 2001-420, relating to New Economic Regulations (operative since 2003) and made environmental and social reporting mandatory for listed companies, including those that are in many cases holding companies. The requirements are based on a list of thirty-two indicators spanning social, governance, and environmental categories—many of them inspired by the Global Reporting Initiative (GRI) performance indicators. Some indicators were also taken from the "French social report," a list of social data required from all companies to show compliance with labor regulation. In 2012, only listed companies with more than 5000 employees and €1 billion in revenue were mandated to report. Mandatory reporting will expand in 2013 to cover all companies with revenue of €400 million and above and 2000 employees; and in 2014 to any company with over €100 million in revenue and more than 500 employees. Companies are required to produce information at stakeholder request. Unlisted subsidiaries may be exonerated from the law provided they fulfill two conditions: the parent company presents consolidated group data that breaks the indicators down into details for each subsidiary, and the subsidiary clearly instructs stakeholders where to locate the published information.[76]

F. India

Effective January 1, 2012, the Securities and Exchange Board of India (SEBI) made mandatory the submission of Business Responsibility Reports for listed entities as part of their annual reporting.[77] The Ministry of Corporate Affairs (MCA) defined guidelines for the social, environmental, and economic responsibilities of companies that became effective in 2012. These guidelines initially applied to the 100 companies with the greatest market capitalization.[78] SEBI has stated that the mandatory reporting will be extended to other companies in phases.[79]

G. Netherlands

In November 2012, the Dutch company Trafigura settled with the Netherlands public prosecutor regarding one of its ships, the *Probo Koala*, dumping oil waste along the coast-

75. Loi 2010-788 du 12 juillet 2010 portant engagement national pour l'environnement [Law 2010-788 of July 12, 2010 on National Commitment to the Environment], Journal Officiel de la République Française [J.O.] [Official Gazette of France], July 13, 2010, p. 12905, art. 225, *available at* http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022470434&dateTexte=&categorieLien=id.

76. *See* Loi 2010-788, art. 225.

77. *Sebi Asks Listed Companies to Submit Business Responsibility Reports*, The Economic Times (Aug. 14, 2012, 8:14 PM), http://articles.economictimes.indiatimes.com/2012-08-14/news/33201486_1_governance-norms-sebi-child-labour [hereinafter Sebi Economic Times].

78. Press Trust of India, *Social Responsibility Guidelines Not Mandatory for Companies, s=says Govt*, NDTV Profit (Aug. 30, 2012, 6:43 PM), http://profit.ndtv.com/news/corporates/article-social-responsibility-guidelines-not-mandatory-for-companies-says-govt-310107.

79. *See* Sebi Economic Times, *supra* note 77.

line of the Cote d'Ivoire in 2006. The waste dumping was suspected of causing thousands of residents from the nearby coastal city, Abdijan, to fall ill. In 2009, the company reached a settlement with 31,000 individuals who claimed to have been made ill by the toxic waste, paying €33 million in damages, and in 2007, the company agreed to pay €152 million to the Cote d'Ivoire government to settle its claim and pay for the clean-up.[80] The company, however, denied liability. Trafigura had also already been fined €1 million for the illegal export of hazardous waste and concealing the nature of that waste. In the settlement with the public prosecutor's office, Trafigura agreed to pay an additional €300,000 as compensation for its earnings from the illegal export and the equivalent amount of the maximum fine that can be imposed for the illegal export of waste, or €67,000, in return for the case being dropped against the company director. The prosecutor's office also dropped charges against one of Trafigura's directors and agreed not to pursue its appeal against a decision not to charge another Trafigura employee for concealing the nature of the waste in return for a €25,000 fine.[81]

H. Spain

Effective January 1, 2012, Spain implemented its Sustainable Economy Law requiring all state-owned companies as well as government-sponsored commercial entities to produce and file annual sustainability reports and all businesses with more than 1000 employees to produce annual CSR reports. The law further requires that S.A. corporations (*sociedades anónimas*), corporations with an excess of 1,000 employees, file a copy of their annual CSR report with the Consejo Estatal de Responsabilidad Social de las Empresas (CERSE or Spanish Council for Corporate Social Responsibility), which monitors and oversees the implementation of CSR policies at large Spanish enterprises. Under the new law, the public departments and entities will also be obligated to draft group sustainability plans to comply with EU rules on environmental auditing and management, encourage their suppliers to adopt CSR policies and diversity practices, and where compatible with other EU laws, draft into their procurement standards certain performance terms and conditions addressing greenhouse gas emissions.[82] Of particular significance, the new law also includes an amendment requiring all Spain-based S.A. companies to disclose if the information contained within the annual CSR report has been certified or audited by an independent third party. The new law specifically sets forth a list of criteria

> that may be made in this respect by the Spanish Corporate Social Responsibility Council [with] the objectives of transparency in management, good corporate governance, commitment to local issues and the environment, respect for human rights, improved employee/employer relationships, promotion of the integration of women, of real gender equality, of equal opportunities and universal accessibility for people

80. *Dutch Probo Koala Toxic Waste Cases Finally Settled Out of Court*, Dutch News (Nov. 11, 2012), http://www.dutchnews.nl/news/archives/print/035374.php.

81. *Id.*

82. Jesús de la Morena & Roberto G. Polo, *Corporate Responsibility Provisions In The Spanish Sustainable Economy Law*, J&A Garrigues, 1 (Feb. 2011), *available at* http://www.employment.gov.sk/110509-csr-in-the-sustainable-economy-law.pdf.

with disabilities, and of sustainable consumption, all in accordance with any recommendations . . . .[83]

I. Sweden

In November 2012, Ikea, a Swedish company, admitted that it had used the slave labor of political prisoners in the former East Germany from 1960 to 1990.[84] An audit of the company's factories and vendors determined that at least sixty-six East German companies with 117 factories used political and other prisoners to make furniture for Ikea at the company's factories and in prisons.[85] The audit further revealed that some members of the Ikea management team were aware of the practice. After consulting with the Union of the Association of the Victims of Communist Despotism (in German, UOKG), Ikea stated that it would make a donation to UOKG's scientific research project on forced labor in the former German Democratic Republic.[86]

J. Inter-American Court of Human Rights

On June 27, 2012, the Inter-American Court of Human Rights (ICHR) declared that Ecuador was responsible for failing to consult the Sarayaku indigenous community in 1996 about the granting of extraction concessions to Compañia General de Combustibles, an oil company, on the community's ancestral lands.[87] This was the first time the ICHR acknowledged the violation of the collective rights of an indigenous community in place of the individual rights of its members. The ICHR held that it was the State's duty to consult with indigenous communities regarding legal or administrative measures that would affect the community directly. The ICHR noted that the idea of free, prior, and informed consent (FPIC) had become a general principle of international law.[88]

Central to the ICHR's decision was the date on which the State's obligation to consult with the indigenous community attached.[89] Counsel for the Sarayaku community argued that the State should have consulted with them as soon as Ecuador had entered into the contract with the oil company seeking to explore the land in question. The State argued that its obligation to confer with the indigenous community was not in place until May 15, 1999, when the *Convenio No. 169 sobre Pueblos Indígenas y Tribales en Países Independientes de la Organización Internacional del Trabajo* [the International Labor Organization Convention No. 169 regarding Indigenous Peoples and Autonomous Communities] that Ecuador had

83. *Id.* at 3.

84. Richard Milne, *Ikea Regrets Using Prison Labour*, Fin. Times (Nov. 17, 2012, 3:12 PM), http://www.ft.com/intl/cms/s/0/d3b4461e-3013-11e2-a040-00144feabdc0.html#axzz2HK5zXW6o; Nicholas Kulish & Julia Werdigier, *Ikea Admits Using Forced Labor in East Germany During '80s*, Int'l Herald Trib. (Nov. 17, 2012), http://iht.newspaperdirect.com/epaper/viewer.aspx.

85. *Id.*

86. *Id.*

87. Kichwa Indigenous Community of Sarayaku v. Ecuador, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 176 (June 27, 2012), *available at* http://www.corteidh.or.cr/docs/casos/articulos/seriec_245_esp.pdf.

88. *Id.*

89. Lisl Brunner & Karla Quintana, *The Duty to Consult in the Inter-American System: Legal Standards After Sarayaku*, ASIL Insights., Nov. 28, 2012, at 1, *available at* http://www.asil.org/insights121128.cfm.

ratified on May 15, 1998, entered into effect.[90] The State's argument was grounded in the Vienna Convention on the Law of Treaties, while the Sarayaku community's claims referenced the American Convention on Human Rights and the evolving law of FPIC. The Inter-American Court agreed with the Sarayaku community's assertion, specifically citing "an evolutionary interpretation of international instruments for the protection of human rights" in its ruling.[91]

IV. Environmental Issues and Sustainability

A. Rio+20

The major event of 2012 was the U.N. Conference on Sustainable Development (UNCSD), or "Rio+20," which was held in Rio de Janeiro June 20-22, 2012.[92] The conference sought to secure renewed political commitment to sustainable development, assess progress and gaps in implementing agreed commitments, and address new challenges. The outcome document, entitled "The Future We Want," was signed by 191 states at Rio+20 and was then endorsed by the U.N. General Assembly on July 24, 2012.[93] "The Future We Want" is structured around the two main negotiation themes of Rio+20: (1) the green economy in the context of sustainable development and poverty eradication, and (2) the institutional framework for sustainable development.[94]

Although the outcome document has been roundly criticized by a number of stakeholder groups for its lack of vision, its recapitulation of previous agreements, and a lack of enforceable commitments, the participating states succeeded in agreeing to over 300 paragraphs of text, some of which promise concrete measures through a framework for action and follow-up. Specific noteworthy provisions in the text include:

1. Developing broader measures of progress, as alternatives to GDP;[95]
2. Creating a high level political forum to coordinate sustainable development;[96]
3. A commitment to protect and restore the health, productivity, and resilience of oceans and marine ecosystems;[97]
4. A commitment to take action to reduce the incidence and impacts of marine pollution;[98]
5. The goal of achieving the sound management of chemicals throughout their life cycle and of hazardous waste by 2020;[99]

---

90. *Id.* at 2.
91. *Id.* at 3.
92. UNITED NATIONS CONFERENCE ON SUSTAINABLE DEVELOPMENT, http://www.uncsd2012.org (last visited Jan. 12, 2013).
93. G.A. Res. 66/288, U.N. GAOR 66th Sess., U.N. Doc. A/Res/66/288, ¶ 1 (Sept. 11, 2012), *available at* http://sustainabledevelopment.un.org/futurewewant.html.
94. *See id.* ¶ 4.
95. *Id.* ¶ 38.
96. *Id.* ¶ 85.
97. *Id.* ¶ 158.
98. *Id.* ¶ 163.
99. *Id.* ¶ 213.

6. A recognition that fundamental changes in the way societies consume and produce are indispensable for achieving global sustainable development;[100]
7. Adoption of the ten-year framework of programs on Sustainable Consumption and Production;[101]
8. Establishing a working group to develop a new set of sustainable development goals by September 2013;[102]

Rio+20 consisted of several concurrent events and meetings and involved discussions on a myriad of related CSR topics, resulting in the announcement of numerous initiatives and reports. Among these, there was a separate legal track in the run-up to the Rio+20 conference that culminated with the World Congress on Justice, Governance, and Law.[103]

The "Kuala Lumpur Statement" (Statement) highlights the key role of the legal community in advancing national and international efforts to attain environmental sustainability goals. The Statement notes the need to strengthen the operational linkages between social justice and environment in areas such as environmental impact assessment, procedural principles (including principles regarding access to information), participation and access to justice, and balancing environmental and development considerations in judicial decision-making.[104] It also calls for the advancement of environmental sustainability to safeguard the environment and human rights.[105]

The "Buenos Aires Statement" identified the following themes for consideration and discussion during the Congress: "(1) Social [J]ustice and Environmental Sustainability: New Approaches; (2) The Challenge of Environmental Governance at National, Regional and Global Levels: Improving Effectiveness; and (3) The Future of Environmental Law: Emerging Issues and Opportunities."[106]

The outcome document from the Congress in Rio, styled as the "Declaration on Justice, Governance and Law," (Declaration) underscores the importance of the rule of law and the role of the judiciary for the implementation, development, and enforcement of environmental law, noting that environmental law is essential for the protection of natural resources and ecosystems. It calls for "more effective national and international dispute settlement systems for resolving conflicts" and to build capacity of the judicial and auditing entities.[107] The Declaration also calls for the strengthening of existing international

100. *Id.* ¶ 224.
101. *Id.* ¶ 226.
102. *Id.* ¶ 248.
103. *See* IISD, *Summary of the World Congress on Justice, Governance and Law for Environmental Sustainability: 17-20 June 2012*, 203 UNEP WORLD CONGRESS BULLETIN 1, 2 (2012), *available at* http://www.iisd.ca/download/pdf/sd/ymbvol203num1e.pdf.
104. *See generally* U.N. Environmental Programme, Division of Environmental Law and Convention, Statement from First Preparatory Meeting of World Congress on Justice, Governance and Law for Environmental Sustainability, Kuala Lumpur, Malaysia (Oct. 2011), http://www.unep.org/delc/Portals/24151/klstatement.pdf.
105. *Id.* at 1.
106. U.N. Environmental Programme, Division of Environmental Law and Conventions, Second Preparatory Meeting of the World Congress on Justice, Governance and Law for Environmental Sustainability, Buenos Aires, Argentina, April 23-24, 2012, http://www.unep.org/delc/Portals/24151/BuenosAiresStatement.pdf.
107. U.N. Environmental Programme, Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability, Declaration on Justice, Governance and Law, http://www.unep.org/rio20/Portals/24180/Rio20_Declaration_on_Justice_Gov_n_Law_4_Env_Sustainability.pdf.

governance institutions and "transforming UNEP to effectively lead and advance the global policy and law-making agenda for the environment within the framework of sustainable development."[108]

The legal recommendations put forth by the 2012 UNCSD are varied and will require not only traditional state actions, but also a willingness to embrace multi-stakeholder processes, consensus approaches, voluntary commitments, and public-private partnerships to foster the goals of sustainable development and poverty eradication under the rule of law.[109]

Since the conclusion of the Rio+20 event, there has been a high level of activity within the U.N. family pointing towards a so-called "post 2015 development agenda."[110] Of special interest to CSR practitioners will be the effort to create a set of "sustainable development goals" to complement the existing Millennium Development Goals.[111]

B. Corporate reporting

The Global Reporting Initiative (GRI) released "G4," the latest version of its widely accepted protocol for sustainability reporting.[112] GRI is collaborating with the Prince of Wales Accounting for Sustainability Project and the International Federation of Accountants under the umbrella International Integrated Reporting Council (IIRC) to create a framework for integrated reporting, bringing together financial information along with ESG information.[113] The aim of IIRC is to advance integrated reporting with a focus on the information needs of long-term capital providers. Other organizations have recently launched related initiatives, including the Sustainability Accounting Standards Board that intends to "establish an understanding of material sustainability issues facing industries and create sustainability accounting standards suitable for disclosure in standard filings,"[114] and the Global Initiative for Sustainability Ratings that is poised to "create a world class corporate sustainability ratings standard as an instrument for transforming the definition of value and value creation by business . . . ."[115]

---

108. *Id.*

109. *See, e.g.*, Marianne Beisheim, *Partnerships for Sustainable Development: Why and How Rio+20 Must Improve the Framework for Multi-stakeholder Partnerships*, Stiftung Wissenschaft und Politik (Feb. 2012), *available at* http://www.swp-berlin.org/fileadmin/contents/products/research_papers/2012_RP03_bsh.pdf.

110. Press Release, Secretary-General, Secretary-General Assembles High-Level Panel on Post-2015 Development Agenda, Appointing 26 Members of Government, Civil Society, Private Sector, U.N. Press Release SG/A/1364 (July 31, 2012).

111. Alex Evans & David Steven, *Sustainable Development Goals—A Useful Outcome from Rio+20?*, N.Y.U. (Center on Int'l Cooperation, New York, N.Y.), Jan. 2012, at 1, *available at* http://www.globaldashboard.org/wp-content/uploads/SDGs-briefing1.pdf.

112. *See* Global Reporting Initiative, Sustainability Reporting Guidelines 3 (ver. 3.1, 2011), *available at* https://www.globalreporting.org/resourcelibrary/G3.1-Guidelines-Incl-Technical-Protocol.pdf.

113. *See* Int'l Integrated Reporting Council, Governance 3 (April 2012), *available at* http://www.theiirc.org/wp-content/uploads/2011/02/IIRC-GOVERNANCE-2012-04.pdf.

114. *Welcome to the Sustainability Accounting Standards Board*, Sustainability Accounting Standards Board, http://www.sasb.org/ (last visited Jan. 12, 2013).

115. Global Initiative for Sustainability Ratings, http://ratesustainability.org/ (last visited Jan. 12, 2013).