

## Climate Change Gets Up Close and Personal for Board Members



By Ron Soonieus , INSEAD

**Shell’s directors are the first to face legal action for mismanaging climate risk. Two new INSEAD reports offer advice to board members seeking to avoid the same fate.**

In the spring of 2022, while war raged once again in Europe, a momentous event in business history passed most people by. The environmental law charity, ClientEarth, began legal action against the 13 executive and non-executive directors of the mighty multinational, Shell. The charge? Failure to properly prepare for the energy transition.

Pursued for “breach of duties” under UK company law, the Shell board is the first to suffer this ignominious fate with respect to climate change. Will directors of other companies also find themselves personally liable for their companies’ sustainability shortcomings?

## Directors *can* up their game

We know from previous INSEAD surveys that most directors **acknowledge** the fundamental relationship between the concept of sustainability and their own critical role in steering the company over the long-term. This attitude is to be celebrated.

However, according to one of our latest reports, the **BCG-INSEAD Board ESG Pulse Check**, directors are not exactly brimming with confidence about their sustainability performance to date. Some 70 percent of those surveyed said their board was ineffective or only moderately effective at integrating ESG into strategy and governance.

Above all, directors feel that they need to devote more time to strategic reflection on ESG issues. More than half (53 percent) admit that they are struggling in this respect.

However, the challenge isn't simply one of strategy. Pressure is building from regulators throughout the world for boards to improve their monitoring of sustainability operations. New Zealand has already mandated climate-risk reporting; the UK, Singapore and India are not far behind. In the US, the SEC is set to introduce compulsory disclosures for corporations with public carbon-reduction targets.

At the same time, the EU has a whole orchard of regulatory and reporting proposals at various stages of fruition – ranging from cracking down on fast fashion to encouraging sustainable finance.

Most notably, the European Commission's proposal on Corporate Sustainability Due Diligence aims to foster sustainable and responsible corporate behaviour. The core purpose is to anchor human rights and environmental considerations in companies' operations and corporate governance.

The proposal introduces new duties for directors. They include setting up and overseeing the implementation of due diligence processes and integrating them into the corporate strategy. In addition, when fulfilling their fiduciary duty, directors must take into account the human rights, climate change and environmental consequences of their decisions. But will boards be ready?

Only if they can raise their performance. Just 47 percent of our survey respondents feel that they currently have sufficient ESG competence and

experience to challenge management on sustainability plans and to exercise board oversight on execution.

Nonetheless, our overall conclusion is upbeat – hence the positive title of the BCG-INSEAD Pulse Check: "Directors Can Up Their Game on Environmental, Social, and Governance Issues". Where there is a will, there is a way, as the old saying goes. Directors simply need to turn their laudable long-term vision for their companies into action. The time has come to incorporate ESG into everything that boards do: strategy discussions; director-development plans; board composition; executive recruitment; and all other decisions, whether about investments and capital allocation or target setting and compensation.

Granted, all this is much easier said than done. But luckily for directors, there are lots of quick wins available to them. Some of these are set out in a second INSEAD report, "[Designing Sustainability Governance](#)".

### **Multiple structural solutions**

Our second report concedes that there is no one-size-fits-all solution for designing sustainability governance. But there are several different “models” that can be used as steppingstones to the ideal situation – and long-term necessity – of fully integrated ESG governance (currently achieved by less than one-third of companies).

For some organisations, a dedicated sustainability committee might be the best interim solution; for others it might be a solo “champion”, a respected, heavyweight non-executive director with a special ESG remit. Alternatively, depending on the corporate context, ESG deliberations and recommendations could be delegated to, say, an audit committee preparing for integrated reporting or a strategy committee preparing for integrated long-term planning.

However, my favourite solution is to integrate sustainability into *all* existing board committees – with the full board remaining responsible for the final decisions. As one interviewee, a serial chair of multinational companies, put it, “ESG requires a lot of granularity and preparation. That can be done in committees. [...] I prefer to use existing committees and put specific ESG topics close to where they belong.”

Better still, this solution enables the board to balance a negative focus on risk and compliance (for example, in the audit committee) with a positive

focus on business opportunities (for example, in the strategy committee).

### **Plug-in practices that can boost any board**

In addition to these more structural models, boards can adopt a range of supplementary practices to boost their ESG performance. Our survey revealed that the most popular of these practical “plug-ins” are “regular updates from ESG management” (used by 48 percent of companies) and ad-hoc “updates from external experts or advisors” (used by 40 percent of companies). These are both effective, as far as they go, but ideally should be supplemented by permanent or semi-permanent mechanisms, whether regular input from external advisors or frequent presentations by a variety of internal experts.

As one frustrated sustainability manager complained, “I’m getting 30 minutes a year to give the board an update on sustainability. They all sit back, relax and enjoy the show. But they don’t ask critical questions.” In other words, the presentation becomes an annual box-ticking exercise rather than an opportunity for directors to learn.

Surprisingly, some of the most effective practices are the most underused. Only 7 percent of companies, for example, have a “sustainability taskforce of board members and executives”. This is effectively an informal version of the dedicated board committee mentioned above, without the formalities.

Similarly, just 3 percent of companies in our sample have an “independent external sustainability council”. This is effectively an extra board, but only for ESG and without voting rights. The beauty of the latter solution is that a crack team of academics, technical specialists, sustainability investors and NGO leaders can be assembled to cover the entire – and sometimes bewildering range – of ESG issues, all of which have long-term repercussions.

### **Short-term decisions are no longer an option**

Of course, to turn the old saying around, where there is no will, there is no way. No matter how well boards design their sustainability governance, directors must embrace their mission of long-term corporate stewardship if they want to avoid personal liability for corporate ESG failings.

It’s no coincidence that ClientEarth instigated legal proceedings shortly after Shell announced a decision to increase dividends and buy back more shares – rather than, for example, making future-focused investments in renewable

energy.

Above all, the cautionary tale of the little NGO that dared to take on the oil giant proves that short-term thinking about ESG is no longer an option for company directors ... unless they're happy to follow the Shell board into the law courts.

### Find article at

<https://knowledge.insead.edu/responsibility/climate-change-gets-close-and-personal-board-members>

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