

Introducing the Special Issue on Corporate Law and Climate Change – (How) Can Corporate Law Steer Companies Towards Meeting the Paris Climate Goals?

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Corporate law and climate change have long been viewed as two entirely separate topics.¹ In recent years, scholarly attention to the intersections between the two areas has certainly grown.² Regulators and supervisory authorities, too, are increasingly turning their minds to how corporate law can be used (better) to strengthen corporations' actions towards achieving international, supranational and national climate targets. Addressing the widespread lack of corporate responsibility concerning climate change mitigation, interested parties (typically shareholders) have recently begun to resort to corporate law-based litigation against corporations, in some cases directly targeting the directors and officers of these businesses. These developments are complemented by the fact that the risks posed by climate change are now widely considered so large that they not only pose financial risks to entities, but even threaten global financial stability.³

In light of the foregoing, climate science and international climate change law affect corporate law and corporate governance debates more and more. Embarking into these interdisciplinary waters is enticing, but a closer

look reveals that it triggers fundamental questions: what are the legal responsibilities of companies and company directors in the transition to a net-zero global economy? Is corporate law a bridge or rather a barrier to achieving international climate policy goals? What role does international law play in this context, and what influence does climate change litigation have?

It is against this background that we sought out to compile this Special Issue. We invited authors to present innovative perspectives on corporations' legal responsibility in the face of climate change, focusing on international and comparative points of view. The result is a formidable and multi-faceted mix of contributions, both cross-jurisdictional and country-specific.

Cross-Jurisdictional Perspectives

The Special Issue begins with *Prudential Regulation and Climate Change* by Scott Donald. This article maps how the practice of prudential regulation has evolved in recent years across several major legal systems (including the United Kingdom, the European Union, Australia, South Africa and Singapore) to engage with the risks arising from climate change. It further provides a case study of how prudential regulation itself needs to be conceived, and specifically the need for prudential regulators to be ready to deal with nascent types of risk.

Rolf H. Weber and Rainer Baisch delve into the topic of climate change transparency in their article *Climate Change Reporting and Human Information Processing – Quo Vadis Transparency?* While acknowledging that standard-setting developments are ongoing, Weber and Baisch posit that it will take some time to achieve full transparency and comparability in climate change reporting.

With her contribution *Unpacking Corporate Due Diligence in Transnational Climate Litigation: A Planetary Perspective*, Esmeralda Colombo explores due diligence from the perspective of transnational climate change litigation against corporate entities. Colombo argues that this type

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¹ A. Johnston and B. Sjäffell, 'The EU's Approach to Environmentally Sustainable Business: Can Disclosure Overcome the Failings of Shareholder Primacy?', in: M. Peeters and M. Eliantonio (eds.), *Research Handbook on EU Environmental Law* (Edward Elgar, 2020) 396, 401.

² See, for instance, A. Engert and others (eds.), *Business Law and the Transition to a Net Zero Economy* (C.H. Beck Hart Nomos, 2022); R.H. Weber and A. Hösl, 'Corporate Climate Responsibility – The Rise of a New Governance Issue' (2021) *sui generis* 83.

³ See, for instance, I. Monasterolo, 'Climate Change and the Financial System' (2020) *12 Annual Review of Resource Economics* 299.

of litigation proves key to articulating science-based business duties through mandatory climate change due diligence.

Country-Specific Studies

The article by Maria Pilar Perales Viscasillas – *Climate Change and Governance in Spain* – examines the role played by climate change considerations in Spanish corporate governance. Situating the analysis within the discussion on sustainable corporate governance, Viscasillas takes stock of normative developments occurring from the transposition of recent EU Directives.

Muriuki Muriungi's contribution *Directors' Duties and Climate Change in Africa: Evidence from Kenya, Nigeria and South Africa* conducts a comparative review of directors' duties related to climate change in three African jurisdictions: Kenya, Nigeria and South Africa. Muriungi investigates how climate-related risks may give rise to directors' liability in each of the selected jurisdictions, while also addressing some of the practical challenges for enforcement.

Finally, Sheila C. Neder Cerezetti and Gabriela de Oliveira Junqueira take our focus to Brazil with *Brazilian Corporate Sustainability Regulation in the Green Transition: Missing the Forest for the Trees*. The authors present a comprehensive overview of new rules regarding corporate governance and climate change in Brazil and argue in favor of a holistic approach that considers the broader regulatory context as well as the relations between corporate regulation, climate change and private power.

On a final note, we would like to acknowledge that this Special Issue was originally planned to be published with the *International and Comparative Corporate Law Journal* (ICCLJ). In this connection, we thank the General Editors of the ICCLJ (Professor Mads Andenæs, Professor Beate Sjøfjell, Professor Jukka Mähönen, Professor Taina Pihlajarinne, and Postdoctoral scholar Eléonore Maitre-Ekern) for their trust. Due to unfortunate circumstances out of our control, this project could not be realized there and so the Special Issue found a new home with *ex/ante*. We are grateful to the highly supportive Editorial team of *ex/ante* for making this possible on very short notice. Last but certainly not least, we thank all anonymous peer reviewers for their invaluable input given to the authors. We conclude by expressing our sincere hope that this Special Issue will provide innovative thoughts and fertile ground for further discussion across jurisdictions.