
Scan of Proposed Domestic and International Solutions Enabling Fourth Sector Activity

- DISCUSSION DRAFT -

July 17, 2008

This summary of the law is only a discussion draft intended to be revised during and after the Fourth Sector Legal Strategy Meeting on July 17, 2008. This draft is not an exhaustive list.

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In the United States:

List of Fourth Sector Activities	When was it Proposed/ enacted?	Where does it exist?	Brief Description
Socially Responsible Corporation (SRCs)	Proposed in 2007	Hawaii, Minnesota	<p><u>Criteria:</u></p> <ul style="list-style-type: none"> • A public SRC is required to file a "public interest report" along with its annual financial report in order to affirm its commitment to "public benefit"; • SRC boards would include directors who represent both the employees' interests and the public interest; • MN-no favorable tax treatment. Allow SCR to pursue something other than short-term maximization. HI-grants SRC corporate tax exemption.
Non-profit Limited Liability Company (Non-profit LLC)	KY : enacted in 1994, revised in 2007. TN: enacted in 2001, revised in 2004	Kentucky, Tennessee	<p>A total of thirty-four states currently contain statutory language that will allow a nonprofit LLC to exist but have not legally recognized such an entity. A recent private letter ruling holds that it is permissible for LLC's to be tax exempt entities.</p> <p><u>Criteria:</u></p> <ul style="list-style-type: none"> • In TN: Must be disregarded as an entity for federal income tax purposes; AND must have as its sole member a nonprofit corporation, whether foreign or domestic that is incorporated and is exempt from franchise and excise tax as not-for-profit; • In KY: Must be formed for a nonprofit purpose, cannot issue membership interests, and cannot make distributions to its members from income or profit.
Low-profit Limited Liability Company (L3C)	VT: enacted in 2008 NC: proposed in 2007	Vermont, North Carolina	<p>L3C limited to business activities that significantly further a charitable or educational purpose, do not have a significant goal of producing income or capital appreciation, and do not accomplish political or legislative purposes.</p> <p><u>Criteria:</u></p> <ul style="list-style-type: none"> • foundations may give to L3C's without risking punishment for jeopardizing investment, facilitates the flow of philanthropic capital to economic development; • Similar requirements for a for-profit requirements to receive a PRI; • no tax benefit; • Serves a narrow charitable purpose (e.g.) job creation in distressed industries; • Limited benefit: affects only the flow of PRIs, which comprise a relatively small amount of foundation grants and capital.
Sustainable Business Achievement Ratings (S-bar)	Created in 2004	Any state	S-bar is the first comprehensive system with a market-based, broadly applicable, and transparent means of assessing a company's environmental, economic and social performance.
New Markets Tax Credit Program	Enacted in 2003	Any state	Established to provide tax credits for private sector investment in economically disadvantaged communities through community development entities

B Corporations (B lab)	Created in 2007	Any state.	<p>B Lab, a nonprofit organization, functions as an impartial third-party that certifies and rates B corporations on how well they meet a certain list of social and environmental standards. Corporation must score 80 points out of 200 to become a b certified corporation.</p> <p><u>Criteria:</u></p> <ul style="list-style-type: none"> • B Corporations still subject to private-sector tax laws and state corporate statutes. However, a b corporation must incorporate, or re-incorporate in a constituency statute state and must insert values in bylaws, including their social commitments in their corporate governing documents for investors to see; • Must commit itself to a governance structure that reflects a broad set of stakeholders so that a B corporation aims not only to maximize profits for shareholders but also to pursue the interests of its employees and, more broadly, of the communities and environments in which it operates; • Must commit to meeting a set of un-audited social and environmental performance standards; • Must pay a portion of net profit to B lab.
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International Activity:

List of Fourth Sector Activities	When was it Proposed/ enacted?	Where does it exist?	Brief Description
Worker-owned limited liability company (Sociedad Laboral)	Enacted in 1997	Spain	<p>The Sociedad Laboral is a special type of Public Limited Company (Sociedad Anónima) OR Limited Liability Company (Sociedad de Responsabilidad Limitada).</p> <p><u>Criteria:</u></p> <ul style="list-style-type: none"> • The shares are held by A) workers, in this case the <i>clase laboral</i>, and B) those who do not work for the business, the <i>clase general</i>. Workers who directly contribute their labor to the business must own at least 51% of the shares. Workers who do NOT own shares must not work more than 15% of the total hours worked each year, or not more than 25% if the company has less than 25 workers with shares.
Social Cooperatives	Enacted in 1999	Spain	<p>The new law of 16 July 1999 (art. 106) created the social cooperatives in Spain.</p> <p><u>Criteria:</u></p> <ul style="list-style-type: none"> • Must have a non-profit purpose; • Prohibited from distribution, • Capital interest limited to legal interest; • Freely receives the mandate of the administrative council; • Remuneration of employee members may not be greater than 150% of the salary of the collective conventions.

Mondragon's Cooperative Corporation (MCC)	Created in 1956	Spain/Basque	<p>Started as a single entity and has evolved into a cluster of 250 companies, half of them cooperatives with more than 84,000 employees. Offers financial services, consumer goods, agricultural-food enterprises and other activities such as vocational training. In 2006 the MCC contributed 3.8% towards the total GDP of the Basque Country.</p> <p><u>Criteria:</u></p> <ul style="list-style-type: none"> • 2006 revenues were more than \$20 billion, 50% of those profits were distributed to worker members; • Contains a democratic ownership and governance built into the fabric of a for-profit enterprise; • Contains a supreme governance body, the Co-operative Congress, which is comprised of 650 delegates who represent all member co-operatives; • The Co-operative Council has an 18-person Standing Committee that is responsible for overseeing the carrying out of the policies and agreements adopted by the Congress, and for monitoring Mondragon's business performance; • Committed to distributed ownership and governance: supervisory board includes representatives of strategic stakeholders like their suppliers, customers, and officials of their host community; • Contains network governance, a model found in all biota, which allows them to be self-regulating and sustainable over generations.
Sociétés à finalité sociale (Society for Social Purpose) (SFS)	Enacted in 1995	Belgium	<p>Formed from the act of the 13 April 1995. The Act SFS, created a new legal entity called SFS's and has come to fill the gap in the Belgian law giving legal personality to companies that combine a social purpose and the pursuit of commercial or industrial activities as principal.</p> <p><u>Criteria:</u></p> <ul style="list-style-type: none"> • Cannot have a commercial activity as a principal. Must engage in only a specific activity • Must stipulate that no dividend can be distributed • Do not enjoy reduced rates for non-profit associations on donations • Altruistic purpose may be financed by a commercial activity • Limited voting power • Employee participation
Social Cooperatives	Enacted in 1991	Italy	<p>Social cooperatives provides both social and health services.</p> <p><u>Criteria:</u></p> <ul style="list-style-type: none"> • Italian co-operatives are supported through fiscal measures including low interest rates and grant schemes. In return for tax advantages, social co-operatives are required to contribute 3% of their annual income to the "Marconi Fund" to finance new co-ops; • Currently there are 7,700 social co-operatives in Italy.

Social Solidarity Cooperatives	Enacted in 1996	Portugal	<p>Formed from the law of 15 January 1998 (art. 2), which defines their purpose as «to support vulnerable groups (children, youth, disabled persons, elderly persons), as well as economically disfavored families and communities, and Portuguese immigrants in difficulty. These entities create programs to help the aforementioned groups, and helps promote social integration through professional training.</p> <p><u>Criteria:</u></p> <ul style="list-style-type: none"> • Distinguishes effective member, families and the paid employees, from unpaid volunteers who are not paid. The latter do not have the right to vote and are elected or eligible but can participate in the cooperative activity as a “conseil général”; • The profit made must be put aside in a reserve, which may not be shared.
Ireland Companies Act	Enacted in 1990	Ireland	<p>Section 52(1)-(2): requires directors to take into account the employee’s interests. Allows stakeholder primacy governance</p>
New Companies Consolidation and Reform Bill	Proposed in 2007	Ireland	<p>In order to be competitive with the U.K, Ireland proposed a bill that would favor a stakeholder governance model. In the proposal, Irish legislators referenced the fact that the U.K.’s Companies Act would save 150 million pounds, and the need for maintaining a competitive edge with the U.K.</p> <p><u>Criteria:</u></p> <ul style="list-style-type: none"> • Part IV section 61 of the General Scheme of New Companies Bill allows members of a company to recover for damage resulting from a situation in which “the affairs of the company are being conducted or that the powers of a director of the company are being exercised in a manner oppressive to him.” • Encourages stakeholder governance, and allows employees to recover for damages of decisions made by directors in a manner oppressive to employees
Council for Sustainable Development	Appointed by Chancellor Schroder in 2001	Germany	<p>The German Council for Sustainable Development has the task to provide recommendations on sustainability politics, to suggest model projects and to strengthen the topic in the public.</p> <p>The council focuses on Climate / energy and initiatives for "clean" uses of coal, Corporate social responsibility, and Land use. In addition, it researches demographic trends and their effects on urban and residential development. Provides ongoing advice on sustainability. Produced a report on Corporate responsibility in 2006.</p>

Codetermination Act	Enacted in 1976	Germany	<p>After World War II, the government reaffirmed the importance of stakeholder interests through the enactment of the Codetermination act.</p> <p><u>Criteria:</u></p> <ul style="list-style-type: none"> • Requires “all stock corporations, Actiengesellschaft (AG), and all other business entities over a certain employee base, to have a two-tiered board structure that includes significant employee representation on the supervisory Aufsichtsrat board.” • The Aufsichtsrat board oversees the Vorstand board to the same degree that a board of directors oversees corporate officers in an American company. • The presence of a board that is made up of non-shareholder constituencies creates the implicit assumption that non-shareholder interests must also be upheld when making business decisions in the interests of the corporation. However, even when workers have a number of representatives in the Supervisory Board (Aufsichtsrat) equal to shareholders, the latter have the power to appoint the President of the board, who has casting vote in case of parity. • According to article 27, the chairperson is to be elected by a two-third majority of all members of the supervisory board. If the necessary majority is not attainable, the chairperson is elected by the shareholders’ representatives while the employees’ representatives may only elect the vice-chairperson.
Companies Act/ Community Interest Corporations (CICs)	Enacted in 2005	U.K.	<p>A CIC’s must pass a Community Interest Test and formally declare the general interest and how it will serve stakeholders. The company follows “an approach embodying open and transparent business practices, ethical behavior, respect for stakeholders and a commitment to add economic, social and environmental value.” (CSR definition by SustainAbility)</p> <p><u>Criteria :</u></p> <ul style="list-style-type: none"> • Profits may not be shared or distributed. • Asset locks are those in the blocked reserves and must only used for the public interest purposes. • Section 172(1) of the Companies Act allows directors to take into consideration the long-term interests of the corporation, including “the likely consequences of any decision in the long term on...the interests of the company's employees...suppliers, customers and others...the impact of the company's operations on the community and the environment.” • Promotes stakeholder, concern for the environment, but no enforcement or clarity around guidelines.
Community Investment Tax Relief (CITR)	Set up under the Finance Act of 2002	U.K.	Encourages investment in accredited community development finance institutions (CDFIs) by offering tax relief on investments.

Tikhvin-Chalna Project	Launched in 2004	Russia	The Tikhvin-Chalna Project is the first Internet-based initiative to communicate social and environmental sustainability issues of an international supply chain of wood and paper products. Originally started in the town of Tikhvin in the Leningrad Region in 2004, the project was extended to include the village of Chalna in Russian Karelia in 2005. Involves the largest international players in the supply chain of wood and paper: Stora Enso and publishers Axel Springer, Random House Group UK and Time Inc.
Corporations Act	Enacted in 2001, revised in 2002	Australia	This Act imposes obligations on companies and directors in relation to employees and the environment. <u>Criteria:</u> <ul style="list-style-type: none"> Companies must pay employees at least minimum rates and comply with health and safety, anti-discrimination and equal opportunity requirements as well as a wide range of environmental requirements.
Canadian Business Corporations Act (CBCA)	Enacted in 1984	Canada	The Supreme Court of Canada found the CBCA to allow directors to consider the interests of stakeholders. In <i>People's Department Stores Inc v Wise</i> , (2004) 244 DLR (4th) 564, the Supreme Court of Canada held that: 'in determining whether [directors] are acting with a view to the best interests of the corporation it may be legitimate, given all circumstances of a given case, for the board of director's to consider, inter alia, the interests of shareholders, employees, suppliers, creditors, consumers, governments and the environment.
La coopérative de solidarité (Solidarity Cooperatives)	Enacted in 1997	Quebec	The June 1997 law defines a <i>coopérative de solidarité</i> as an entity that serves both the customers that benefit from the entity's services as well as the employees, producers and manufacturers of the entity. <u>Criteria:</u> <ul style="list-style-type: none"> Any stakeholder who has an interest or part in the object of such an entity can also become a member. These members are called « <i>membre de soutien</i> (support members).

Social economy enterprises (SEEs)	Emerged in the 90's	Canada	<p>The Social Economy consists of social assets (housing, childcare, etc.), social enterprises including cooperatives, equity and debt capital for community investment, social purpose businesses, community training and skills development, integrated social and economic planning, and capacity building and community empowerment. The social economy is a continuum that goes from the one end of totally voluntary organizations to the other end where the economic activity (social enterprise) blurs the line with the private sector.”</p> <p><u>Criteria:</u></p> <ul style="list-style-type: none"> • SEEs are a component of the social economy that are run like businesses, producing goods and services for the market economy, but manage their operations and redirect their surpluses in pursuit of social and environmental goals. • Serves the members of community rather than generating profits. • Maintains an autonomous management (not government or market controlled). • Contains democratic decision-making; • Upholds the primacy of persons and work over capital. • Based on principles of participation, empowerment.
National Basic Livelihood System/social enterprise	Enacted in 2000	South Korea	This act led to the recent enactment of a law on social enterprise in Korea.
Social Enterprise/ The Act on Social Enterprise Promotion	Enacted in 2007	South Korea	<p>A social enterprise may be either a private non-profit organization, a “public-service” corporation , a social welfare organization, or a cooperative</p> <p><u>Criteria</u></p> <ul style="list-style-type: none"> • Supports social enterprises who “mainly” pursue the social purpose • Income through business activities is capped
Enhancing Employment of People with Disabilities through Small Enterprise Project” (also known as “Seed Money” project)	Launched by the Social Welfare Department in 2001	Hong Kong	An amount of HK\$ 50 million non-recurrent fund was set aside for NGOs to set up businesses to employ people with disabilities. As at end of June 2005, 396 posts were created and 290 disabled persons were employed. As more and more low-skills workers faced unemployment or underemployment in recent years, a variety of non-mainstream economic activities, including SE in forms of co-operatives and community economic development projects were initiated by NGOs and continue to flourish in recent years. Some of these SEs are funded by Community Investment and Inclusion Fund (CIIF).
New Labor Contract Law	Effective Jan. 1, 2008	China	Laid legal foundation for harmonious employer-employee relationship

Singapore Companies Act	Enacted in 1994	Singapore	Chapter 50 section 159 states: “The matters to which the directors of a company are entitled to have regard in exercising their powers shall include a) the interests of the company’s employees generally, as well as the interests of its members; and (b) the rulings of the Securities Industry Council on the interpretation of the principles and rules of and the practice to be followed under the Singapore Code on Take-overs and Mergers.”
Singapore Compact for Corporate Social Responsibility	Launched by National Tripartite Initiative (NTI), and Minister of State of Defence in 2004	Singapore	Stakeholder platform, fosters dialogue about CSR on all levels, develop strategies and approaches to promote CSR, conduct research and surveys and highlight best practices, establish CSR training, create networks.
Council for Better Corporate Citizenship (CBCC)	Launched in 2002	Japan	Business Federation (Nippon Keidanren) and its affiliated organization; the CBCC has long been promoting CSR in Japan as a collaboration since 2002. CBCC founded in 1989 and authorized as a “designated public-benefit organization” under the Corporate Tax Law Enforcement Ordinance and the Income Tax Law Enforcement Ordinance. CBCC originally was formed to promote good relations with Japanese-affiliated companies and various stakeholders because of the US’s criticism in late 1980’s for investment friction from the strong yen. Executives from all the major Japanese companies sit on the CBCC board including Sony, Mitsui & Co., Toyota Motor Corp Toshiba Co., Mitsubishi, Kajima, IBM, Fuji Xerox Co. (as of June 2008).
Company Law Reform Bill	Proposed in 2007	Nigeria	<u>Criteria:</u> <ul style="list-style-type: none"> • Enlightened shareholder provisions • Companies must report on the impact of their operations on other stakeholders such as employees, suppliers, communities and the environment.
Fate Foundation	Formed in 2000	Nigeria	In Nigeria, organizations are moving away from grant-funding towards a new social enterprise model. This new model, in essence, is a non-profit corporation that offers a service for reasonable compensation. One example is FATE foundation (FATE), a non-profit Nigerian corporation formed in 2000. FATE is committed to assisting Nigerian youth to establish and grow successful businesses by equipping them with the tools, skills, networks and financing required for this task in order to eradicate poverty and unemployment. <u>Criteria:</u> <ul style="list-style-type: none"> • The board must make annual contributions to the organization in order to free up the thought of fundraising • Offers 1) A 4-month school of entrepreneurship, 2) 6 months of bi-weekly workshops on business topics, 3) Enterprise promotion services-equip the general public with entrepreneurial skills, and 4) Alumni business support services. • Shares services and the cost of access to services with other NGO’s.

New Zealand Companies Act	Enacted in 1993	New Zealand	<u>Criteria:</u> <ul style="list-style-type: none"> Requires concise annual report to shareholders
Co-operative Companies Act	Enacted in 1996	New Zealand	<u>Criteria:</u> <ul style="list-style-type: none"> A co-operative company is a company, the principal activity of which is, and is stated in its constitution as being, a cooperative activity and in which not less than 60 percent of the voting rights are held by transacting shareholders. Activity includes any goods or services or transactions with shareholders. Adopts a stakeholder model.
Consular paper encouraging business partnerships between for-profit and non-profit businesses	Submitted in Feb. 2007	New Zealand	<p>Ministry of Economic Development announced six initiatives to lead New Zealand, one of which focused on business partnerships for sustainability because they believe that partnerships between government, business and the community are integral for progress towards a truly sustainable nation.</p> <p>The goal of this initiative is to support New Zealand firms to use environmental integrity for economic advantage and to position New Zealand as a world-leading exponent of smart, innovative and business-savvy responses to environmental issues.</p>
European Legislation:			
Council of Lisbon	March 2000	Europe	In 2000, the European Council in the council of Lisbon encouraged companies to become more socially responsible by taking into consideration “lifelong learning, work organization, equal opportunities, social inclusion and sustainable development.”
Commission Green Paper on Promoting a European framework for Corporate Social Responsibility	Submitted by the European Commission (EC) in 2001	Europe	In this paper, the European Council encouraged companies to become more socially responsible by taking into consideration “lifelong learning, work organization, equal opportunities, social inclusion and sustainable development.”
Communication from the Commission Concerning Corporate Social Responsibility: a Business Contribution to Sustainable Development	Submitted by EC in July 2002	Europe	The European Commission recognized “a growing perception among enterprises that sustainable business success and shareholder value cannot be achieved solely through maximizing short- term profits, but instead through market-oriented yet responsible behaviour.”

Communication from the Commission to the European Parliament, The Council and the European Economic and Social Committee Implementing the Partnership for Growth and Jobs Making Europe a Pole of Excellence on Corporate Social Responsibility	Enacted by the EC in March 2006	Europe	<p>In this communication, the EC stated its intention to make Europe “a pole of excellence on corporate social responsibility” Further, the EC acknowledged that CSR has become “an increasingly important concept for competitiveness both globally and within the EU, and is part of the debate about globalization, competitiveness and sustainability.</p> <p>This communication led to the creation of <i>European Alliance for Corporate Social Responsibility</i></p>
The European Alliance for Corporate Social Responsibility (EA)	Launched in 2006	Europe	<p>The EA is a network of nineteen action-oriented projects which aim to address CSR challenges. The Goal of goal of the EA’s CSR Laboratories is to bring together business practitioners, stakeholders and representatives of the European Union to share experience and explore joint operational projects.</p> <p>This Alliance operates around three core principles:</p> <ul style="list-style-type: none"> • raising awareness and improving knowledge on CSR and reporting on its achievements; • helping to mainstream and develop open coalitions of cooperation; and • ensuring an enabling the environment for CSR.
Goteborg European Council of June 2001	Held in June 2001	Europe	Acknowledged that the long-term, economic growth, social cohesion and environmental protection go hand in hand and encouraged businesses to adopt such policies in their own bylaws.
EU Multi-Stakeholder Forum on CSR (CSR Forum)	Formed in 2002	Europe	The CSR Forum aims to foster corporate social responsibility, the CSR EMS Forum shall promote innovation, transparency and convergence of CSR practices and instruments through: 1) Improving knowledge about the relationship between CSR and sustainable development; and 2) exploring the appropriateness of establishing common guiding principles for CSR practices and instruments.
European Coalition for Corporate Justice (ECCJ)	Formed in 2006	Binding in more than ten countries	The ECCJ brings together national platforms of civil society organizations including NGOs, trade unions, consumers’ organizations and academic institutions promoting Corporate Accountability (CA) from all over Europe.

International Public Law:

List of Fourth Sector Activities	When was it Proposed/ enacted?	Where does it exist?	Brief Description
International Organization Standardization(ISO): Working Group on ISO 26000 Guidance on Social Responsibility	Due for release in 2009	Adopted in over 150 countries	<p>The 26000 guidelines will be an international index that measures how well companies fulfill their corporate social responsibility.</p> <p>Many developing countries, such as Korea have voluntarily adopted such standards and use this index to stay competitive. Samsung states that compliance with ISO 26000 is essential for the profitability of their business.</p>
UN Global Compact (UNGC)	Enacted in 2000	More than 3000 participating companies in more than 100 countries	<p>The UNGC is comprised of ten principles derived from the Un. Dec. on Human Rights (1948), Rio Dec on Environmental and Development (1992), ILO's Dec. on Fundamental Principles and Rights at Work (1998) and the UN Convention Against Corruption (2003).</p> <p>UNGC established the Global Compact Cities Programme in 2003 to encourage cross-sector partnerships between businesses, government, and civil society to deal with environmental social or economic urban problems.</p>
ILO Tripartite Declaration of Principles concerning Multinational Enterprises and social policy	Enacted in 1977, revised in 2000 by the ILO	178 member states	<p>The ILO, founded in 1919, is a specialized agency of the United Nations that encourages the positive contribution of multinational corporations (MNEs) to economic and social progress. The Declaration provides voluntary guidelines on responsibilities of businesses and government in the area of labor and employment.</p> <p><u>Criteria:</u></p> <ul style="list-style-type: none"> • Requires MNEs to obey national laws, respect international standards, honor voluntary; commitments and harmonize their operations with the social aims of countries in which they operate; • Urges governments to implement suitable measures to deal with the employment impact of MNE's; • Requires MNE's in developing countries to provide the best possible wages, conditions of work (including health and safety) and benefits to adequately satisfy basic needs within the framework of government policies.
Global Reporting Initiative (GRI)'s Sustainability Reporting Guidelines	Launched in 2002, revised in 2006	Over 1000 organizations worldwide incorporate GRI's guidelines into reporting	<p>GRI is an Amsterdam-based independent institution founded in 1997, which became independent in 2002 and is now an official collaborating centre of UNEP (UN Environment Programme).</p> <p>The Sustainability Reporting Guidelines seeks to develop globally accepted sustainability reporting guidelines that will improve sustainability reporting practices, while achieving comparability, credibility, timeliness, and verifiability of reported information.</p> <p>These voluntary guidelines are used by organizations in reporting on the economic, environmental, and social dimensions of their activities.</p>

<p>Organization for Economic and Co-operation and Development (OECD) Guidelines for Multinational Enterprises</p>	<p>Enacted in 2000</p>	<p>Adopted in the 20 OECD member states</p>	<p>Sets out voluntary guidelines for responsible business conduct for OECD member states. The guidelines “encourage positive contributions that multinational enterprises can make to the economic, environmental and social progress and to minimize difficulties to which their various operations may give rise.”</p> <p>Guidelines address topics such as business conduct, employment and industrial relations, human rights, environmental protection, combating bribery, consumer interests and competition, disclosure, science and technology, taxation.</p>
<p>UN Principles for Responsible Investment (PRIs)</p>	<p>Enacted in 2006</p>	<p>20 institutions from 12 countries</p>	<p>Mostly applies to pension funds, and institutional investors. Requires signatory to take into account in investment decisions whether companies meet certain environmental, social, and ethical standards.</p> <p>PRIs focus on the eleven largest capital markets, with a goal of protecting the long term interests of fund beneficiaries. They provide a framework for achieving higher long term investment returns and more sustainable markets through social, environmental and governance criteria.</p>