

**ICLES 2018**  
**International Conference on Law, Environment and Society**

**INTEGRATING SUSTAINABLE DEVELOPMENT GOALS  
WITHIN THE CORPORATE GOVERNANCE FRAMEWORK**

Hasani Mohd Ali (a)\*, Asmah Laili Yeon (b)  
\*Corresponding author

(a) Faculty of Law, Universiti Kebangsaan Malaysia, hmohdali@ukm.edu.my

(b) School of Law, Universiti Utara Malaysia, asmah485@uum.edu.my

*Abstract*

Sustainability is part of corporate governance which conventionally deals with ethical values, accountability and transparency to minimize risk, corruption and mismanagement. Sustainability is pertinent to the long-term company's performance. However, challenges remain whether the existing legal framework is adequate in addressing environment protection and sustainable development goals (SDGs) agenda. This paper analyses these challenges and identify avenues to address them. This paper evaluates various legal measures including self-regulation in integrating sustainability and environment protection within the corporate governance framework in Malaysia. Relevant regulations, by-laws, legislation and international instruments are legally analysed. Concepts such as locus standi, constitutional impediments and enforcement issues are critically analysed. The paper finds that in cases of human rights infringements and environmental damages, the common law principle of locus standi may pose a problem for establishing standing in civil courts. Further, the legal infrastructure in place is not supportive enough to the implementation and enforcement especially since most corporate governance principles are soft law. Environmental protection and sustainable development is not specifically provided for under the constitution. Corporate governance is dynamic in addressing SDGs issues but the non-legal measures such as engagement and education is more vital in promoting sustainability.

© 2019 Published by Future Academy [www.FutureAcademy.org.UK](http://www.FutureAcademy.org.UK)

**Keywords:** Corporate social responsibility, human rights, environment protection, stakeholders, corporate citizenship.



## 1. Introduction

This paper discusses and highlights legal issues arising out of the aim to incorporate sustainable development goals (SDGs) into the corporate legal framework. Both concepts of corporate governance and SDGs are intensely converging driven by the need to address common challenges. This section deals with the evolution of corporate governance concept and its relationship with the sustainability agenda and environmental concerns which are relevant to companies' long-term performance.

Specific address is made to the principles of United Nations Global Compact and the United Nations Guiding Principles on Business and Human Rights (UNGPs) as the international instruments which deal with issues relating to the protection of environments, and the labour and human rights standards by corporations. They are also the vital instruments in promoting SDGs for corporations.

Specific legal issues of locus standi and constitutional impediments in implementing SDGs will be briefly introduced before a legal analysis is made with reference to case law development in Malaysia.

Accountability as manifested in responsible reporting is highlighted especially with reference to the initiative to promote integrated reporting of "Environmental, Social and Governance" (ESG) for the company's long-term value, especially from the stakeholders' view.

The above are the initiatives which the corporate governance framework has captured to advance SDGs. The findings are important to appraise each of them legally in terms of their enforceability or merely voluntary initiatives with different strategies of implementation.

### 1.1. Corporate Governance and SDGs

According to the Brundtland Commission's Report, Our Common Future, (World Commission on Environment and Development, 1987, at para. 27) sustainable development is development that "meets the needs of the present without compromising the ability of future generations to meet their own needs". In 1997, John Elkington of the UK consultancy, Sustain Ability, introduced the term 'triple bottom line' reporting namely a type of accounting focusing on environmental, social, and economic performance. The essence is that business goals were inseparable from the societies and environments within which they operate. The long-term economic gain should take into account social and environmental impacts in order for the business to remain sustainable (Elkington, 2018). Since then, many initiatives have developed supporting the proposition.

The challenges and changes in both the corporate and financial landscape determine the corporate governance framework. Corporate governance has evolved over the years following a series of global financial crises especially the 1997-98 Asian financial crisis and 2008 financial crisis which led to the reform of corporate governance structure worldwide. The 1997 crisis had exposed many institutional and policy weaknesses among the emerging economies including Malaysia. The main references are the OECD Principles of Corporate Governance as the benchmark. The principles have been developed since 1999, and then updated in 2004 and in 2015.

Corporate governance framework conventionally provides a control mechanisms to mitigate risk, corruption and mismanagement that support the company in achieving its goals. Sustainability is now among the pillars of the corporate governance along with ethical behaviour, accountability and

transparency. Sustainability is especially pertinent to the company's long-term performance. Corporate sustainability emerges amidst the phrases such as corporate social responsibility (CSR) and corporate citizenship which continue to be used but are increasingly overlapped and superseded by the broader term of corporate sustainability.

In Malaysia, the Malaysian companies' regulator, the Companies Commission of Malaysia (SSM<sup>1</sup>) introduced SSM's Corporate Responsibility Agenda as part of the corporate governance practice with the inclusion of sustainability and community elements of "Driving Business Beyond Profitability" since 30 June 2009. Sustainable development is among the main pillars of the Malaysian Code on Corporate Governance 2017. At the same time, numerous legislations and international instruments provide for the application of the agenda related to SDGs in corporations. Good corporate governance is aimed towards long-term sustainability wherein economic, environmental and social responsibilities become integral to the company's performance. The objective of this paper is to highlight the challenges of whether the best legal framework is available to address environmental protection and the sustainable agenda especially within the corporate governance framework.

## **1.2. SDGs and International Instruments for Companies**

International law and human rights law have essentially centred on shielding people from infringement by the government. The rapid expansion of multinational corporations' activities have prompted renewed international discourse and action over past decades to address the human rights abuses committed by companies (Weissbrodt, 2014). The United Nations Guiding Principles on Business and Human Rights (UNGPs) was introduced in June 2011 and endorsed as the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.

The UN Global Compact is an initiative to achieve SDGs aimed particularly at businesses. All 193 Member States of the United Nations adopted a plan for achieving "Agenda 2030" in September 2015, wherein the 17 Sustainable Development Goals (SDGs) were set as the new Global Goals.

The UN Global Compact targets all companies regardless of their sizes and industry affiliations to contribute to the SDGs. The UN Global Compact calls companies to conduct business responsibly and emphasises the importance of innovation and collaboration in their pursuit to solve current societal challenges.

Global challenges are specifically identified ranging from climate, water and food crises, to poverty, conflict and inequality. They are addressed by the private sector simultaneously while conducting their business innovations with integrity and values. In order to advance the SDGs agenda, companies must act responsibly by incorporating the "Ten Principles of the UN Global Compact" widely into strategies and operations. The UN Global Compact instils a business case for SDGs through "Making Global Goals Local Business" campaign, in that the business leaders of tomorrow belong to the companies that do business responsibly and find opportunities to innovate around sustainability.

---

<sup>1</sup> SSM refers to *Suruhanjaya Syarikat Malaysia* which is the Malay term for the Companies Commission of Malaysia and which henceforth be used for the rest of the paper.

### **1.3. Locus standi and common law; and other legal issues**

Sustainable development goals benefit humankind. Hence, businesses are not only supposed to give back but to society but also need to take into account the interests of society and the environment by emphasising on the best practices of corporate governance that go beyond profits. Examples of the main beneficiaries are the employees and the people generally through their right to enjoy safe water or clean air. It is ironic when the victims of transgression of human rights by the company's activities do not necessarily have a direct means of recourse to either the company or its management.

In law, standing or locus standi refers to the term for the capacity of a party to bring a particular case. A party especially the plaintiff must indicate to the court sufficient connection to and harm from the case in terms of the law or action challenged to substantiate that party's grounds to participate in the case. Under common law, the technicalities surrounding locus standi issues are the major hurdle for the victims of human rights transgression or arising out of the environmental damages to bring any action against the errant companies.

In Malaysia, apart from the locus standi which is inherently a common law technicality issue, the legal challenges to redress human rights violation or cases of environmental damages stem from the limited ambit of the respective provision under the Malaysian Constitution as the supreme law.

### **1.4. Accountability and reporting**

Corporate reporting has become an important tool to demonstrate accountability on the part of the management and the companies. Reporting focuses mostly on financial and regulatory reporting. There is a growing tendency for the companies to conduct an integrated report consisting environmental, social, and governance (ESG) reporting (or sustainability reporting). An integrated report comprises communication of how an organization's strategy, governance, performance, and prospects lead to the creation of value over time by taking into consideration the external context of the company's environment and various shareholders. The framework of an integrated reporting is put forth by the International Integrated Reporting Council (IIRC) (IIRC, 2018).

Lately, the applicability of stewardship of investors' capital is extended to other stakeholders including the environment and sustainability. Good practice of corporate governance is supposed to support economic efficiency, sustainable growth and financial stability. This wider scope and meaning of corporate governance is encapsulated in the integrated reporting <IR>, an initiative which is introduced by International Integrated Reporting Council (the IIRC- a global not-for-profit organization and centre of excellence). The initiative was triggered by the 2008 financial crisis which brought to the forefront, the importance of corporate governance to underpin sound economic growth and value creation. Based on research into the uptake of integrated reporting globally, evidence strongly suggests that the 'momentum phase' is taking off with a relatively high level of adoption of the International <IR> Framework with many elements of the Framework present in the reports (Gibassier, Adams, & Jerome, 2019).

## 2. Problem Statement

The corporate governance framework provides a mechanism for SDGs issues to be taken into account by the companies. The problem remains as to the extent of which SDGs are applicable and to be incorporated into the corporate governance framework in their implementation. SDGs principles are largely without legal force. Many of the principles enforceable under the framework are limited to the compliance of financial and regulatory reporting. Still, the enforceability of each of the SDGs propositions depends on the sources and instruments where the principles or regulations are derived or grounded.

### 2.1. The main problems may be split into a range of specific problems, namely:

- International principles derived from UNGP and UN Global Compact set non-binding international standards for companies. Companies are free not to follow them.
- Stakeholders generally do not have a locus standi to bring cases for damages or compensation based on sustainable development or environment issues.
- Article 5 provides “no person shall be deprived of his life and personal liberty save in accordance with law”. Does the Constitution of Malaysia provide the right to life to mean the quality of life, and includes the right to live in reasonably healthy and pollution free environment?
- SDGs issues are not subject to requirement of reporting by the companies. IIRC emphasises on the need to align capital allocation and corporate behaviour to wider goals of financial stability and sustainable development through the cycle of integrated reporting and thinking. The Malaysian Code on corporate governance addresses some of the IIRC inspiration but much of the implementation is voluntary.
- Should the eventual acceptance merely depend much on the extent to which the value proposition or business case of the reporting is practically achievable.

## 3. Research Questions

What is the relationship between Corporate Governance Framework and SDGs? There are 2 main questions, namely,

### 3.1. Are SDGs part of the corporate governance framework?

What are the SDGs principles that are relevant to sustainable development?

- What is the SDGs’ status of implementation in Malaysia?
- Is the applicability of the principles legally binding on the companies?
- What are the instruments available in Malaysia that legalise those principles, if any?

### 3.2. Are they are enforceable, or if so, to what extent they are enforceable?

What is the legal position of the current law relating to victims of environmental damage?

- What is the scope of right to life according to the Constitution of Malaysia and does it embrace the quality of life to bring it into accord with the ambit of SDGs?
- To what extent are SDG issues required to be reported by the companies?

#### **4. Purpose of the Study**

The purpose of this study is to identify and specify measures to integrate SDGs into Corporate Governance Framework

The study aims

- to specify the principles as developed by UNGP and UN Global Compact etc. which are applicable to the Corporate Governance framework;
- to identify and propose solutions to some legal challenges in integrating sustainable development into the Corporate Governance framework;
- to propose strategies in promoting SDGs in the Corporate Governance framework;
- to specify actions available to the victims of environmental damages; and
- to identify means of promoting companies to report SDG issues affecting them

#### **5. Research Methods**

The corporate governance framework was legally analysed to determine its legal status and to what extent SDGs principles are part of it.

##### **5.1. Legal analysis of the status of SDGs principles; reporting instruments under IIRC and MCCG 2017**

To what extent are they voluntary or obligatory?

##### **5.2. Case law analysis on locus standi issues and the meaning of “life” under the Malaysian constitution**

#### **6. Findings**

The corporate governance framework has already incorporated certain SDGs. However, most of the principles incorporated constitute soft laws. The hard part of the framework is enshrined under the concept of directors’ duties and their appointments; and also certain minimum requirements relating to audit and internal control under Malaysian Companies Act 2016 (CA 2016).

##### **6.1. Directors’ duties**

Directors owe duties of loyalty and duties of care and skill to the company which interests normally equate to those of the shareholders. Section 213 of the Malaysian CA 2016 provides that a director shall at all times exercise his power for a proper purpose and in good faith in the best interest of the company. This duty is also referred to as a duty of loyalty of a director. According to section 214, a

director also shall exercise reasonable care, skill and diligence with the knowledge, skill and experience which may reasonably be expected of a director having the same responsibilities (objective test); and any additional knowledge, skill and experience which the director in fact has (subjective test). The interpretation of hard law on directors' duties may hardly include the notion of other stakeholders as part of the meaning of the company to whom directors owe their duties.

## **6.2. Stakeholders**

The concept of directors' duty includes duties to take into account stakeholders generally besides shareholders. Stakeholders include creditors, especially the unsecured creditors; employees; customers and generally members of the public including consideration to environments. At the same time, there is rising recognition of shareholder primacy namely where shareholders may participate and influence the decisions of companies to reflect the shareholders' interests. The Malaysian CA 2016 recognises the concept through section 195 where shareholders may make a resolution opposing the board's decision with certain conditions. Shareholders therefore may override the board because according to Mohd Sulaiman and Rachagan (2017, p. 211) this abrogates the traditional power fully vested in the board to make business decisions and to manage companies.

## **6.3. Shareholder Primacy**

Shareholder primacy promotes shareholder activism, whereby directors' stewardship may be subject to scrutiny based on shareholders' interests. Shareholder primacy per se however is subject to many criticisms, for example a criticism on its tendency to favour short termism (Correia, 2014)

There are attempts by the legislature to impose specific duties to compel the company and its directors to protect public interests and environments. In the UK section 172 of the UK Companies Act 2006 has imposed upon the directors a duty to promote the success of the company but at the same time they have to give regard explicitly to the interests of its stakeholders. The directors through their decision making process may need take into account the interests of shareholders, employees, suppliers and creditors etc. They are stakeholders whom the management should treat fairly. The legislation is however, not without anomalies. The problem still remains in that a recourse for the remedies is not clearly provided for those stakeholders if the corporations fail to take into account their interests. This is the main weakness for other stakeholders to enforce directors' duty supposedly owed to them.

## **6.4. International instruments**

The implementation of corporate responsibilities under SDGs agenda may likely fall under the soft law instruments. The code on corporate governance identifies the distribution of rights and responsibilities among different participants in the company and outlines among others the rules and procedures for decision-making, internal control and risk management. Corporate governance already incorporates, apart from shareholder interests, balancing the needs of other stakeholders such as employees, customers, suppliers, society and the communities in which the companies conduct their business.

Corporate sustainability takes the centre stage of the UN Global Compact initiative. Companies are encouraged to meet fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption. The initiative introduced the Ten Principles of the United Nations Global Compact which are derived from: the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption.

According to the initiative, companies are encouraged to incorporate the Ten Principles of the UN Global Compact into strategies, policies and procedures, and establish a culture of integrity. The principles reflect the responsibilities of the companies to people and planet by promoting compliances to those international instruments. This approach also manifests in the business case of the SDGs as it is setting the stage for long-term success of the companies.

However, only certain companies in Malaysia are committed to comply with the UN Global Compact. Based on its website, these number only 138, which is relatively a very low number if compared to the overall number of companies in Malaysia.

#### **6.5. Corporate governance and SDGs in Malaysia**

In Malaysia, the corporate governance framework is flexible in adopting SDGs. Corporate governance is centred on accountability and transparency. The Malaysian Code on Corporate Governance (MCCG) 2017, was introduced as the result of a comprehensive review by the SC in 2016 with inputs from local and international stakeholders, lessons from corporate governance failures and changes in market structures and business needs. The 2017 version was preceded by 2000, 2007 and 2012 versions respectively. The MCCG 2017 was released and launched on April 26, 2017. The new set of best practices places greater emphasis on the internalisation of corporate governance culture. The MCCG 2017 is applicable to all public listed companies and the first batch of companies that are expected to report their application of the practices set out in the new code will be those with financial year ending 31 December 2017. The range of companies to embrace the code extends not just among listed companies, but also among non-listed entities, including state-owned enterprises, small and medium enterprises and licensed intermediaries.

- MCCG 2017 is itself an achievement to revamp corporate governance. The Code takes on a new approach to promote greater internalisation of corporate governance culture. The code contains 36 practices to support three core principles, namely, board leadership and effectiveness; effective audit and risk management; and integrity in corporate reporting and meaningful relationship with stakeholders.
- The new code introduced Comprehend, Apply and Report (CARE) approach and the shift from “comply or explain” to “apply or explain an alternative”. This CARE approach requires companies to set out the processes involved in practising good corporate governance. The most significant part of the inclusion of SDGs element is through the reporting. The ‘report’ element is the provision of informative disclosure for shareholders and potential investors to assess the stewardship of management, valuation of the company and the ownership structure. In order for the company to attract and maintain confidence in



the capital market, the companies are required to provide a meaningful explanation on how it has applied each practice.

- Integrated reporting is inspired by the initiative put forth by the movement of the International Integrated Reporting Council (IIRC) (2018) which describes itself as a global coalition of regulators, investors, companies, standard setters, the accounting profession and NGOs. Their goal is to “promote communication about value creation as the next step in the evolution of corporate reporting.” Integrated Reporting measures corporate assets across a broader spectrum, with an attempt to quantify six corporate assets, or as the IIRC puts it, six capitals: financial, manufactured, human, social and relationship, intellectual and natural: “[These six capitals] represent all the resources and relationships organizations utilize to create value. An integrated report looks at how the activities and capabilities of an organization transforms these six capitals into outcomes.”
- In order to encourage companies to achieve corporate governance excellence, adopting integrated reporting as a form of communication is a “step up” practice. The Companies Act 2016 also provides the inclusion of stakeholders’ interests for reporting purposes including employees, environment and society or community issues in the “business review”. The report serves in addition to the requirement of Directors’ Report i.e. an obligation to report on the financial performance of the company of a particular financial year. Item 2(d) of Part II of the Fifth Schedule of Malaysian Companies Act 2016 provides for the companies to prepare a business review report on a voluntary basis. Companies Commission of Malaysia (SSM) launched the SSM’s Best Business Practice Circular (BBPC) 6/2017 on Business Review Report: Guidance to Disclosure and Reporting. The Guidance is a regulatory initiative aimed at improving the relevance of narrative reports for shareholders and other stakeholders to include elements of social community, economy and environment.

The Guidance is divided into three parts. The first part explains the Corporate Responsibility Disclosure in Malaysia for all types of companies in Malaysia. The second part explains the overview, objectives and benefits of business review reporting, as well as provides guidance on writing a business review report; whilst the third part provides the model template to demonstrate the overall report as part of the policies and initiatives involving corporate responsibility. In particular, the reporting will include issues on environmental and human rights in business.

The guidance promotes the compliance of human rights principles by requiring the companies to build their clear commitment to carry out human rights due diligence processes as promoted by the United Nations Guiding Principles (UNGP) and as recommended for adoption by Malaysian companies under SUHAKAM’s National Action Plan on Business and Human Rights. Companies’ corporate responsibilities commitment covers policies, commitments and initiatives which now are to be extended to potential human rights impacts.<sup>2</sup>

---

<sup>2</sup> SUHAKAM is the acronym of Suruhanjaya Hak Asasi Manusia Malaysia or the Human Rights Commission of Malaysia.

- The United Nations Guiding Principles on Business and Human Rights (UNGPs) is a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. The UNGP requires a balancing act between the state and business entities through the “Protect, Respect and Remedy” Framework. It rests on three pillars: the state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur; and greater access by victims to effective remedy, both judicial and non-judicial.
- The Securities Commission and the Malaysian Stock Exchange known as Bursa Malaysia once teamed up with the Association of Chartered Certified Accountants (ACCA) Malaysia and the Malaysian Institute of Accountants (MIA) have taken steps to boost awareness of the value of integrated reporting. As reported by MIA in 2 November 2017 (Mahzan, 2017), 35 leading companies have committed to adopting the integrated reporting, and the Bursa Malaysia has published an integrated report since March 2017.
- Parallel to the recommendation by IIRC, a good integrated report of a company includes information about the organisation’s culture, ethics and values; ownership and operating structure; principle activities, markets, products and services; competitive landscape and market positioning; key qualitative information (e.g. the number of employees, revenue and number of countries in which the organisation operates) and significant factors affecting the external environment. According to PwC Malaysia (2017), among Bursa Malaysia’s Top 30 companies’ reporting, most companies provide some level of insight into the markets in which they operate. However, the reporting lacks details on future market trends, customer base and the competitive environment.

#### **6.6. Constitutional Impediments and Locus Standi problems**

SDGs are presupposed on an explicit pronouncement that individual right to a clean and healthy environment is one of the fundamental rights. In the Malaysian Constitution, Article 5(1) provides “no person shall be deprived of his life and personal liberty save in accordance with law”.

- In *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan* (Education Service Commission) (1996), Court of Appeal Judge Gopal Sri Ram, (as he then was) took the view that the word ‘life’ in Article 5 of the Malaysian Constitution as not only to mean mere existence, but incorporates all those facets that are an integral part of life itself and those matters which go to form the quality of life (This connotation suggests that it includes the right to live in reasonably healthy and pollution free environment (Divan & Rosencranz, 2001).
- The Federal Court case of *R Rama Chandran v The Industrial Court of Malaysia & Anor* (1997), in the word “life”, reference was made to *Tan Tek Seng* where the word is given a wider meaning.
- However, a narrower interpretation was given in various other judgments. The Federal Court in *Pihak Berkuasa Negeri Sabah (Sabah State Government) v Sugumar Balakrishnan* (2002)

departed from judgment in R Rama Chandran and disagreed with Tan Tek Seng. A panel of 5 judges took the view in the Federal Court's case of *Government of Malaysia v Loh Wai Kong* (1979), where Lord President Sufian held that the words "personal liberty" in Article 5 should be interpreted exclusively within the ambit of Article 5. Accordingly, freedom for personal liberty under that provision, only relates to body of person and freedom from being detained. Therefore, all facets that are integral part of life and those matters which go form the quality of life are excluded from the meaning.

- In *Bato' Bag & Ors v Kerajaan Negeri* (Government of the state of) Sarawak and Another Appeal (2011), the Federal Court adopted the wider interpretation of the word "life". Chief Judge of Sabah and Richard Malanjum (as he then was) said:  
"Meanwhile it may be helpful to bear in mind that the expression "life" appearing in art 5(1) does not refer to mere existence. It incorporates all those facets that are integral part of life itself and those matters which go to form the quality of life. Of these are the right to seek and be engaged in lawful and gainful employment and to receive those benefits that our society has to offer to its members. It includes the right to live in a reasonable healthy and pollution free environment"
- In furtherance to the scope of life according to the meaning under Article 5 of the Malaysian Constitution, deprivation of life should constitute an injury before a locus standi or a right to bring a case or access to civil litigation is given.
- Locus standi is a common law principle. Locus standi is subject to a very strict traditional approach in Malaysia especially where the matter involves environmental law violation. References are to *Kajing Tubek v Ekran Berhad* (1996); *Ketua Pengarah Jabatan Alam Sekitar* (Director General, Department of Environment) & *Anor v Kajing Tubek* (1997) where the Court of Appeal denied the relief sought by the respondents for lack of substantive locus standi. The existence of injury should have been established before a remedy can be granted. The Court of Appeal held that  
"...The complaints advanced by the respondents amount to deprivation of their life under art 5(1) of the federal Constitution. Since such deprivation is in accordance with law, the respondents have, on the totality of the evidence, suffered no injury. There is therefore no necessity for a remedy".
- Besides that, the injury was common to other persons who were adversely affected by the project that was complained of. The action was not representative in character. The court clearly said that it had no sufficient regard to public interest.

## 7. Conclusion

Good corporate governance practices are needed for long-term sustainability. In today's world, investors, creditors and other stakeholders have become sophisticated and increasingly recognise that economic, environmental and social responsibilities are important for the company's performance and long-term sustainability.

### **7.1. Soft Law and Implementation**

The above discussion has highlighted that SDGs depend by and large on the soft law instruments applicable for companies to be implemented voluntarily. Many of the soft and hard laws in place relevant to the implementation of SDGs are applicable to public listed companies. Still, there are options for many companies to simply ignore. Environmental, social and governance (ESG) issues are close to the people and planet. Effective engagement to increase awareness and long-term education is the best way to go. Many of the principles serve as the guidance that may be best implemented through self-regulation and reporting strategy. Accountability and the ethical behaviour of a company that transpires through responsible reporting may attract more confidence by the capital market participants. Stakeholders ranging from suppliers, customers, future investors, creditors and people at large are now more informed and educated to be selective enough to deal only with the SDGs friendly companies. For a particular SDGs' initiative to work, the success will depend eventually on the business proposition that ESG reporting creates long-term value for the businesses, or there is a business case for SDGs.

### **7.2. Enforcement and the Courts System**

Within the courts system, environmental protection cannot depend on the inconsistent attitude demonstrated by the various stances of the court with regard to environmental issues. It is submitted that promoting and facilitating public interest litigation may generate some deterrence to the culprits of environmental violation- most likely among companies. A similar approach has already made inroads in the jurisdiction like in India and the Philippine (Arifin bin Zakaria, 2017). Alternatively, enforcement agencies dealing with environmental protection should be more proactive by bringing cases of violation against the errant companies in civil and criminal proceedings. It follows that they may require education and training to equip themselves with more knowledge and skills for effective enforcement purposes.

## **Acknowledgments**

The authors would like to thank Faculty of Law, Universiti Kebangsaan Malaysia for its support in funding the submission of this paper to ICLES 2018

## **References**

- Arifin bin Zakaria (2017). A Matter of Justice – Selected Articles and Speeches, Tun Arifin bin Zakaria, Chief Justice of Malaysia. *The Malaysian Current Law Journal Sdn Bhd, Selangor, Malaysia Environmental Law: An Overview*, 55 -78.
- Bato' Bag & Ors v *Kerajaan Negeri* (Government of the state of) Sarawak and Another Appeal [2011] 6 MLJ 297
- Correia, I. M. (2014). *Shareholder Activism and Short-Termism Fostering Long-Term Engagement in the European Union*, Working Paper No 4/2014. Retrieved from [www.governancelab.org](http://www.governancelab.org)
- Divan, S., & Rosencranz, A. (2001). *Environmental Law and Policy in India*, (Second Ed.). New Delhi: Oxford University Press.

- Elkington, J. (2018, June 25). 25 Years ago, I Coined the Phrase. *Triple Bottom Line*” Here’s Why It’s Time to Rethink It”. *Harvard Business Review*. Retrieved from <https://hbr.org/>
- Gibassier, D., Adams, C., & Jerome, T. (2019, August 5). *Evidence that the ‘momentum phase’ is taking off*, Retrieved from <https://integratedreporting.org/news/evidence-that-the-momentum-phase-is-taking-off/>
- Government of Malaysia v Loh Wai Kong [1979] 2 MLJ 33
- International Integrated Reporting Council (‘the IIRC’) (2018). Retrieved from <https://integratedreporting.org/>
- Kajing Tubek v Ekran Berhad [1996] 2 MLJ 388; *Ketua Pengarah Jabatan Alam Sekitar* (Director General, Department of Environment) & Anor v Kajing Tubek [1997] 3 MLJ 23
- Mahzan, N. (2017). *MIA’s Journey to Integrated Reporting*. Kuala Lumpur, 2 November 2017. Retrieved from <http://intergratesreporting.org/news/mias-journey-integrated-reporting/>
- Mohd Sulaiman, A. N., & Rachagan, S. (2017). Shareholder primacy, controlling shareholders and Malaysia’s Companies Act 2016. *Journal of Corporate Law Studies*, 17(1), 203-224.
- Pihak Berkuasa Negeri Sabah* (Sabah State Government) v Sugumar Balakrishnan [2002] 3 MLJ 72
- PwC Malaysia. (2017). *The state of Integrated Reporting in Malaysia: An analysis of the Bursa Malaysia’s top 30 companies’ annual reports*. Retrieved from <https://www.pwc.com/my/en/assets/.../the-state-of-integrated-reporting-in-malaysia.pdf>
- R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145
- Securities Commission Malaysia. (2017). *Malaysian Code on Corporate Governance 2017*, Kuala Lumpur: Securities Commission of Malaysia.
- Suruhanjaya Syarikat Malaysia [Companies Commission of Malaysia] (SSM) (2009). *Companies Commission of Malaysia Corporate Responsibility Agenda*, Retrieved from [content.ssm-corporate-development.com/?page\\_id=692](http://content.ssm-corporate-development.com/?page_id=692)
- Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan (Education Service Commission) [1996] 1 MLJ 261.
- United Nations (2011). *Guiding Principles on Business & Human Rights, Implementing the United Nations, 2011. “Protect, Respect and Remedy” Framework*, United Nations Human Rights Office of the High Commissioner, United Nations, New York & Geneva. Retrieved from [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)
- United Nations Global Compact (2015). *A Global Compact for sustainable Development, Business and the Sustainable Development Goals: Acting Responsibly and Finding Opportunities*. Retrieved from <http://www.unglobalcompact.org>
- Weissbrodt, D. (2014). Human Rights Standards Concerning Transnational Corporations and Other Business Entities. *Minnesota Journal of International Law*, 23. Available at [http://scholarship.law.umn.edu/faculty\\_articles/221](http://scholarship.law.umn.edu/faculty_articles/221)
- World Commission on Environment and Development. (1987). *Our common future*. Oxford: Oxford University Press.