

**SUSTAINABLE BUSINESS PRACTICES AND DIRECTORS' DUTIES: A
CRITICAL EXAMINATION OF THE COMPANIES ACT 2019, (ACT 992).**

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ABSTRACT

Company directors play a central role in advancing corporate objectives, and company law traditionally imposes duties and liabilities to ensure that directors discharge their responsibilities with propriety. In Ghana, the passage of the Companies Act, 2019 (Act 992) raises the question of whether directors are legally obliged to look beyond creating wealth for shareholders to actually pursue ethical and sustainable business practices. Adopting a doctrinal, library-based methodology and situating the discussion within the contemporary stakeholder theory, this paper examines the extent to which Act 992 modifies existing rules on directors' duties in promoting ethical and sustainable business practices. The analysis shows that section 190 of Act 992 marks a significant statutory shift from the purely shareholder-centric model of the 1963 Act by expressly requiring directors to consider the long-term consequences of corporate decisions, the impact of operations on the community and the environment, and the company's reputation for ethical conduct. The paper further demonstrates that this revised framework is reinforced by Ghana's wider regulatory ecosystem, including environmental clearance requirements, ESG disclosure guidelines, sustainable banking principles, and green bond regulations. The study concludes that Act 992 embeds sustainability and social responsibility into the core of corporate governance in Ghana, thereby extending the meaning of acting in the "best interests of the company."

Keywords: *Directors' duties, Sustainability, Act 992, Stakeholder theory, Corporate Social Responsibility.*

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1. Introduction

The traditional responsibility of directors to manage the business of the company in the interest of the company, its shareholders and investors appears to have been extended in recent times to consider other societal factors, including ethical and environmental concerns. The climate crisis and the global action geared towards the protection of the environment have both intensified the calls for ethical and sustainable business practices. This has propelled companies to adopt new strategies with the view of reducing carbon emissions, improving the efficiency of new energy investments and promoting sustainable water management.¹

Conducting business in an ethical and sustainable manner has been on the rise, driven by two major factors. The first is a growing societal concern for humanity's impact on the environment and a desire to reverse ecological degradation. This shift aims to realign corporate actions to preserve the environment's intrinsic qualities and humanity's ability to depend on natural systems.² Secondly, there is an increasing expectation for corporations to bear greater moral responsibility for their actions and their role in society, whether expressed as Corporate Social Responsibility (CSR) or a commitment to 'triple bottom line' principles.³

Since society is at the receiving end of both positive and negative consequences of the operations of businesses, it is incumbent to impose some obligations on the manner in which corporations conduct business. Humanity today faces a climate

¹ Nour Chams and Josep Garcia-Blandon, 'Sustainable or not sustainable? The Role of the Board of Directors' (2019) *Journal of Cleaner Production* 226, 1067-1081.

² James McConvill and Martin Joy, 'Interactions of the Directors' Duties and Sustainable Development in Australia: Setting off on the Uncharted Road' 2003 *Melbourne University Law Review* [Vol. 27].

³ *ibid.*

crisis in unprecedented levels. Without singling out any, corporations play a major role in the climate crisis⁴ and it must be admitted that corporate law has not always been strategically structured to attack and deal with environmental reactors that leads to climate crisis.⁵

Sustainability requires businesses to consciously operate within the finite boundaries of ecological and social systems, ensuring their practices do not compromise the health of these foundational resources. Consequently, discussions on sustainability necessitate a critical examination of corporate conduct to ensure the long-term viability of the environment for the benefit of both present and future society.

As articulated by Krishna, sustainability can be defined as “the long-term maintenance of systems according to environmental, social and economic considerations”.⁶ The concept of sustainability is built on a tripartite framework, often called the “three pillars”, which argues that any true solution must address the issue as one stemming from deeply interconnected environmental, social, and economic dimensions. This means that a lasting outcome cannot focus solely on protecting the environment, for example, without also considering the social equity and economic viability of the action, as each pillar supports and influences the others.

⁴ Benedict Sheehy, ‘Sustainability, Justice and Corporate Law: Redistributing Corporate Rights and Duties to Meet the Challenge of Sustainability’ (2022) 3 *European Business Organization Law Review* 273–312.

⁵ *ibid.*

⁶ Anupam Krishna (n 8)

This perspective is expanded upon by Bañon Gomis et al.,⁷ who frame sustainability not merely as a strategic objective but as a moral imperative. They posit that it constitutes a principled and ideally habitual mode of action wherein individuals and organisations intentionally avoid deleterious impacts on the environmental, social, and economic domains. The ultimate aim of such action is to foster a harmonious relationship with these systems, thereby creating the conditions conducive to a flourishing life for all.⁸

Adopting a doctrinal legal methodology, this article seeks to investigate whether or not relevant provisions of Ghana's Companies Act 2019, (Act 992) impose on directors a legal duty to administer and direct the business affairs of companies in ways that are ethical and sustainable.

The evolving discourse on directors' duties and their role in promoting sustainability and ethical business practices has been significantly shaped by comparative corporate governance and the stakeholder theory of the corporation. Chams and García-Blandón⁹ empirically demonstrate that board characteristics such as size, gender diversity, and committee structures positively influence sustainable performance, particularly within European firms, thereby highlighting the instrumental role of governance mechanisms in advancing corporate sustainability. Similarly, Tjio¹⁰ critiques the traditional shareholder primacy model and argues for a reorientation of directors' duties towards the interests of

⁷ Banon Gomis and others (n 9)

⁸ *ibid.*

⁹ Nour Chams and Joseph Garcia-Blandon (n 1).

¹⁰ Hans Tjio, 'Sustainable Directors' Duties and Reasonable Shareholders' (2023) *European Business Organization Law Review*.

“reasonable shareholders” who value long-term sustainability, suggesting that fiduciary duties should incorporate broader ESG considerations. Quinn¹¹ further advocates for a reformist approach, proposing that directors’ duties be explicitly aligned with sustainable value creation and enforced through objective standards and public mechanisms to overcome the limitations of subjective business judgement and private enforcement.

Despite these advancements, a significant gap remains in the literature regarding the application of these principles within emerging economies, particularly in Sub-Saharan Africa. While existing studies focus largely on European, North American, and Asian contexts, there is limited scholarly engagement with how recent statutory reforms in African jurisdictions – such as Ghana’s Companies Act, 2019 (Act 992) – interpret and enforce directors’ duties in relation to sustainability and ethics. This article seeks to fill that void by examining the provisions of Act 992 and assessing their potential to foster ethical and sustainable business practices in Ghana.

The article is structured into three parts. The first part of this article reviews the concept of sustainability in business through the theoretical lens of the stakeholder approach to corporate governance, after a review of other corporate theories. Part II then analyses the role of the Board as an organ of the company and how directors’ duties developed at common law. Part III discusses the broadened scope of directors’ duties under Act 992 and examines how this new development is

¹¹ John Quinn, ‘The Sustainable Corporate Objective: Rethinking Directors’ Duties’ (2019) *Sustainability* 2019, 11, 6734.

intended to promote ethical and sustainable businesses. The paper then concludes with a commendation of the present regime for directors' duties under Act 992.

2. Business Sustainability as a Manifestation of Corporate Purpose

The purpose of this section is to examine existing scholarly literature on business sustainability and its implications for both businesses and society. It also reviews three prominent theories of the firm in order to situate the concept of business sustainability within broader theoretical perspectives.

2.1 Sustainability from Different Perspectives

Patel observes that the contemporary commercial environment is undergoing a fundamental transformation in the way businesses engage with society. Companies are moving beyond traditional profit-driven models and increasingly embracing sustainability and corporate social responsibility (CSR). This shift, he argues, is driven by heightened public concern over environmental challenges, ethical consumption, and broader social impacts. Consequently, the integration of sustainable practices and CSR has become a central component of corporate strategy, serving as essential pillars in modern business operations.¹²

¹² Dashrathkumar Patel, 'Sustainable Business Practices and Corporate Social Responsibility: A Study of their Influence on Consumer Choices and Company Performance in the Modern Commerce Landscape'(2017) 5(8) International Journal of Research in Humanities & Soc. Sciences

Ethical and business practices refer to methods, strategies, approaches and processes that corporations use to curtail or reduce environmental impact, increase positive impact and create long-term value for their stakeholders.¹³ Spiliakos¹⁴ also suggests that sustainability means doing a business while keeping the environment, community, or society as a whole in mind.¹⁵ This is particularly because businesses do not only create value for investors but for the societies they find themselves in also. They provide goods and services, wages for workers, income for investors, and taxes that help to support community infrastructure.¹⁶ Additionally, the intricate link between business and society requires that a conscious effort is made by businesses to consider the needs of society in their operations. Quite apart from seeking profit for investors, businesses ought to be concerned about how their activities actually affect the environment within which they operate and make provision for any concerns.

A question however arises on how businesses can actually implement sustainability in their operations. In order to focus on environmental and social impacts, companies need to strategise and categorise sustainable practices based on the impact on both.¹⁷ Vaishnani and Parmar's study on business practices that reduce the negative impact on the environment and society categorises business practices

¹³ Lee Shields, '5 Impactful Sustainable Business Practices' (2023) Contributor Network <<https://learn.g2.com/sustainable-business-practices> > accessed on 9 May 2024

¹⁴ Alexandra Spiliakos, 'What is Sustainability in Business?' (2018) HBS Online Business Insights.

¹⁵ Mohammed Ibrahim bin Tariq and Abu Dhabi University, 'Ethical and Sustainable Business Practices to Enhance Financial Management' (2021) ResearchGate <https://researchgate.net/publication/355215746_Ethical_and_Sustainable_Business_Practices_to_Enhance_Financial_Management > accessed 9 May 2024.

¹⁶ M Tina Dacin and others, 'Business Versus Ethics? Thoughts on the Future of Business Ethics' (2022) 180 *Journal of Business Ethics* 863-877.

¹⁷ Dr. Haresh Vaishnani and Rajeshri Parmar, 'Sustainable Business Practices and Organizational Performance: A Systematic Review' 37 (2021) *International Journal of Advanced Research in Commerce, Management & Social Science (IJARCMSS)* 37-46.

into two dimensions: planet-orientated sustainable business practices and people-orientated sustainable business practices.

On the former, they assert that planet-orientated practices are such practices that reduce the negative impact on the environment, which can also be termed “green practices” or “environmental practices”. In the business context, they defined that “green” means taking steps towards decreasing environmental impact in all business activities, having positive environmental attributes in existing operations, and achieving environmental sustainability in business outcomes. Planet-orientated practices include resource management practices and pollution prevention and waste management practices in the manufacturing industry for example. Regarding the latter, they espouse that people-orientated practices are such practices that reduce the negative impact on the society, which can also be termed as “social practices” or “CSR practices”. To cater for the needs of different constituents associated with a business, they assert that the consideration of stakeholder needs plays a significant role as per the principles of the stakeholder theory. For example, employees are a key element of social practice within organisations, as such, addressing their needs and enhancing their satisfaction will improve overall firm performance.¹⁸

The element which establishes the framework and defines the extent to which sustainability or business success can be achieved is ethics. For sustainable business practices to thrive, specific behaviours or values must be developed to support and maintain these practices, guided by the standards set by ethics. Business ethics

¹⁸ *ibid.*

involves the organisational principles, sets of values, standards and norms which influence the actions and behaviour of an individual in the organisation. Business ethics attracts customers for the firm's products and thus boosts sales and profit; business ethics reduces turnover and makes employees stay in business, thereby increasing productivity.¹⁹ Business ethics are the principles that prescribe a code of behaviour that describe what is good and right and what is bad and wrong. They reveal standards for conduct and decision-making of employees and managers.²⁰ Ethics, therefore, are the conduit through which a culture and mindset of sustainability is achieved.

Ethics in business is one of the intangibles that may appear amorphous to academic discipline and even to practitioners. Just like corporate culture, many questions arise when the concept of ethics arises. In providing some clarity, Larshley²¹ argues that there is a difference between "ethics" and "morality", even though they are sometimes used interchangeably, and advocates seeing the difference between the two will enhance understanding of sustainable business practices. Ethics is more concerned with ensuring good behaviour and can be thought of as developmental, whereas morality is judgmental.²² Ethics are virtues of desirable values that help people to do good actions, making ethics indispensable in corporate governance. Lashley²³ adds that a number of changes within the world economy are causing

¹⁹ Charity Ezenwakwelu and others, 'Business Ethics and Organizational Sustainability' (2020) 24(3) International Journal of Entrepreneurship

²⁰ *ibid.*

²¹ Conrad Lashley, 'Business Ethics and Sustainability' (2016) 6 Research in Hospitality Management 1-7

²² Referencing Colin Fisher and Alan Lovell (2012). *Business Ethics and Values* (2nd Edn) London: Prentice-Hall (2006).

²³ Chris Moon and others, *Business ethics: Facing up to the Issue* (Economist Books 2001).

many major business organisations to adopt more ethical practices. Technological innovation, globalisation, the importance of intangible assets, competition for talent and the growing use of economic networks are all leading to change towards more ethical practice.

In the context of the governance of businesses, the board has the burden of ensuring the implementation of ethical and sustainable practices in the company. This is because the most essential decisions that shape the company's goals and objectives are made by them.

2.2 Theory at the Heart of Corporate Law

A number of theories have been propounded to ground business sustainability principles in the affairs of the company. This is in a bid to establish a link between the responsibility of directors towards the corporation and the responsibility of the directors towards the broader environment or society. The governance system of a company primarily depends on the decisions of the board and members in a general meeting. The effect is that the decisions taken by these two principal organs of the company impact the wider society in one way or the other. Within the context of sustainability, there is the need to attribute obligations not only from a practical point of view but also from justifiable theoretical underpinnings on the operations of the board in the corporation. This then establishes the direct relationship between the governance system of a company and the principles of sustainability. Three

theories shall be discussed: the agency theory, the resource dependency theory and the stakeholder theory.

2.2.1 The Agency Theory

This theory concerns sustainable business practices as jointly upheld by the board of directors and shareholders. The proponents of this theory argue that the board has the obligation of monitoring the operations of the company, while the shareholders' duty is to focus on economic and financial efficiency.²⁴ The central argument of this theory is that conflicts emerge when the interests of owners and managers diverge.²⁵ Proponents maintain that such divergence is rooted in competing goals between management and shareholders, with managers often using their control over firm operations to maximise short-term personal gains at the expense of shareholders' long-term interests.²⁶ In such circumstances, boards may also extract greater benefits or rents than those that would ordinarily be granted by the firm's owners.²⁷

Three mitigation approaches have been suggested to address the agency theory problem: the independence approach; the equity approach and the market for corporate control approach. The "independence" approach advocates for an

²⁴ Charl de Villiers and Vic Naiker, 'The Effect of Board Characteristics on Firm Environmental Performance' (2011) 37(6) J. Manag. 1636-1663. (This paper discusses the relationship between strong firm environmental performance and board characteristics that capture boards' monitoring and resource provision abilities during an era when the natural environment and the related strategic opportunities have increased in importance. The authors relate the proxy for strong environmental performance to board characteristics that represent boards' monitoring role.)

²⁵ Dan Dalton and others, 'Fundamental Agency Problem and its Mitigation: Independence, Equity, and the Market for Corporate Control' (2007) 1(1) Acad. Manag. Ann. 1-64, 2.

²⁶ Charl de Villiers and Vic Naiker (n 24) 6.

²⁷ Dan Dalton (n 25) 2.

independent board. It is argued that corporate directors must remain independent of management, oversee managerial actions, and ensure that their interests remain aligned with those of shareholders.²⁸ The equity approach suggests that managers who hold equity in the firm are more likely to align with the interests of other shareholders, thereby directing the firm in pursuit of their collective objectives. Similarly, the market for corporate control posits that corporate markets can serve a disciplinary function, as managers who misuse their agency position for self-interest may expose the firm to acquisition by competing firms.²⁹

The board's monitoring role enhances managerial accountability, thereby increasing the likelihood of more effective strategic initiatives.³⁰ Within the context of sustainability, this role underscores the need for governance structures designed to promote social and ethical performance, but often only when such measures promise tangible efficiency gains or financial returns.³¹ However, this perspective does not necessarily ensure that top management will pursue ambitious environmental performance objectives. Such strategies typically demand substantial investment in production redesign, new technologies, and cross-functional employee collaboration.³² As a result, corporations must evaluate the long-term benefits of robust environmental practices, even though managers may be reluctant to incur costs without immediate financial payoffs. Consequently, management often prioritises conservative initiatives that safeguard short-term

²⁸ *ibid.*, 3.

²⁹ *ibid.*, 2.

³⁰ Charl de Villiers and Vic Naiker (n 24).

³¹ Nour Chams and Josep García-Blandon (n 1) 1068.

³² Charl de Villiers and Vic Naiker (n 24) 6.

reputation and financial outcomes over more transformative, long-term sustainability strategies.³³

2.2.2 Resource Dependence Theory (RDT)

This theory is grounded in the board's responsibility to allocate resources effectively. It emphasises that one of the board's primary functions is to enhance firm performance through efficient resource distribution.³⁴ The Resource Dependence Theory (RDT) rose to prominence following the publication of "The External Control of Organizations: A Resource Dependence Perspective" by Jeffrey Pfeffer and Gerald Salancik.³⁵ At its core, the theory posits that organisational actions are shaped by their reliance on critical external resources, and that decision-making can be explained by the specific nature and degree of these dependencies.³⁶ The theory further illustrates that organisations rely on critical resources provided by their external environment. To understand organisational behaviour, it is therefore necessary to first identify which resources are most essential.³⁷ However, it does not suggest that environmental conditions and resource dependencies influence behaviour independently of the actors involved. Rather, it emphasises the interaction between organisational actors and their environment. The theory assumes bounded rationality, acknowledging the cognitive and informational limits

³³ *ibid.*

³⁴ Nour Chams and Josep García-Blandon (n 1) 1068.

³⁵ See Werner Nienhuser, 'Resource dependence theory: How well does it explain behavior of organizations?', *Management Revue* (2008) 19(2), Rainer HamppVerlag, Mering 9-32.

³⁶ *ibid.*, 11.

³⁷ *ibid.*, 12.

actors face in formulating and solving complex problems, as well as in processing, storing, and transmitting information.³⁸

Although the environment objectively constrains organisational action through the availability of resources, managers must still subjectively perceive and interpret how these resources are distributed.³⁹ Resource Dependence Theory recognises the influence of external factors on organisational behaviour but emphasises that managers can actively reduce environmental uncertainty and dependency. Central to this process is the concept of power, understood as control over critical resources, which enables firms to either minimise dependence or secure additional resources – functions often carried out through the board.⁴⁰ Early applications of RDT to boards examined size and composition as indicators of a board’s ability to provide essential resources. These studies suggested that firms with greater environmental interdependence tend to appoint larger boards with a higher proportion of outside directors.⁴¹ According to Pfeffer,⁴² directors enhance organisational capacity in four main ways: by offering advice and counsel, facilitating information flows between the firm and its external environment, providing access to key resources, and conferring legitimacy.⁴³

2.2.3 Stakeholder Theory

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ Amy Hillman and others, ‘Resource Dependence Theory: A Review’ (2009) 35(6) *Journal of Management* 1404–1427.

⁴¹ *ibid.*

⁴² Jeffrey Pfeffer and Gerald Salancik, *The External Control of Organizations: A Resource Dependence Perspective*. Harper & Row, New York (1978).

⁴³ Amy Hillman and others (n 40).

The stakeholder theory is highly versatile, with applications across multiple fields due to its flexibility in addressing diverse issues. It holds particular significance in the areas of corporate social responsibility, business ethics, and sustainability. Freeman defines a stakeholder as any individual or group that can influence, or is influenced by, the achievement of a firm's objectives.⁴⁴ This broad definition encompasses shareholders, employees, creditors, public interest groups, and other parties connected to the corporation. Inevitably, these stakeholders may pursue conflicting objectives.⁴⁵ While profit generation remains the primary goal of most corporations, other concerns—such as social, ethical, and environmental considerations—also hold significant importance, creating potential tensions among stakeholder interests. The stakeholder-oriented perspective has been widely adopted in jurisdictions such as Germany, France, Japan and the United States.

The stakeholder theory has been divided into two main models:⁴⁶ the Corporate Planning and Business Policy Model and the Corporate Social Responsibility Model of stakeholder management.⁴⁷ The Corporate Planning and Business Policy Model focuses on the development and evaluation of corporate strategic decisions, emphasising the need for approval and support from key stakeholder groups essential to the corporation's survival. It views the behaviour of these groups as a factor that constrains management's strategic choices, requiring alignment between corporate resources and the external environment. This model identifies

⁴⁴ Edward Freeman, *Strategic Management: A Stakeholder Approach* (Marshall, MA Pitman, 1984).

⁴⁵ Robin Roberts, 'Determinants of Corporate Social Responsibility Disclosure: An Application of Stakeholder Theory' (1992) 17(6) *Accounting Organizations and Society* 595--612.

⁴⁶ Edward Freeman (n 44).

⁴⁷ Robin Roberts (n 45).

stakeholders such as creditors, employees, shareholders, and public interest groups as integral components of the corporation.⁴⁸ Importantly, it does not regard stakeholders as adversaries but as collaborators whose contributions are vital to achieving mutual benefits and overall corporate success. For example, customers sustain the corporation through purchases, creditors and shareholders provide necessary capital, and public groups – including local communities and regulatory authorities – maintain a vested interest in the organisation’s conduct and its wider societal impact.

The Corporate Social Responsibility (CSR) Model presents a different perspective. Unlike the collaborative approach of the Corporate Planning and Business Policy Model, this framework highlights the role of external influences – such as regulatory authorities and special interest groups – that often act in an adversarial capacity, particularly in relation to social and environmental issues. The model underscores stakeholder theory as a valuable justification for CSR by providing a rationale for integrating stakeholder interests into strategic decision-making. Through this lens, businesses are encouraged to align their CSR initiatives with the expectations and needs of diverse stakeholder groups, thereby enhancing both the strategic effectiveness and broader societal impact of their activities.⁴⁹

In making decisions, the board must take into account the interests of stakeholders. Whether applying the Corporate Planning and Business Policy Model or the

⁴⁸ *ibid.*

⁴⁹ Arie Ullmann, ‘Data in Search of a Theory a Critical Examination of the Relationship Among Social Performance, Social Disclosure, and Economic Performance’ (1985) *Academy of Management Review* 540-577.

Corporate Social Responsibility Model, it is essential that the board evaluates how its decisions affect various stakeholder groups. A corporation's objectives should therefore extend beyond profit generation and maximisation to include the broader interests of stakeholders, including those of society at large.

While a company's performance is primarily evaluated based on profitability, it is important to recognise that a firm's decisions also impact various stakeholder groups. Although profit generation remains a fundamental objective, conflicts can arise between the company and its stakeholders. To prevent or swiftly resolve such disputes, certain conditions must be met. Accordingly, the following has been proposed:⁵⁰

- (i) to identify well-defined groups of agents close to the firm that are affected by the externalities it creates;
- (ii) to assign well-defined benefits to each group of stakeholders;
- (iii) to assign relative weights to the benefits defined in (ii) to obtain a well-defined objective for the firm and;
- (iv) to provide incentives for the firm's management to maximise this objective.

These proposals will help prevent potential conflicts and guide the company in its decision-making when undertaking transactions or projects that impact the stakeholder group. For example, when a clearly defined set of stakeholders is affected by the firm's internal and external decisions, the company can concentrate

⁵⁰ Michael Magill, Martine Quinzii and Jean-Charles Rochet, 'A Theory of Stakeholder Corporation' (2015) 83(5) *Econometrica*. 1685-1725.

on maximising benefits for the group while minimising any adverse effects associated with the initiative. This therefore triggers proposal (ii), as each stakeholder group advocates for outcomes that align with their distinct interests. Such engagement is critical, as every stakeholder contributes to the business's operations with the expectation of receiving meaningful value in return.

For instance, in a company with shares, the shareholders expect higher returns, and employees seek fair wages and career growth, while customers demand quality and affordability. Proposal (ii) ensures these competing interests are balanced – perhaps through profit-sharing for employees, sustainable pricing for customers, and reinvestment strategies for shareholders – creating a mutually beneficial ecosystem where all stakeholders see their contributions rewarded.

The goal is to strike a balance between profit maximisation and the corporation's sustainable market presence as a going concern. The key differentiator of stakeholder theory lies in its requirement to account for all stakeholders' interests – even when doing so may potentially diminish the company's profitability, particularly in the immediate term.

The Ghanaian Companies Act of 2019 formally incorporates stakeholder theory principles to promote sustainable business practices. As will be examined in Part III of this analysis, this legislative framework requires companies to balance the interests of various stakeholders.

The foregoing discussion demonstrates that the agency theory, resource dependence theory, and stakeholder theory each provide valuable theoretical

foundations for linking corporate governance with sustainability. Together, they clarify the dual responsibility of directors—towards the corporation itself and towards the broader environment and society. By situating board decision-making within these theoretical frameworks, the governance system of a company can be understood not merely as a mechanism for profit generation but as a structure that embeds ethical, social, and environmental considerations into corporate strategy. Thus, these theories collectively reinforce the role of the Board as a central actor in advancing principles of business sustainability. While none are without flaws, these shortcomings can be effectively managed, often without significant cost.

3. Board Primacy and the Development of Directors' Duties at Common Law.

3.1 Board Primacy in Ghana

Building on the discussion of theories that connect corporate governance with sustainability, it is important to examine how the law itself grounds the powers and responsibilities of directors. The principle of board primacy and the common law development of directors' duties provide the legal framework within which sustainability obligations may be interpreted and enforced. These duties not only define the relationship between directors, shareholders, and the company but also shape how corporate decisions impact wider societal and environmental interests. In this way, the legal evolution of directors' duties serves as a bridge between traditional corporate governance principles and the modern demand for responsible and sustainable business practices.

An incorporated company cannot act on its own. It does not have a mind or body to undertake transactions on its own. It is therefore described as an “abstraction” in the context of company law to reflect the concept of an artificial person.⁵¹ It can only take decisions and perform its stated business through the principal organs of the company. In the Ghanaian company law context, once a company is incorporated, it assumes full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and it has full rights, powers and privileges for the purposes of undertaking any business or activity.⁵² The powers of the corporate personality are achieved through the functionality of human beings acting in the capacity of organs, agents and officers of the company.⁵³ Two key organs of the company are the Board of Directors and Members in General Meeting.

The Board of Directors, together with the Members of the Company in General Meeting, exercise powers that are deemed to be the direct acts of the company.⁵⁴

Section 144(1) of Act 992 provides as follows:

“A company shall act through the members of the company in general meeting or the board of directors or through officers or agents, appointed by, or under authority derived from the members in general meeting or the board of directors.”

Such powers are derived either by the constitution of the company,⁵⁵ or by statutory provisions.⁵⁶ In the exercise of their functions and powers, the Board is not bound

⁵¹ *Lenarri's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd* (1915) AC. 705.

⁵² The Companies Act 2019 (Act 992), s 18(1).

⁵³ *Ayodele James.: Mid-Motors (Nig) Co. Ltd* (1975) 11-12 SC 31.

⁵⁴ The Companies Act 2019 (Act 992), s 144(1).

⁵⁵ *ibid*, s 144(2).

⁵⁶ Act 992 imposes certain obligations on the board of directors and the members in general meeting.

by the directions and instructions of the members in the general meeting.⁵⁷ Section 144(4) provides as follows: *“Unless the constitution of the company otherwise provides, the board of directors, when acting within the powers conferred on them by this Act or the constitution of the company, are not bound to comply with the directions or instructions of the members in general meeting.”* The Board has power to take decisions and manage the affairs of the company. They are not bound by the instructions and decisions of the company as to fetter their constitutional power or legislative power in relation to the administration and operation of the company. The board’s independence is guaranteed, and there is a balance between the powers of the members in the general meeting and the board.

In the case of *John Shaw & Sons (Salford) Ltd v Shaw*,⁵⁸ Greer LJ had this to say on the powers of the board:

“...The only way in which the general body of the shareholders can control the exercise of the powers vested by the articles (the constitution of the company) in the directors is by altering their articles, or, if opportunity arises under the articles, by refusing to re-elect the directors of whose actions they disapprove. They cannot themselves usurp the powers which by the articles are vested in the directors any more than the directors can usurp the powers vested by the articles in the general body of shareholders...” (emphasis is mine)

Where members in a general meeting intend to control or exercise their powers over the Board, such control or power must be embodied in the articles of the company

⁵⁷ The Companies Act, 2019 (Act 992), s. 144(4); See *Scott v. Scott* [1943] All ER 582. In this case a company's shareholders passed a resolution at a general meeting that certain payments in respect of dividends should be made to preference shareholders. It was held that the resolution was invalid as an attempt by the shareholders to usurp the directors' powers of control.

⁵⁸ [1935] 2 KB 113.

or the constitution of the company. It is one of the derivative sources of power of members in the General Meeting. Where such power is not articulated in the constitution of the company, the members in general meeting have the alternative to amend the constitution in order to exercise such control.

Greer LJ's position fortifies the principle that directors are not agents of the shareholders.⁵⁹ Consecrating the act of the board, Act 992 prevents decisions or acts of the board to be reversed or affected in the event that the constitution of the company is amended.⁶⁰ These limitations on the members in the general meeting are to avoid conflicting decisions between the two principal organs of the company.⁶¹

The role performed by the Board of Directors is crucial to the existence of the corporation. The board of directors, managing director and other top officers normally carry out the managerial functions of a company. They speak and act on behalf of the company. They are the faces and the directing minds of the company.

⁶² Any act of the board of directors or managing director, for instance, while carrying on in the usual way the business of the company is treated as the act of the company itself; and accordingly, the company shall be civilly liable therefore to the same extent as if it were a natural person.⁶³

⁵⁹ *Automatic Self- Cleansing Filter Syndicate Co. v. Cunninghame* [1906] 2 CH 34 CA.

⁶⁰ The Companies Act 2019 (Act 992), s 144(6).

⁶¹ Paul Davies, 'The Board of Directors: Composition, Structure, Duties and Powers' (2000) OECD <<https://www.oecd.org/daf/ca/corporategovernanceprinciples/1857291.pdf>> accessed on 12 May 2024.

⁶² *Michael Ayuune And 24 Others V. Board of Directors, Tek Cooperative Credit Union Ltd* (2018) JELR 63961 (HC).

⁶³ *Bousiako Co., Ltd. v. Ghana Cocoa Marketing Board; Kwabo-Oseyere Construction Works Ltd. v. Ghana Cocoa Marketing Board (Consolidated)* [1982-83] GLR 824.

The primacy of the board of directors in the governance of the company is well cemented under Ghanaian law. Consequently, the responsibility to ensure business ethics and sustainability among corporations falls within the ambit of the Board. Since the Board is essentially the directing mind and will of the Company, decisions concerning ethical and business sustainable practices rest squarely on its shoulders.

3.2 Development of Directors' Duties at Common law

The establishment of the primacy of the board in the governance of a company must of necessity be accompanied by a discussion of the duties of directors. Directors' duties are the channels through which directors exercise their powers. This section therefore traces the development of directors' duties from common law.

Common law judges were the pioneers in establishing fiduciary duties on directors, independent of any explicit statutory directives.⁶⁴ This meant that the evolution and development of the fiduciary duties of directors were based on case law. In other words, the set of regulations in the United Kingdom that evolved over time through the judiciary's gradual decision-making in similar cases over an extended duration, eventually solidifying into a formal legal framework through the doctrine of judicial precedent.⁶⁵ The jurisprudence surrounding directors' duties was crafted by the judiciary throughout the 19th and 20th centuries by transplanting and modifying

⁶⁴ Professor Bernard Black, 'The Principal Fiduciary Duties of Boards of Directors' Presentation at Third Asian Roundtable on Corporate Governance Singapore, 4 April 2001.

⁶⁵ David Cabrelli, 'The Reform of the Law of Directors' Duties in UK company Law'(2008) Edinburgh Research Explorer (2008). Presentation for Università Bocconi on the Reform of the Law of Directors' Duties in UK Company Law.

the preexisting laws governing trustees' duties. Directors were seen as trustees by the common law; thus, they were attributed with the duties of trustees.

The general duties of directors at common law were divided into two: the duty of loyalty and the duty of care, skill and diligence. The former was a fiduciary duty, whereas the latter was not since it was concerned about the competence or negligence of directors.⁶⁶ The duty of loyalty and care has received extensive scholarship since it was the first and foremost duty of directors. It included the duty to act in the interest of the company⁶⁷; the duty to avoid conflict of interest⁶⁸; and the duty to avoid misusing corporate information, contracts and properties.⁶⁹ The benefit of common law evolution in directors' fiduciary duties lies in its adaptability and capacity to be adjusted to align with contemporary commercial and economic circumstances.

The challenge with the common law, however, was that there was a lack of transparency on the fiduciary duties of directors. Directors did not know exactly what their duties were towards the company.⁷⁰ They relied on advice from legal practitioners due to the absence of specific legislative provisions governing fiduciary duty. For this reason, the government of the United Kingdom charged the Company Law Review Steering Group, the Law Commission and the Scottish Law Commission to make findings to replace the common law with statutory provisions on the legal duties of directors towards a company in a new Companies Act.⁷¹ In

⁶⁶ *ibid.*

⁶⁷ *Re Smith & Fawcett Ltd.* [1942] Ch. 304

⁶⁸ *Aberdeen Railway Co. v Blaikie Bros* (1854) 1 Macq 461.

⁶⁹ *Cook v Deeks* [1916] 1 AC 554, PC.

⁷⁰ David Cabrelli (n 65).

⁷¹ *ibid.*

their 2001 Final Report, the Company Law Review Steering Group stated that a statutory statement of directors' legal duties would provide greater clarity on what is expected of directors and make the law more accessible. It would also correct defects in the existing law, particularly in areas where it no longer aligns with accepted norms of modern business practice. This is especially relevant to the duties of conflicted directors and the powers of the company in dealing with such conflicts. Finally, the statement would define whose interests companies should serve, in a manner that reflects both modern business needs and wider expectations of responsible corporate behaviour..⁷²

3.3 Duties of Directors under Ghanaian law

The companies Act, 2019 (Act 992) in the section 170(1) defines a 'director' to mean "*those persons, by whatever name called, who are appointed to direct and administer the business of the company.*" It is the role or function or duties of a person that qualifies that person to be recognised as a director of a company. So far as those persons have been "appointed to direct and administer the business of the company", they are directors in the face of the law.

Act 992 recognises directors who are not officially or duly appointed as directors but still play a role in the running of the business as if they were duly appointed directors. These people are called *de facto* directors and shadow directors, depending on the context. With regard to a *de facto* director, section 170(2)(a) of Act 992 provides that "*a person, not being a duly appointed director of a company, who holds out*

⁷² The Great Britain Company Law Review Steering Group, *Modern Company law for a Competitive Economy: Final Report* (Department of Trade and Industry 2001) 40-41.

as a director or knowingly allows to be held out as a director of that company is subject to the same duties and liabilities as if that person were a duly appointed director of the company.”⁷³ On the other hand, a shadow director is defined in section 170(2)(b) of the Companies Act, 2019 (Act 992) as “a person, not being a duly appointed director of a company, on whose directions or instructions the duly appointed directors are accustomed to act, is subject to the same duties and liabilities as if that person were a duly appointed director of the company.”⁷⁴ It is important to draw this distinction because the law takes the position of ascribing duties and liabilities to all persons who purport to be directors, even if they are not officially appointed as one.

The duties of directors can be found in two main sources: the constitution of the company and legislation, in this case Act 992. Act 992 states in section 190(1) that “A director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in a transaction with or on behalf of the company.” The expression ‘fiduciary duty’ is properly confined to those duties which are peculiar to fiduciaries and the breach of which attracts legal consequences differing from that consequent upon the breach of other duties.⁷⁵ In the case of *Breen v Williams*,⁷⁶ the court explained that a fiduciary relationship is one in which one person comes under a duty to act in the other person’s interest.

⁷³ See *Re Hydrodam (Corby) Ltd*, [1994] 2BCLC 180; *Commodore v Fruit Supply (GH) Ltd* [1977] 1 GLR 241; *Kwapong and others v Ghana Cocoa Marketing Board and others*; *Amoh v Ghana Cocoa Marketing Board and others (consolidated)* [1984-86] 1 GLR 74-91.

⁷⁴ See *Re Hydrodam (Corby) Ltd* (n 112); *Re Unisoft (No.3) Group Limited (No 3)* [1994] 1BCLC 609.

⁷⁵ *Bristol & West Building Society v Mothew* [1998] Ch 1, p. 16

⁷⁶ [1997] 1 LRC 212

A director is also obligated to “observe the utmost good faith towards the company in a transaction with or on behalf of the company.”⁷⁷ In addition, a director has a duty to act in the interest of the company as a whole so as to preserve the assets, further the business, and promote the purposes for which the company was formed, in the manner that a faithful, diligent, careful and ordinarily skillful director would act in the circumstances.⁷⁸ A director of a company also has the duty act in accordance with the constitution of a company and only exercise powers for the purposes for which the powers are conferred.⁷⁹ Moreover, a director is mandated to exercise independent judgement.⁸⁰ A director also has the duty to avoid conflict of duty and conflict of interest.⁸¹ A director has the duty not to compete against the company.⁸² Concerns for interaction between business and the environment and society continue to take shape globally. Although social pressure from civil society has been the primary force behind this dynamic, there is a growing trend toward integrating social and environmental concerns into the legal framework that regulates corporations.⁸³ Ghana in its Companies Act, 2019 (Act 992) appears to have responded to such calls by expressly broadening the considerations directors must have regard to in acting in the best interests of the company.

⁷⁷ See *Charterbridge Corporation v Lloyds Bank* [1969] 2 All ER 1185

⁷⁸ Act 992, s 190(2); *ibid*; *Greenhalgh v. Arden* [1951] Ch 286.

⁷⁹ Act 992, s 190(3); see *Re Smith & Fawcett* [1942] Ch 304; *Hirsche v. Sims* [1894] AC 654, PC; *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821.

⁸⁰ *ibid*, s 190(5).

⁸¹ *ibid*, s 192(1); see *Bray v Ford* (1896) AC 44 HL 51-2; *Aberdeen v. Blaikie* [1843-60] ALL ER 249; *Bhullar v Bhullar* [2003] BCLC 241; *Commodore v Fruit Supply (GH) Ltd* [1977] 1 GLR 241.

⁸² *Ibid*, s 192(1)(b); see *Asafu Adjaye and other v Agyekum* [1984-86] 1 GLR 382.

⁸³ James McConvill and Martin Joy, ‘Interactions of the Directors’ Duties and Sustainable Development in Australia: Setting off on the Unchartered Road’ (2003) 27 Melbourne University Law Review

4. Duties of Directors and Ethical and Sustainable Business Practices under Act 179 and Act 992

In examining the provisions of Act 992 on directors' duties in this paper, the analysis is guided by the stakeholder theory of the firm, which the Act itself considers as a foundation for promoting sustainable business practices. Stakeholder theory provides the conceptual basis for assessing how directors' duties extend beyond the traditional focus on shareholders to include a wider range of interests, such as those of employees, creditors, communities, and the environment. By applying this framework, the analysis evaluates whether Act 992 effectively redefines the role of directors to balance profit-making with broader ethical, social, and environmental. Under the repealed Act 179, directors had no express obligation to consider the impact of the company's operations on the environment or the society, nor the company having a reputation for high standards of business conduct. What the Act did was to give directors the opportunity to have regard for certain constituents when determining whether a transaction is in the best interest of the company. These constituents were employees of the company, members of the company, or in cases where the director is appointed by a special class of members or creditors, the director may give special consideration to the interests of that class. Even so, the said provision was drafted in permissive terms with the use of 'may', which meant that directors were not mandated. For purposes of analyses, the provisions of the two Acts on directors' duties is quoted verbatim below.

Section 203 of the Companies Act 1963 (Act 179) provided:

(1) A director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf.

(2) A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skilful director would act in the circumstances.

(3) In considering whether a particular transaction or course of action is in the best interests of the company as a whole a director may have regard to the interests of the employees, as well as the members, of the company, and, when appointed by, or as representative of, a special class of members, employees, or creditors may give special, but not exclusive, consideration to the interests of that class.

(4) No provision, whether contained in the Regulations of a company, or in any contract, or in any resolution of a company shall relieve any director from the duty to act in accordance with this section or relieve him from any liability incurred as a result of any breach thereof.

The aforementioned provision failed to establish any binding obligation on directors to consider sustainable business practices in the performance of their duties. While the Act comprehensively outlined directors' duties, it notably omits any specific requirements regarding their role in considering the likely effects of the company's operations on the environment and society or even maintaining a reputation for high standards of business conduct.

The Companies Act, 2019 (Act 992), however, introduced reforms that explicitly include sustainable business considerations among the statutory duties of company

directors. Section 190(2) and (4) of the Companies Act, 2019 (Act 992) reflects a leaning towards the stakeholder theory in Ghanaian company law. The provision expressly requires directors, in the performance of their duties, to consider not only the interests of shareholders but also those of employees, customers, creditors, and the broader community. By doing so, the Act moves away from a purely shareholder-centric model and situates corporate decision-making within a stakeholder framework, thereby embedding sustainability and social responsibility into the governance structure of companies.

Section 190(2)&(4) of Companies Act, 2019(Act 992) provides as follows:

(2) A director shall always act in what the director believes is the best interest of the company as a whole so as to preserve the assets, further the business, and promote the purposes for which the company was formed, in the manner that a faithful, diligent, careful and ordinarily skilful director would act in the circumstances and in doing so shall have regard to

(a) the likely consequence of any decision in the long term,

(b) the impact of the operations of the company on the community and the environment, and

(c) the desirability of the company maintaining a reputation for high standards of business conduct.

(4) In considering whether a particular transaction or course of action is in the best interests of the company as a whole, a director may consider the interests of the employees, as well as the members, of the company, and, where appointed by, or as representative of, a special class of members, employees, or creditors may give special, but not exclusive, consideration to the interests of that class.

The scope of directors' duties under section 190(2) Act 992⁸⁴ has been extended particularly regarding the promotion of ethical and sustainable business practices. In acting in the best interest of the company as a whole so as to preserve the assets, further the business, and promote the purposes for which the company was formed, in the manner that a faithful, diligent, careful and ordinarily skilful director would act in the circumstances, the director is mandated to have regard to:

- (a) the likely consequence of any decision in the long term,*
- (b) the impact of the operations of the company on the community and the environment, and*
- (c) the desirability of the company maintaining a reputation for high standards of business conduct.*

When making decisions, a director under Ghanaian law must consider the long-term consequences, ensuring that the choices made today will benefit the company in the future. Additionally, the director must be mindful of the company's impact on the community and the environment, recognising that the operations of the company extend beyond mere financial performance to broader social and ecological effects. Finally, maintaining a high standard of business conduct is essential, as the company's reputation is a valuable asset that can influence its success and sustainability. By adhering to these principles, a director not only fulfils their legal and ethical obligations but also contributes to the overall well-being and longevity of the company.

⁸⁴ This provision is similar to the U.K Companies Act, 2006, s 172.

According to Gharthey,⁸⁵ the Companies Act 2019 marks a statutory expansion of the traditional understanding of the phrase “in the best interests of the company as a whole.” In interpreting this standard, directors are now expected to take into account not only the company’s long-term viability but also the impact of corporate decisions on the community, the environment, and the company’s reputation. These considerations, he argues, have become integral criteria for determining what constitutes the best interests of the company under Ghanaian law.

Recognising that corporate activities directly affect the environment—and in response to growing global advocacy for climate responsibility—Act 992 imposes an obligation on directors to consider the long-term consequences of their decisions, the impact of company operations on the community and the environment, and the importance of maintaining a strong reputation for ethical business conduct. As Gharthey observes, this approach aligns with modern expectations of the company as a “social citizen.”⁸⁶ Societal demands for corporate responsibility towards communities and the environment continue to intensify, and these statutory obligations embed environmental accountability within corporate governance. In practice, this requires companies to pursue strong environmental performance, which ultimately enhances the resilience, vitality, and sustainability of their operations within the communities they serve.

⁸⁵ Kenneth Gharthey, ‘Directors’ Duties under the 2019 Ghanaian Companies Act’ (2020) 46 (2) Commonwealth Law Bulletin 249 .

⁸⁶ *ibid.*

In Ghana, certain enactments in specific sectors require companies to seek environmental clearance before operating. For instance, under the Petroleum (Exploration and Production) Act, 2016 (Act 919), the Act requires companies to acquire environmental impact assessment clearance from the Environmental Protection Agency before being granted a reconnaissance licence.⁸⁷ Additionally, before undertaking exploration drilling, the company must first comply with the relevant statutory environmental requirements as prescribed in the Environmental Protection Agency Act, 1994 (Act 490).

Furthermore, under the Minerals and Mining Act, 2006 (Act 703), before undertaking an activity or operation under a mineral right, the holder of the mineral right (company) shall obtain the necessary approvals and permits required from the Forestry Commission and the Environmental Protection Agency for the protection of natural resources, public health and the environment.⁸⁸

Charl, Vic and Chris⁸⁹ have observed that firms with strong environmental performance are better positioned to seize market opportunities arising from the growing demand for environmentally friendly goods and services.⁹⁰ They also caution that heightened societal expectations increase the risk of environment-related liabilities, citing the Exxon Oil spill in 1986 and BP's Gulf of Mexico spill in 2010, both of which saddled companies with immense financial burdens in the form

⁸⁷ Petroleum (Exploration and Production) Act, 2016 (Act 919), s. 9. A reconnaissance licence grants to the licensed person a non- exclusive right to undertake (a) data collection including seismic surveying and shallow drilling, and (b) processing and interpretation or evaluation of petroleum data in the area specified in the licence.

⁸⁸ Minerals and Mining Act 2006 (Act 703), s 18.

⁸⁹ Charl de Villiers and Vic Naiker (n 24).

⁹⁰ *ibid*, 4.

of clean-up costs, fines, and settlements.⁹¹ In their view, the positive correlation between robust environmental performance and shareholder wealth, coupled with non-financial benefits such as reputational resilience, makes environmental responsibility a strategic imperative. From a stakeholder theory perspective, this insight reinforces the statutory direction of Act 992: directors must not only safeguard shareholder value but also align company operations with community and environmental expectations. By embedding environmental accountability into governance, directors reduce exposure to liability while enhancing trust and legitimacy among a wider set of stakeholders, thereby securing the company's long-term sustainability.

As indicated earlier, the Companies Act appears to cogently recognise the need for company directors to consider the needs of other stakeholders in their operations. For a corporation to achieve sustainable long-term success, it must recognise and safeguard the interests of all stakeholders impacted by its operations. Which stakeholders does Act 992 make mention of? Section 190(4) provides as follows:

(4) In considering whether a particular transaction or course of action is in the best interests of the company as a whole, a director may consider the interests of the employees, as well as the members, of the company, and, where appointed by, or as representative of, a special class of members, employees, or creditors may give special, but not exclusive, consideration to the interests of that class.

⁹¹ *ibid.*

Consequently, a company's stakeholders extend beyond the local community to include shareholders, employees, and creditors – each playing a distinct role in the organization's success. Under the Act, companies must prioritise shareholders' interests as they provide capital and hold ownership rights. Similarly, employees' interests are vital because their labor and expertise enable directors to fulfill corporate objectives, while creditors must be considered due to their financial contributions through loans or credit.

Industry regulations and its regulators have also taken steps in sustainable business practices. The Minerals and Mining Act, 2006 (Act 703) and the Petroleum (Exploration and Production) Act, 2016 (Act 919). In addition to this, the Ghana Stock Exchange (GSE) requires listed companies to adhere to its Environmental, Social and Governance (ESG) Disclosures Guidance Manual, standardising sustainability reporting practices.⁹² Also, the Bank of Ghana has implemented the Sustainable Banking Principles, equipping financial institutions with tools to identify and mitigate environmental and social risks.⁹³ Furthermore, the Bank of Ghana in May 2024, released its Climate-Related Financial Risk Directive for public consultation. The draft document, which invited stakeholder feedback prior to finalization, will become legally binding once enacted. The regulation will govern a wide range of financial entities including commercial banks, specialised deposit-taking institutions (SDIs), financial holding companies, mortgage providers, leasing

⁹² Ghana Stock Exchange, *ESG Disclosures Guidance Manual* (Ghana Stock Exchange 2022) 15.

⁹³ Bank of Ghana, 'Sustainable Banking Principles and Sector Guidance Notes' (2019.) <Ghana-Sustainable-Banking-Principles-and-Guidelines-Book-1.pdf <https://share.google/fmuHthhtVYaqCL1Ia>> accessed 19 April 2024.

firms, and development finance institutions - collectively designated as 'Regulated Financial Institutions' (RFIs) under the proposed framework.

Complementing these efforts, the Securities and Exchange Commission (SEC) has introduced a regulatory framework for green bonds,⁹⁴ creating new avenues for sustainable investment while accelerating Ghana's transition toward ESG-aligned financial markets. The current Affirmative Action (Gender Equity) Act, 2024, has the objective to ensure the attainment of gender equity in the political, social, economic, educational and cultural spheres of the society.⁹⁵ The Act requires employers to take measures to ensure progressive gender equity of employees.⁹⁶

Given these regulations, a company's directors are responsible for ensuring compliance. These rules and guidelines further demonstrate Ghana's resolve to ensure the protection of stakeholder rights.

Section 190(2) of Act 992 reflects a legislative leaning towards the stakeholder theory. By mandating directors to consider the long-term consequences of their decisions, the Act acknowledges that the company's survival and prosperity are inseparable from the wider social and ecological systems in which it operates. The express requirement to evaluate the impact of corporate operations on the community and the environment moves beyond the shareholder-primacy model, which traditionally emphasised short-term financial returns. Instead, directors are guided to adopt a broader perspective that integrates environmental stewardship,

⁹⁴ Securities Industry (Green Bond) Guidelines, 2024 (SEC/GUI/003/03/2024).

⁹⁵ Affirmative Action (Gender Equity) Act 2024 (Act 1121), s 1.

⁹⁶ *ibid*, s 21.

community welfare, and reputational integrity into corporate governance. This approach gives statutory force to the principle that companies derive legitimacy from their ability to balance profit-making with social responsibility, a central claim of stakeholder theory.

Section 190(4) further strengthens this stakeholder-oriented framework by explicitly permitting directors to consider the interests of employees, members, and creditors, in addition to shareholders. This provision underscores the reality that companies function within a network of interdependent relationships, where the contributions of employees, financiers, and other classes of stakeholders are essential to corporate success. While shareholders remain important, their interests no longer stand in isolation at the apex of corporate governance. Instead, Act 992 positions directors as fiduciaries of a broader constituency, responsible for harmonising competing claims in pursuit of the company's long-term viability. This statutory shift operationalises stakeholder theory by embedding plural accountability into the decision-making duties of directors, thereby promoting inclusive, ethical, and sustainable business practices in Ghana.

5. Conclusion

This paper asked whether the Companies Act, 2019 (Act 992) has altered Ghanaian company law so as to impose on directors, legal duties to manage company affairs in ways that are ethical and sustainable. Using a doctrinal, stakeholder-framed

analysis, the study finds that Act 992 materially reorients directors' duties toward stakeholder-sensitive, sustainability-aware decision-making.

Statutorily, Act 992 marks a notable departure from the earlier regime under the repealed Act 179. Whereas Act 179 contained the general common law requirement of acting in the company's "best interests", the provision failed to require directors to consider the impact of the company's operations on the environment or the community at large. Act 992, notably section 190(2) and section 190(4), requires directors to have regard to the likely long-term consequences of decisions, the impact of company operations on the community and the environment, and the desirability of maintaining a reputation for high standards of business conduct. Section 190(4) further permits directors to consider employees, creditors and other classes of stakeholders alongside members. Read together, these provisions operationalise the stakeholder theory in Ghanaian corporate law by embedding plural accountability and environmental and community considerations into the statutory fiduciary framework.

Second, the statutory shift is reinforced by the regulatory ecosystem surveyed in the paper, including sectoral environmental clearance requirements under the Petroleum and Minerals Acts, the Ghana Stock Exchange's ESG guidance, the Bank of Ghana's Sustainable Banking Principles and its draft climate directive, the Securities and Exchange Commission's green-bond guidelines, and recent affirmative-action regulation. These instruments convert the Act's normative commitments into concrete compliance expectations, signalling that directors'

sustainability obligations will be tested and enforced in multiple fora beyond private litigation.

Finally, although Act 992 answers the research question affirmatively, the paper identifies implementation gaps that temper the statutory promise: judicial interpretation of section 190 will be determinative; regulators must provide sector-specific guidance; and companies need internal governance reforms (director training, ESG committees, stakeholder engagement and reliable reporting) to operationalise the new duties. Accordingly, the paper recommends clearer regulatory guidance, mandatory disclosure standards, capacity building for directors, and stronger regulatory enforcement as complementary measures to secure the Act's objectives.

In sum, Act 992 has redefined directors' duties in Ghana by legislatively incorporating stakeholder and sustainability considerations. The statute provides a necessary legal foundation for ethical and sustainable corporate conduct. To achieve its intended benefit, the law, regulation and corporate governance practice must converge to produce measurable social and environmental outcomes.