

Climate Stewardship in Brazil

A guide for
investors

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LACLIMA
LATIN AMERICAN CLIMATE
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1. Introduction

Capital markets are an essential source of financing for the transition to a low-carbon economy. In order to minimize the risks and maximize the opportunities linked to climate change, the responsible engagement of investors¹ with securities issuers is essential for the improvement of environmental, social and governance (ESG) practices.

In recent years, the interpretation of the fiduciary duties of institutional investors has been broadened to comprise the understanding that the long-term vision of investments include the impacts of climate change on businesses related to the invested assets. There are several ways to fulfill the fiduciary duty of third-party asset managers, depending on the chosen strategy.

It is possible to expressly consider climate risks in investment analysis and monitor the assets that compose an investment portfolio. Investor practices may also involve collaborative dialogues with an investee company's management, so as to contribute to the setting of goals and plans to reduce greenhouse gas (GHG) emissions. Investors can also raise relevant points for discussion and deliberation by shareholders at a General Shareholders' Meeting, and participate in companies' corporate governance structures. In more critical situations, litigation to obtain information and demand compliance with obligations, as well as divestment decisions, are also possible. The role of institutional investors in the climate agenda, in its most varied forms, is what we call, for the purposes of this guide, climate stewardship practices.

In other relevant markets, institutional investors are increasingly engaged in climate issues.² In Brazil, a recent research³ reveals that the ESG agenda is still very much focused on corporate governance issues. This result suggests

¹ This guide broadly considers the possibilities for institutional investors and minority shareholders to act on climate issues. For the purposes of this analysis, the distinction between different stewardship modalities, involving, respectively, large institutional investors and shareholder activism is not addressed. For more on this topic, see GOMTSIAN (2021) Different visions of stewardship: understanding interactions between large investment managers and activist shareholders.

² This trend is exemplified by the fact that, as of mid-April 2022, there were 576 shareholder proposals on environmental and social issues in the United States. The Economist. (2022). [The push for shareholder democracy should be accelerated](#).

³ ANBIMA. (2021). [Retrato da Sustentabilidade no Mercado de Capitais](#), p. 46.



that there is ample room for investor engagement in the climate agenda regarding assets traded in the Brazilian capital market.

The main objective of this guide is to identify stewardship paths that can be followed by investors to act responsibly and in a way that is committed to a long-term vision in terms of value creation, especially considering the consequences of the effects of climate change on invested assets. To this end, the guide gathers information to support the effective practice of stewardship by shareholders of Brazilian publicly traded companies⁴ with a focus on the climate agenda, considering the instruments available in the Brazilian legal system.

However, an important caveat must be considered: the participation of minority shareholders in the relationship with investee companies is not yet common practice in Brazil.⁵ In this sense, not all instruments provided by the Corporate Law (Law Nr. 6,404/1976) or administrative rules are widely used by minority shareholders in Brazil, and there may be hurdles to their effectiveness and use in future concrete cases.⁶

The first part of this guide identifies the major issues related to climate change that can affect the performance of invested assets, addresses recent regulatory initiatives, and explores the growing importance of climate stewardship in other markets. The second part identifies which instruments are available to investors to engage in the climate agenda.

⁴ There are other relevant forms of investment with a potential impact on the climate agenda, such as investments in corporate bonds and in private companies, the latter especially considered by the private equity industry. Note that the Brazilian Corporate Law (Law Nr. 6404/1976) disciplines both publicly traded and private companies in the same legal statute. Thus, part of this guide can be used to consider strategies for engaging private equity funds in investee companies. In private equity investments, however, the negotiation of targets and monitoring instruments, as well as participation in management, take place at the time the funds are received. Thus, for climate engagement, the main legal instruments are the shareholders' agreement - which does not appear in this guide - and any changes to the bylaws. In addition, due to the lack of liquidity, divestment forecasts also need to be negotiated and disciplined.

⁵ CFA Society Brazil and *Associação dos Investidores no Mercado de Capitais*. (2021). [Código Brasileiro de Stewardship](#).

⁶ The uncertainty about the effectiveness of the legal instruments available to investors to act in accordance with the climate agenda is not exclusive to the Brazilian market and legal system. In a recent survey on the possible role of investors through the presentation of proposals to the General Shareholders' Meeting (called a proposal or resolution, depending on the jurisdiction), several challenges were identified. For these results, see: The Institutional Investors Group on Climate Change - IIGCC e ClientEarth. (2021). [Know your rights. A guide for institutional investors to the law on climate-related shareholder resolutions](#).

PART I

2. Context

In 2005, the United Nations Environment Program Finance Initiative (UNEP-FI) commissioned the law firm Freshfields Bruckhaus Deringer to produce the report “A Legal Framework for the Integration of Environmental, Social and Governance Issues into Institutional Investment”, better known as the Freshfields Report.⁷ The report concluded that “integrating ESG considerations into an investment analysis so as to more reliably predict financial performance is clearly permissible and is arguably required in all jurisdictions.”

In 2015, the report “Fiduciary Duty in the 21st Century”, authored by the Principles for Responsible Investment (PRI), a network of investors supported by the United Nations (UN), corroborated this understanding, stating that “failing to consider long-term investment value drivers, which include environmental, social and governance issues, in investment practice is a failure of fiduciary duty.” In 2021, the “*A Legal Framework for Impact Report: Sustainability impact in investor decision-making*”⁸, prepared by Freshfields Bruckhaus Deringer at the request of UNEP-FI, PRI and Generation Foundation, concluded that, in Brazil, it is permissible for investment funds to declare in their statutes that the portfolio must be managed based on sustainability and impact objectives.

The fiduciary duty of institutional investors regarding the management of financial resources implies the responsibility to care for the assets in which they invest. The condition of third-party asset managers requires them to be accountable for their performance, in particular for the active monitoring of issuers of securities they acquire or trade. In this context, the notion of stewardship is important to understand the role of institutional investors and their influence on the assets invested in order to maximize long-term value, incorporating economic, social and environmental aspects into their

⁷ UNEP-FI. (2005). [A legal framework for the integration of environmental, social and governance issues into institutional investment](#).

⁸ UNEP-FI, PRI, Generation Foundation. (2021). *A Legal Framework for Impact: Sustainability impact in investor decision-making*.

operations, on which the financial return for their clients and the interest of the final beneficiaries of the investments depend.⁹

Climate change is a crucial factor for the economy, and directly and indirectly impacts the economic results of financial assets. The climate variable affects the business sector from a dual materiality perspective: companies affect the climate, and at the same time are affected by it.¹⁰ The systemic effects of climate change on the economic and productive system are well established¹¹, and justify that climate risks and opportunities are approached from the perspective of stewardship.

In general, it is in the interest of investors that investee companies adopt practices that allow for the mitigation of risks and the use of opportunities related to climate change, in order to seek long-term value creation. Moreover, investors have sought to play a role in decarbonizing the economy, and to align their portfolios with net-zero ambitions. To achieve this, it is necessary to promote changes in the real economy. In this sense, climate stewardship is a valuable instrument to encourage investee companies to take action.

In Brazil, the performance of institutional investors as stewards is still timid compared to the European and US markets. This fact can be partly explained by the characteristics of the country's capital market and the ownership structure of the vast majority of publicly traded companies, which concentrates control in the hands of one shareholder or group of shareholders.¹² Even so, it is worth noting that, in 2016, the Association of Capital Market Investors (AMEC) prepared and published the AMEC Code of Principles and Duties of Institutional Investors – Stewardship¹³, which expressly includes, among its seven principles, compliance with ESG criteria, of which climate is a central element. The code, currently known as the Brazilian Stewardship Code, was updated in May 2021, in partnership with the CFA Society Brazil, and its Principle 3 maintains the 2016 recommendation regarding ESG.¹⁴ Additionally, as shown in the report Portrait of Sustainability in the Capital Market, prepared by the Brazilian Association of Financial and Capital Market Entities - ANBIMA, asset managers, especially larger ones, voluntarily adopt international standards for

⁹ PRI. (n.d.). [About stewardship](#).

¹⁰ The concept was introduced by the European Commission. See European Commission. (2019). [Guidelines on non-financial reporting: Supplement on reporting climate-related information](#).

¹¹ STERN, Nicholas. (2006). [Stern Review: The economics of climate change](#).

¹² With the amendment of the Corporate Law by Law Nr. 14,195/2021, the issuance of multiple voting shares in the Brazilian market is now allowed. However, a series of limitations were established in the use of multiple voting shares, including the attribution of a maximum of 10 votes per share, a 7-year extendable term and prohibition of voting on executives compensation and related party transactions. The multiple voting share represents yet another corporate instrument for the concentration of power, alongside others already used: preferred shares without voting rights, pyramid structures, shareholders' agreements for the joint exercise of control, poison pills and golden share.

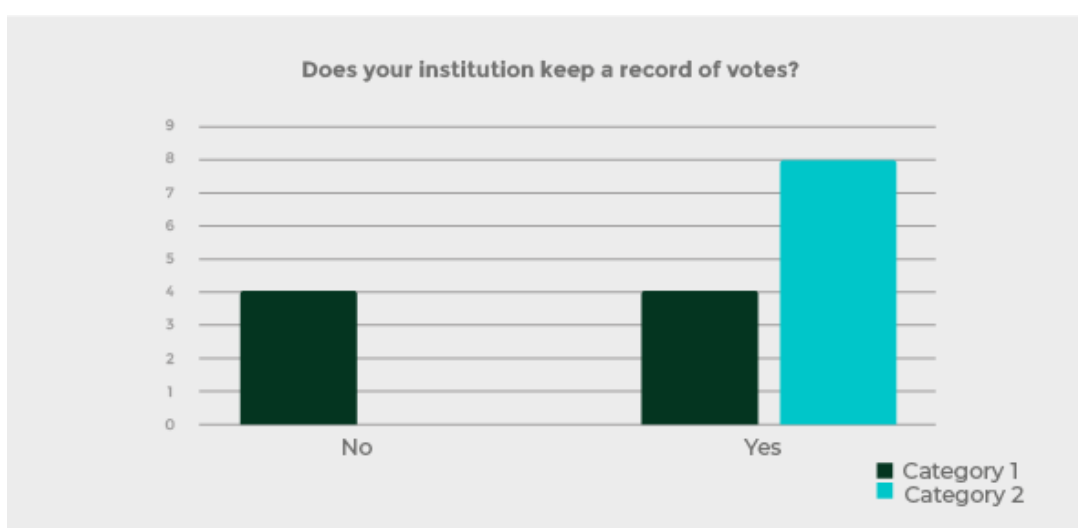
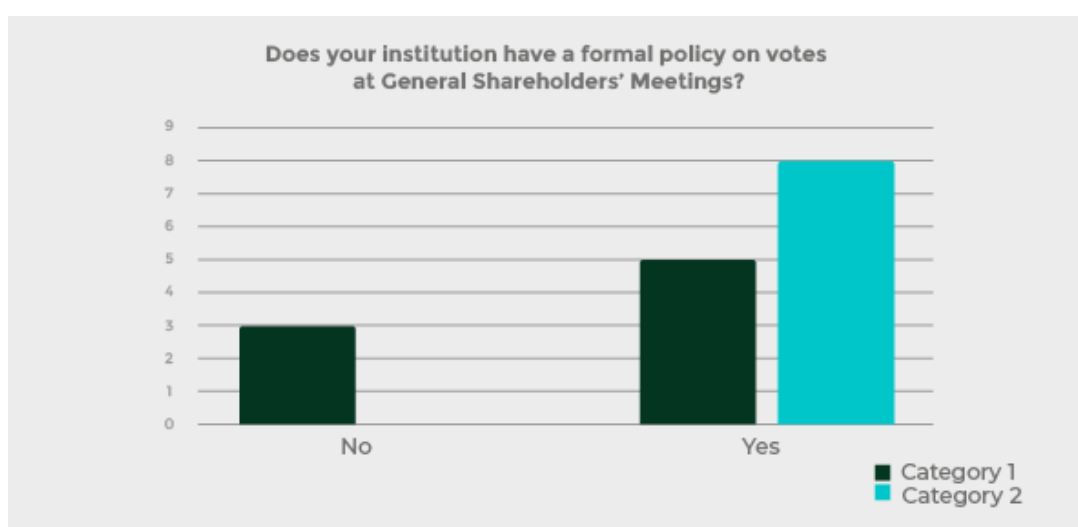
¹³ AMEC. (2016). [Código Brasileiro de Stewardship e Princípios](#).

¹⁴ CFA Society Brazil and Associação dos Investidores no Mercado de Capitais. (2021). [Código Brasileiro de Stewardship](#). "Principle 3: Consider ESG aspects in your investment processes and stewardship activities. Institutional investors should consider environmental, social and governance factors in their investment process, weighing both their impact on risk and return and their contribution to the sustainable development of securities issuers. Guidance - ESG factors impact securities issuers and decisively influence their sustainability. The analysis and monitoring of ESG factors is part of the assessment of risks and opportunities associated with investments, even if they are not the final determinants of the investment decision. Institutional investors, when managing the capital of their end beneficiaries prudently, should consider relevant ESG factors as a fundamental requirement in the fulfillment of their fiduciary duty, giving due transparency on how these factors are considered. Investors should assess the positions of securities issuers on relevant ESG issues".

decision-making investment, such as the PRI (25%), CDP (5%) and the UN Global Compact (2%), among others.¹⁵

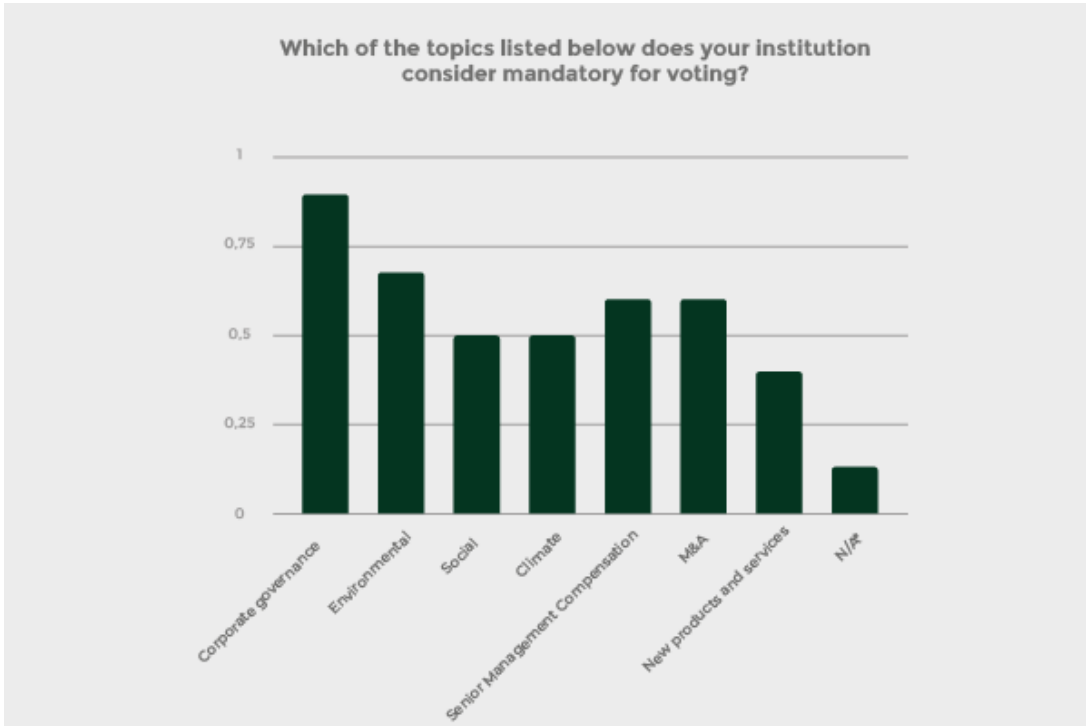
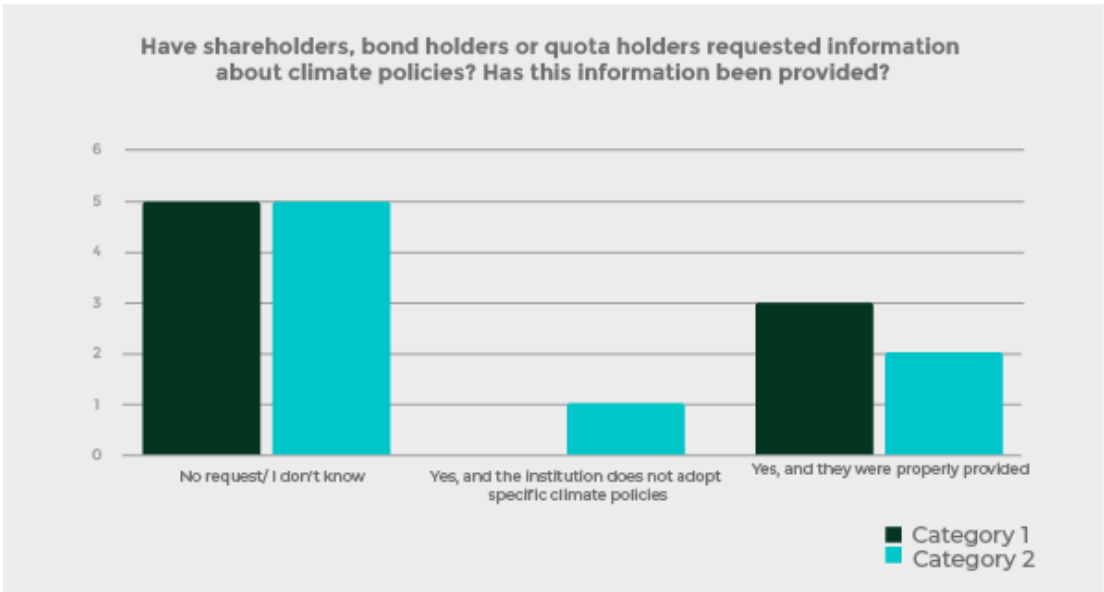
- ▶ The incorporation of the climate variable into corporate practices and the disclosure of relevant information is still incipient, despite the strength with which ESG issues have been taking over corporate and investor agendas. A survey by the Investors for Climate - IPC initiative, carried out in December 2021 especially for this guide, found that climate issues are taken into account by most asset managers consulted¹⁶, but the information provided by the investees shows that there are different degrees of maturity in dealing with these issues, and that there are investee companies that do not adopt any climate policy whatsoever (Box 1).

Box 1: Investors for Climate (IPC) Survey

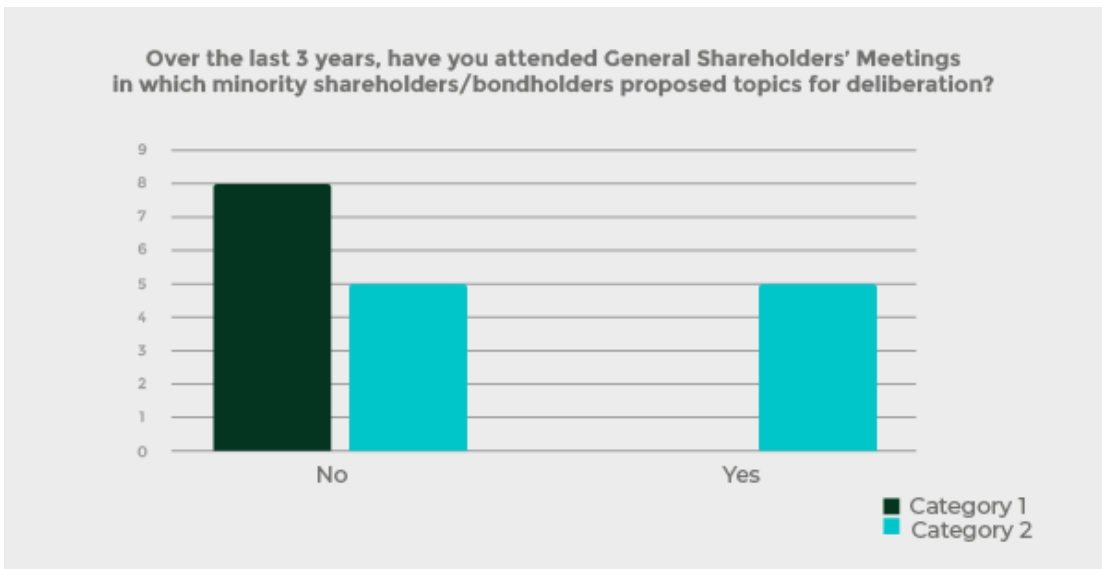
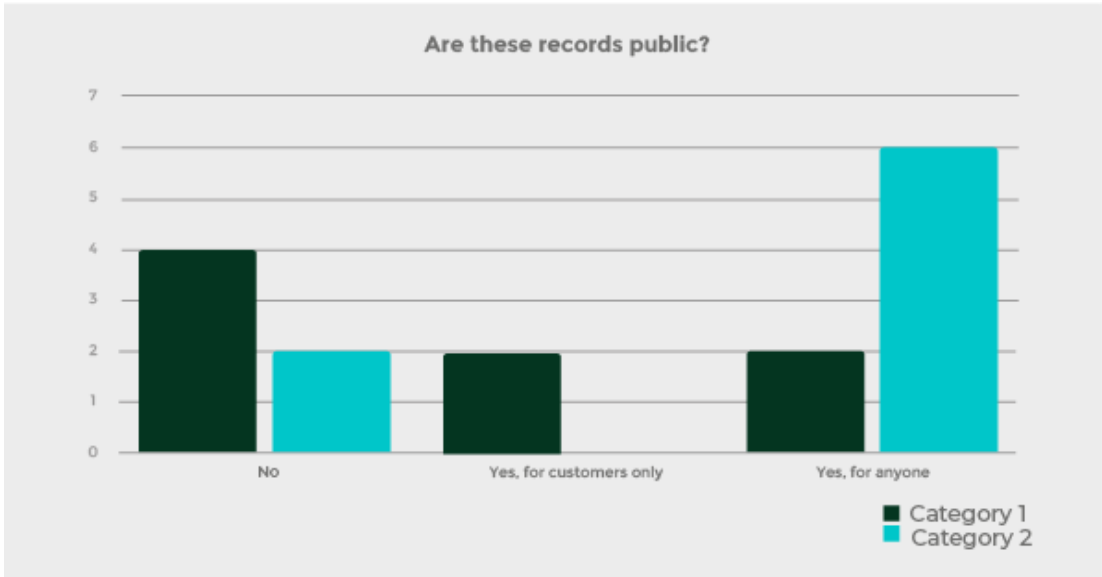
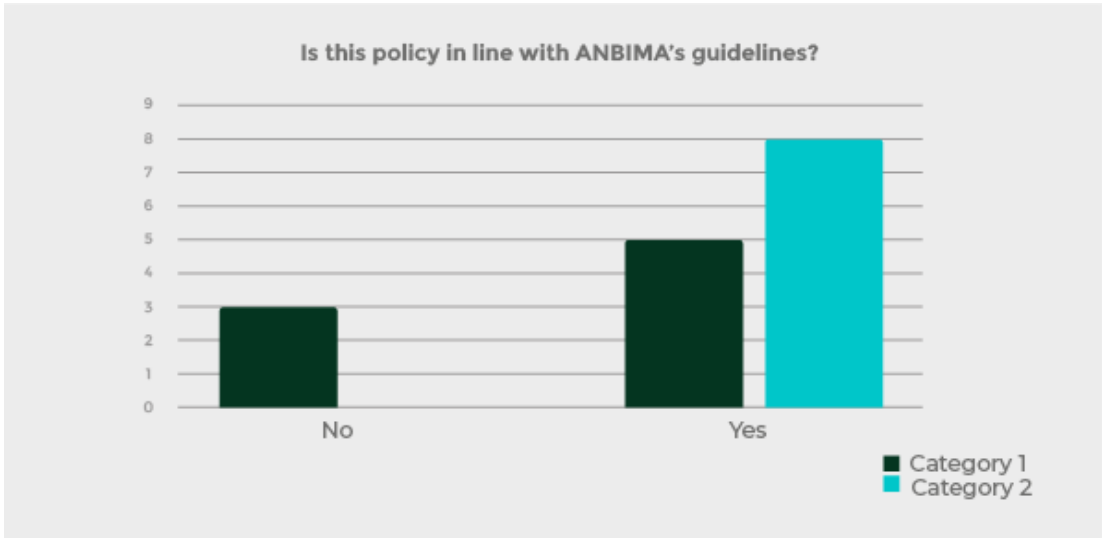


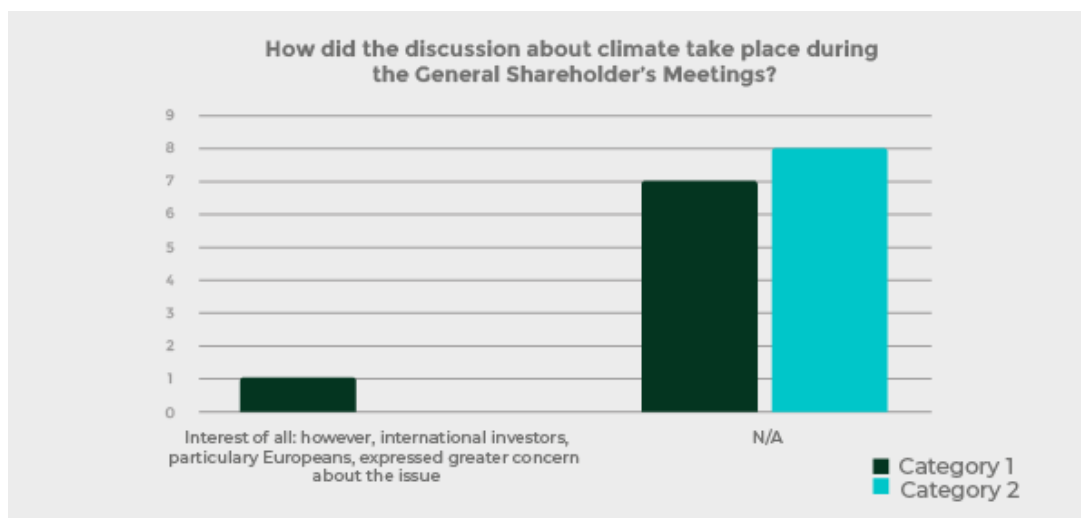
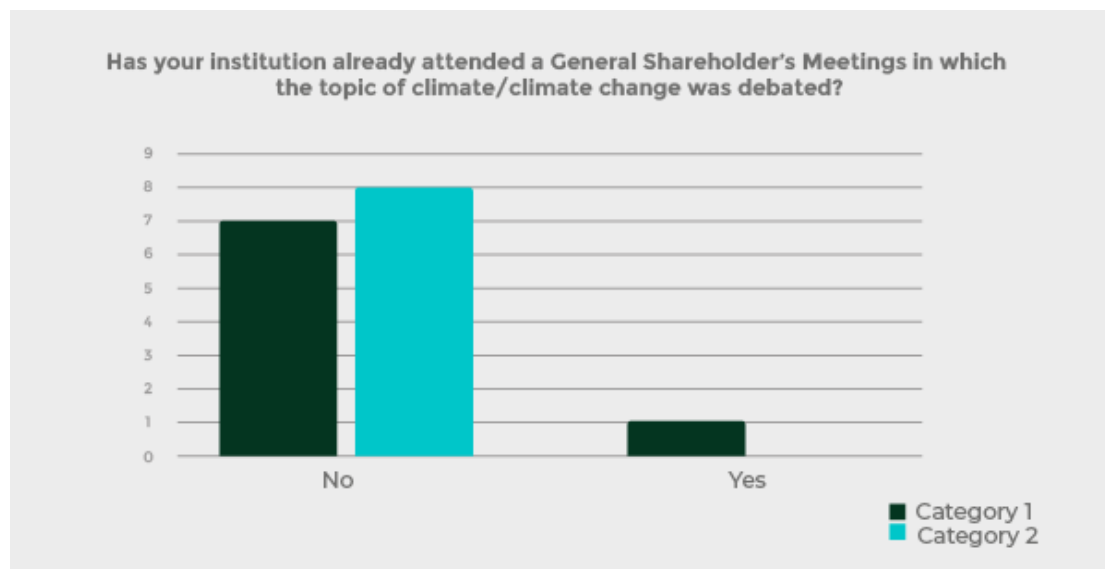
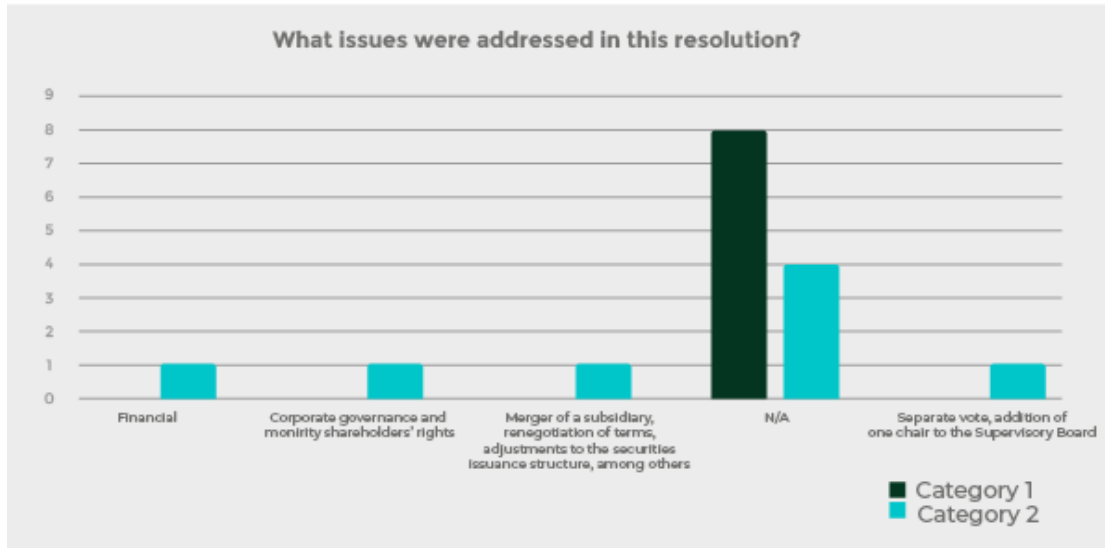
¹⁵ ANBIMA. (2021). [Retrato da Sustentabilidade no Mercado de Capitais](#), p. 46. For the mentioned percentages, the sample consisted of 209 respondents. It is interesting to note that the institutions that adopt the PRI (25%) have more than 51 employees and more than BRL\$1 billion in assets under management.

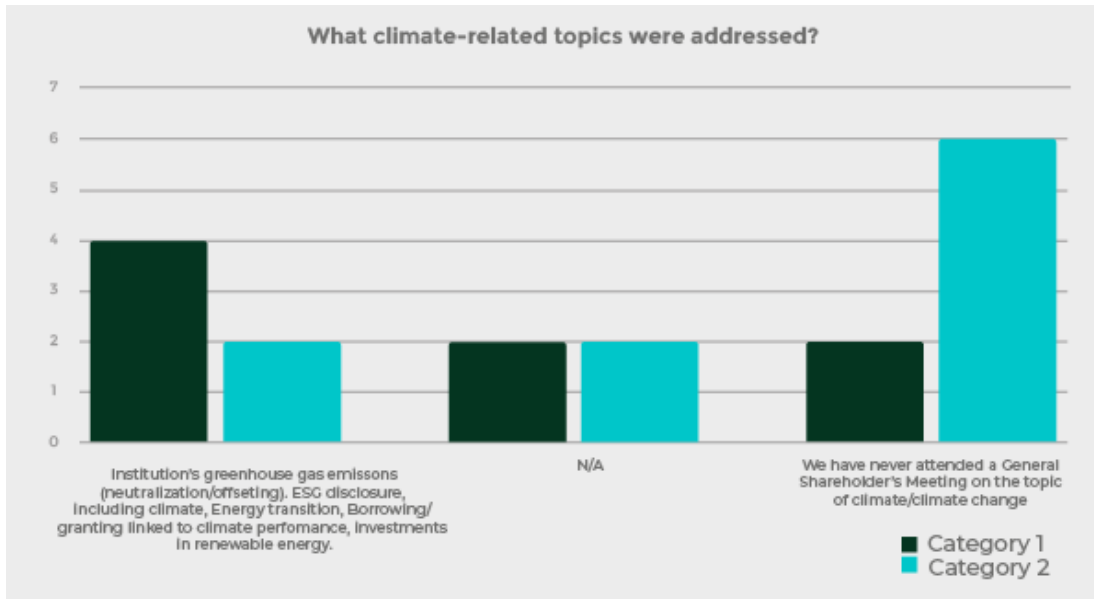
¹⁶ The respondent asset managers represent 27% of the assets under management, considering the universe of ANBIMA. Respondents to the survey were qualified institutions such as: family/multi-family office, pension fund, independent asset manager, financial service provider/investment fund distribution, asset manager linked to an insurance company, and asset manager linked to a bank.



*** The question does not apply to two respondents: one indicated that they are real estate asset managers, with no relevant direct investments in listed companies; another is a board observer and participates without voting rights.**







Category 1: institutions with up to 1 trillion reais under management.

Category 2: institutions with more than 1 trillion reais under management.

Despite the growing importance of climate stewardship, expertise in climate change, ESG and other related topics within the scope of company management is still incipient (Box 2).

Box 2: % of Fortune 100 board members with relevant ESG-related credentials

Energy-----	1.2%
Conservation/nature-----	1.2%
Sustainable businesses-----	0.8%
Sustainable development -----	0.8%
Environmental law -----	0.5%
Environmental protection -----	0.5%
ESG investment -----	0.3%
Climate -----	0.2%
Water -----	0.1%

Source: Tensie Whelan, NYU Stern Center for Sustainable Business.¹⁷

From the asset managers' standpoint, research carried out by ANBIMA also suggests that climate issues are not on the radar of institutional investors in Brazil. The publication Portrait of Sustainability in the Capital Market, mentioned above, revealed that investment decision-making is primarily based on governance issues,

¹⁷ WHELAN, Tensie. (2021). [U.S. Corporate Boards Suffer from Inadequate Expertise in Financially Material ESG Matters](#)

in particular transparency and ethics.¹⁸ The survey also points out that there are different stages of maturity in the adequacy of ESG practices in the 250 respondent institutions, with 67% in an incipient stage in terms of sustainability issues.¹⁹

Considering this background, there is ample room for institutional investors to act on the climate agenda in the Brazilian capital market.

¹⁸ ANBIMA. (2021). [Retrato da sustentabilidade no mercado de capitais](#), 2021, p. 36. The research shows that environmental issues appear less frequently.

¹⁹ ANBIMA. (2021). [Retrato da sustentabilidade no Brasil](#), p. 25.

3. Stewardship and the climate agenda

3.1. Growing importance of climate stewardship worldwide

In other relevant markets, it is noted that the engagement of institutional investors in the climate agenda is evidenced by the growing number of emblematic cases of investors acting on this agenda.

Engagement can take place in several ways. Actively participating at the General Shareholders' Meeting by submitting proposals or resolutions to the company's management is one of the existing tactics, which takes different forms in different jurisdictions and is very popular in the United States.²⁰ This tactic is often used as an escalation feature by investors when there is no response to dialogue. Through shareholder resolutions or shareholder proposals (referred to in this guide as "shareholder proposals"), shareholders, in certain circumstances, include topics on the agenda of the company's General Shareholders' Meeting (for more details, see Box 9). Shareholder proposals are submitted annually, and there is a growing trend in the use of this mechanism to achieve the goals of the climate agenda.²¹

With public attention increasingly turning to climate issues, the media has been consistently reporting relevant cases of shareholder proposals, exemplified in Box 3.

²⁰ COOLS, Sophie. (2020). [Shareholder Proposals Shaking Up Shareholder Say](#).

²¹ REISINGER, Sue. (2022). [Shareholders File A Record 529 ESG Resolutions So Far In '22](#).

Box 3: Flagship cases of climate stewardship

Company Involved	Year	Country	Case
Occidental Petroleum	2017	USA	<ul style="list-style-type: none"> - Shareholders voted in favor of a climate change disclosure proposal led by pension fund CalPERS and other investors at the company's 2017 annual meeting; - The proposal received support from BlackRock, Occidental's largest shareholder. It was the first time that BlackRock supported this type of proposal; - First proposal of this nature in the US, indicating that information on climate change is an essential element for corporate governance.
PPL	2017	USA	<ul style="list-style-type: none"> - Shareholders voted in favor of a proposed climate change risk disclosure at PPL Corp.'s annual meeting from 2017; - PPL's board of directors recommended that shareholders vote against the climate change risk disclosure proposal, arguing that the board did not believe resources should be allocated to assess a 2 degrees Celsius scenario, given PPL's business mix, the lack of a specific framework that could be properly modeled and the uncertainty as to whether the Paris Agreement would be honored by the United States. The board also argued that the report was unnecessary in light of the company's other sustainability actions; - The approved proposal, presented by Thomas P. DiNapoli, State Comptroller (New York State Comptroller) and sole trustee of the New York State Common Retirement Fund, with \$186 billion in assets, required PPL to prepare a report on the impacts term in the company's portfolio against the backdrop of an increase in the global average temperature of up to 2 degrees Celsius.

BP	2019	United Kingdom	<ul style="list-style-type: none"> - A proposal by Federated Hermes required the company to include in its strategic report, and/or other corporate reports, a description of strategy consistent with the objectives of Articles 2.1(a)(1) and 4.1(2) of the Paris Agreement, for the year 2019 onwards; - It also required the company to evaluate the consistency of each new materially relevant capex investment for the acquisition or development of activities related to oil and gas, as well as the main metrics and objectives of the company in the short, medium and/or long term, in a manner that is consistent with the Paris Agreement; - The proposal was approved by 96.4% of the total shareholder votes.
Chevron	2021	USA	<ul style="list-style-type: none"> - In May 2021, 61% of shareholders voted in favor of a proposal for the company to reduce Scope 3 carbon emissions. The board had recommended that investors reject the proposal.
Exxon Mobil	2021	USA	<ul style="list-style-type: none"> - Historic defeat at the 2021 annual meeting, with investors pushing for a change in strategy towards the transition to cleaner energy; - Engine No. 1 got support to elect at least two of the four names it proposed for the company's Board; - The largest US pension funds and BlackRock also voted in favor of three of the four candidates on the slate; - Engine No. 1's thesis is that the company needs to diversify its investments to become more resilient.
LGIM	2021	United Kingdom	<ul style="list-style-type: none"> - Legal & General Investment Management (LGIM)²², the largest asset manager in the United Kingdom, works with its investees through its engagement program called the Climate Impact Pledge. - In 2021, after intense engagement, the manager divested from AIG, the Chinese bank ICBC, the Chinese dairy company Mengniu and the US concessionaire PPL, attributing the decision to the insufficiency of climate action by these companies.

²² Legal & General Investment Management (Holdings) Limited. (2022). Climate Impact Pledge.

Eneva	2022	Brazil	<ul style="list-style-type: none"> - In early 2022, Eneva announced a commitment to shut down its two coal-fired power plants by 2040. It also committed to becoming carbon neutral by 2050; - The announcement was made in the wake of pressure from foreign investors allocating capital in Brazilian funds and holding an important position in the company's shares.
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It is worth mentioning that the practice of climate stewardship is becoming mainstream, as demonstrated by the recent actions of large asset managers aiming at evaluating the policies and action plans of the investee companies to manage climate risks and take advantage of the opportunities presented by the global energy transition. Some of the criteria used to assess companies' preparedness for the transition to a low-carbon economy are the Board of Directors' fluency in these topics, to ensure proper supervision of a company's plans and goals, and the adoption of disclosures in line with internationally used standards, such as the Task Force on Climate-Related Financial Disclosures (TCFD), the Sustainability Accounting Standards Board (SASB), and the GRI (Global Reporting Initiative) recommendations, among others. See, for example, LGIM's climate engagement policy (Box 3) and some points measured by BlackRock²³:

- ▶ Whether the Board and management assess climate risk and have adequate knowledge of the company's business to ensure adequate assessment of climate-related risks and opportunities in relation to the company's strategy and operations;
- ▶ Whether the Board and management consider the impacts of climate risk and energy transition on the company's long-term performance, including opportunities for innovation and diversification of energy sources;
- ▶ Whether the company considers the change in demand for goods and services due to changes in regulation, technology, and/or consumer preferences;
- ▶ Whether the company measures its current emissions baseline, sets short, medium, and long-term science-based emission reduction targets where available, and assesses resilience to scenarios, including most likely decarbonization paths, well below 2°C, as well as the aspirational path of 1.5°C;
- ▶ Whether the company assesses annually, or over a series of years, the alignment of its activities to its stated emission reduction targets and other climate risk-related efforts;

²³ BlackRock. (2022). [Climate risk and the global energy transition - Investment Stewardship](#).

- ▶ Whether the company incorporates climate risk in its capital allocation decisions, including investments in sustainable solutions, opportunities, lines of business, renewable energy and/or low carbon products, and how these investments support the long-term economic interests of its shareholders; and
- ▶ Whether the company considers, and, where relevant, quantifies and accounts for material climate-related risks in its financial statements, including whether the company explains these risks in the context of its audit report and/or as part of its strategic planning and outlook of company performance.

Examples of climate stewardship initiatives have been growing considerably. In March 2022, 75 institutional investors with a total of USD\$4.7 trillion in assets under management urged the Securities Exchange Commission (SEC), the US securities regulatory agency, to require full reporting of greenhouse gas emissions, including Scope 3, as part of the SEC's climate disclosure rules²⁴.

3.2 Regulatory initiatives and self-regulatory frameworks in Brazil

Brazilian regulators, following a global trend, have been including ESG criteria, and specifically climate criteria, in their regulatory initiatives.

The Brazilian Securities and Exchange Commission (CVM), after a public consultation process aimed at reforming the main disclosure rules (CVM Instruction Nr. 480/2009²⁵), published CVM Resolution Nr. 59, of December 22, 2021.²⁶ The standard aims to meet the growing demand from investors for information related to environmental, social, and governance issues, requiring companies to observe the following points:

- ▶ **Specific disclosure of social, environmental and climate risk factors and opportunities:** present a specific assessment of climate risks and inform whether GHG inventories are prepared, the scope of inventoried emissions, and the role of management bodies in the assessment, management and supervision of climate-related risks and opportunities;
- ▶ **Emphasis on generating positive impact and innovation:** detail the business opportunities related to socio-environmental issues (e.g. green bonds, innovation to reduce costs and impacts, positive socio-environmental impact, etc.);
- ▶ **Sustainability reports:** present reports detailing key ESG performance indicators and materiality matrix, as well as information on its methodology

²⁴ AS YOU SOW. (2022). [75 Investors With \\$4.7 Trillion AUM Weigh in on Upcoming SEC Climate Disclosure Rulemaking](#).

²⁵ CVM. (2020). [CVM lança audiência pública sobre mudanças na Instrução 480](#).

²⁶ CVM Resolution Nr. 59/2021.

and auditing. Such reports must also point out the position of issuers on the Sustainable Development Goals (SDGs), relevant in the context of their business and compatibility with the recommendations of the TCFD. Issuers that do not disclose such information or sustainability reports must explain why they do not do so (“comply or explain”);

- ▶ **Diversity information:** present data on the management positions and employees, as well as disclosure of diversity objectives and goals, considering gender identity, race, age, among other criteria.

CVM Resolution Nr. 59/2021 will enter into force on January 2, 2023, granting publicly traded companies a period of one year to comply with the requirements.

Similarly, the Central Bank of Brazil enacted a set of rules that strengthens the norms for managing social, environmental and climate risks and the preparation of the Social, Environmental and Climate Responsibility Policy (PRSAC) by the institutions that make up the Brazilian National Financial System (SFN), as well as the regulation of the disclosure, by these institutions, of information on social, environmental and climate risks and opportunities.

The Central Bank informed, in a note on the subject,²⁷ that the initiatives are in accordance with recent international recommendations and trends regarding the management of climate and environmental risks, as well as transparency in relation to them. By strengthening the rules associated with social, environmental and climate issues, whose positive or negative impact is increasingly relevant for the solvency of financial institutions, the Central Bank reaffirms its role as guarantor of the balance, reliability and solidity of the SFN.

The Central Bank’s set of rules expressly considers both physical and transition climate risks and, in addition to a purely prudential perspective, also incorporates the positive impacts and opportunities related to climate change.

The Central Bank published, on September 15, 2021, its first Social, Environmental and Climate Risks and Opportunities Report²⁸, which addresses in an integrated manner the bank’s actions in the Sustainability dimension of their Agenda.

As for the insurance sector, which is a major risk taker and resource allocator, the Superintendence of Private Insurance (SUSEP) opened public consultation 44/2021, to invite comments, from December 2021 to March 2022, regarding the draft norm aimed at regulating the management of climate risks and other environmental and social risks of insurers, reinsurers, capitalization companies, and private pension

²⁷ BANCO CENTRAL DO BRASIL. (2021). [Agenda BC#: BC publica Relatório de Riscos e Oportunidades Sociais, Ambientais e Climáticas e aprimora regulação sobre o tema.](#)

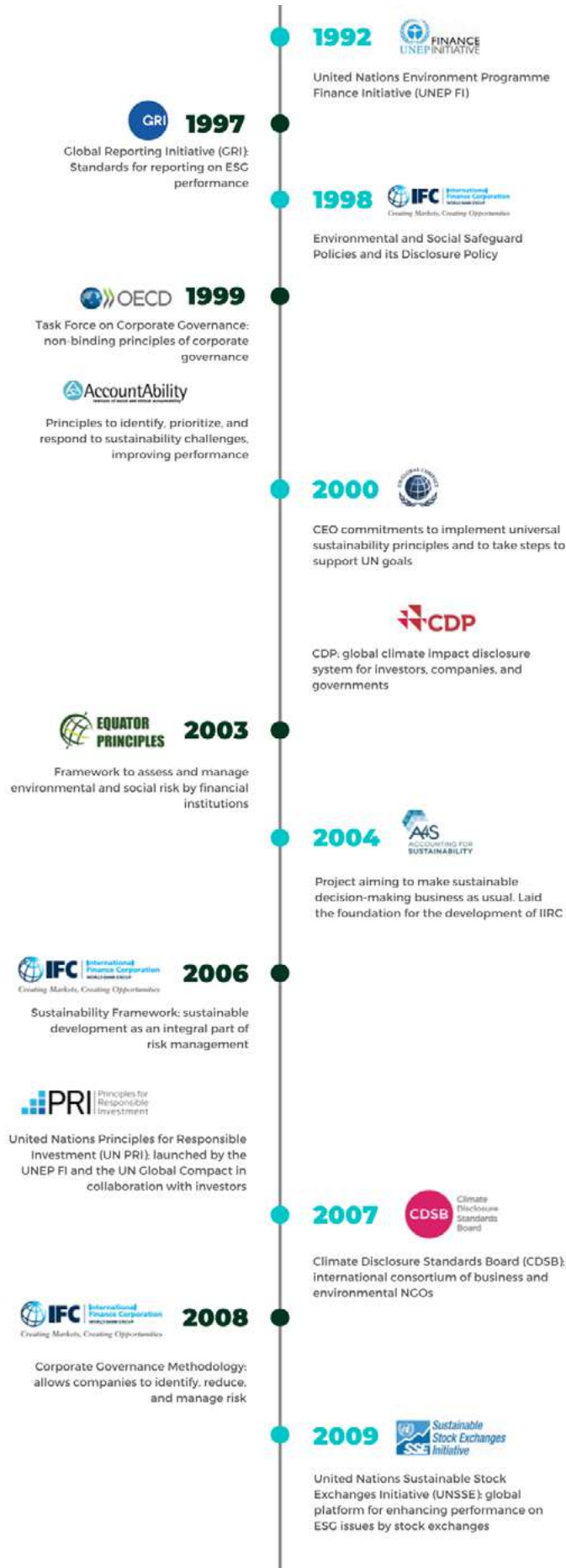
²⁸ BANCO CENTRAL DO BRASIL. (2021). [Relatório de Riscos e Oportunidades Sociais, Ambientais e Climáticas Relatório de Riscos e Oportunidades Sociais, Ambientais e Climáticas](#)

companies. Climate risks have been divided, for the purposes of the consultation circular, into three categories: physical, transition, and litigation risks.

The text submitted for consultation provides that companies may define limits for the concentration of risks and/or restrictions for doing business, taking into account the exposure to sustainability risks of sectors, geography, products, and services, and must create pricing criteria that consider the customer's track record in managing and mitigating risks associated with sustainability. The text also provides for the adoption of a sustainability policy, and the publication, by June 30, 2023, of a sustainability report for 2022.

The proliferation of self-regulatory initiatives embodied in the adoption, by private actors, of different voluntary frameworks that address, to different degrees, environmental and/or climate issues, is also relevant. The evolution of these initiatives over the last few decades can be seen in the timeline prepared by the International Finance Corporation (IFC), summarized below.

Box 4: Timeline of voluntary initiatives and frameworks





Standard to assist organizations in contributing to sustainable development



Guidelines for Multinational Enterprises: recommendations from governments to multinational enterprises on responsible business conduct



Sustainability Accounting Standards Board (SASB): encourages high-quality disclosure of material non-financial information, and develops various industry-specific standards



Corporate Governance Development Framework: methodology for assessing corporate governance in the DFIs investment work



Update of the IFC Sustainability Framework to encompass commitments to climate change, business and human rights, corporate governance, and gender, among other areas



Community of financial sector regulatory agencies and banking associations from emerging markets committed to advancing sustainable finance in line with international good practice, supported by the IFC



International Integrating Reporting Framework: tool for all companies to report on their efforts to embed ESG into their core business, encompassing both financial and ESG performance



Platform to strengthen cooperation and alignment between key standards setters and framework developers, such as ISO, CDSB, CDP, FASB, GRI, IASB, IIRC, and SASB



Non-Financial Reporting Directive: requires all companies of a certain size to disclose non-financial information along with financial reporting



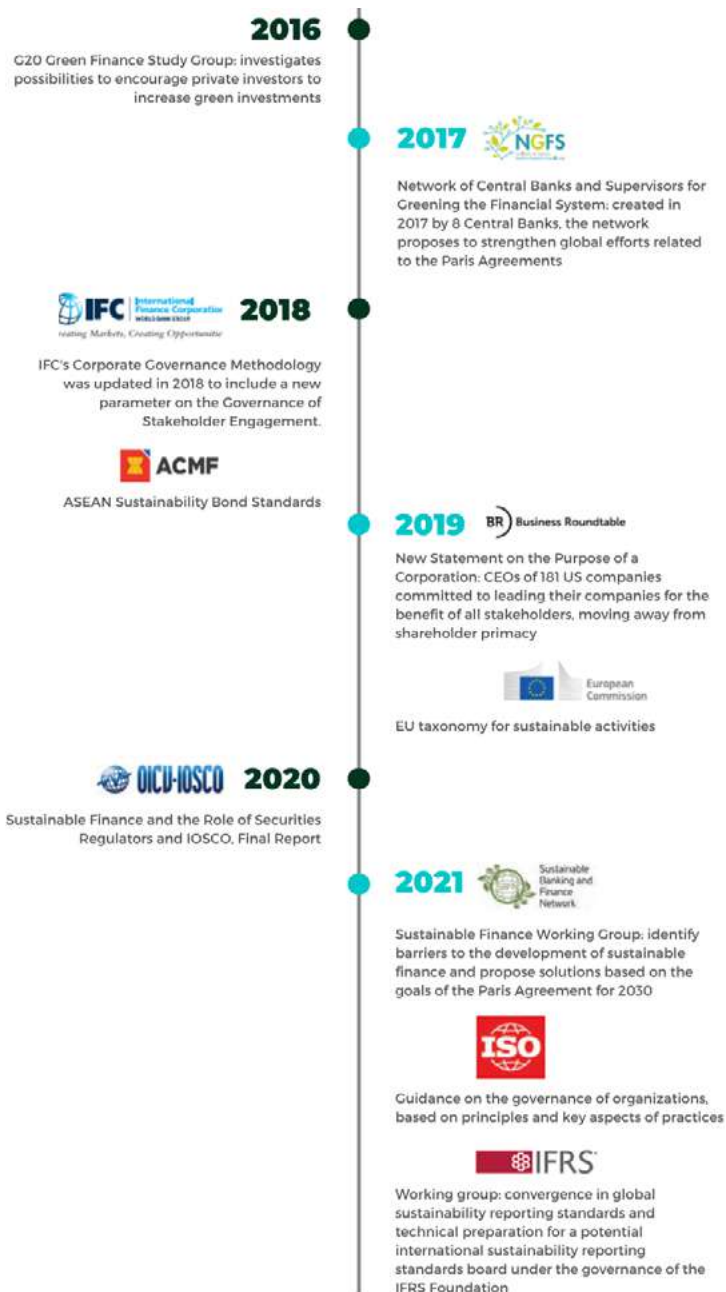
UN Sustainable Development Goals: used as a matrix to assess the impact of companies' operations and to structure their ESG approach



TCFD (Financial Stability Board): recommendations for more effective climate-related disclosures to promote more informed investment, credit, and insurance underwriting decisions, and enable stakeholders to better understand the financial system's exposures to climate-related risks



G20: Green Finance Study Group: investigates possibilities to encourage private investors to increase green investments



Source: IFC ESG Guidebook, 2021 (adapted).

Among self-regulatory initiatives, the TCFD is of special importance, and will be analyzed in more detail in item 3.3, below. This is due to its specificity for climate issues, as well as to the fact that it has been influencing regulations in several jurisdictions. Also, the TCFD is a standard widely used by companies.

Adherence to self-regulatory standards offers opportunities for companies and investors: in particular, the potential for competitive advantages to those that incorporate them into their practices sooner. On the other hand, failure to comply with these obligations, even if voluntary, potentially subjects companies and investors to greater scrutiny, and practices that are at odds with the initiatives adopted can be challenged. At COP 26, UN Secretary-General António Guterres

announced an initiative to monitor the private sector's net-zero commitments.²⁹ Another example of this trend of greater scrutiny is the Corporate Climate Responsibility Monitor 2022 report³⁰, prepared by the New Climate Institute and Carbon Market Watch and released in 2022, which assessed the integrity levels of the climate commitments of 25 large companies and will be released annually.

3.3. Risks and opportunities: the core themes of climate stewardship

The role of the private sector in the climate agenda is critical. There is growing recognition that implementation of the Nationally Determined Contributions (NDC) defined by countries under the Paris Agreement largely depends on the performance of the private sector (Box 5).

Box 5: Climate change and the private sector

In *Milieudefensie v. Shell*, a Dutch district court has unprecedentedly interpreted the Dutch Civil Code in light of the Paris Agreement, the UN Guiding Principles on Business and Human Rights (UNGP), and the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Companies, as well as the science produced by the Intergovernmental Panel on Climate Change (IPCC), concluding that a general duty of care determines that, Shell, a private company, has an obligation to align its operations with the goals of the Paris Agreement, a treaty between States. The court ordered Shell to reduce its CO2 emissions by 45% by 2030, compared to 2019 levels. The reduction must cover the entire economic group, as well as Scope 3 emissions³¹, which include suppliers and consumers.

Furthermore, the private sector is subject to regulatory changes aimed at creating the conditions for implementation of the NDCs, in addition to public scrutiny of greenhouse gas emissions associated with its operations. Both factors can entail risks and opportunities for companies and financial institutions.

Asset management by institutional investors who adopt climate stewardship practices presupposes, therefore, the assessment and consideration of climate risks and opportunities. The TCFD recommendations³² provide a comprehensive and widely used risk and opportunity assessment framework that can guide the analysis of a company.

The contents of the TCFD report were reproduced by Central Bank regulation classifying and exemplifying climate risks in Brazil. Thus, in order for this guide

²⁹ S&P Global. (2021). ['Deficit of credibility': UN deepens benchmarking of corporate net-zero pledges](#).

³⁰ NewClimate Institute in collaboration with Carbon Market Watch. (2022). [Corporate Climate Responsibility Monitor](#).

³¹ According to the [GHG Protocol](#), Scope 1 emissions are the company's own operational emissions, Scope 2 emissions are those from electricity purchased for the company's own use, and Scope 3 emissions are indirect emissions arising from the company's value chain, both from suppliers and consumers.

³² Task Force on Climate-Related Financial Disclosures. (2017). [Recomendações da Força-tarefa para Divulgações Financeiras Relacionadas às Mudanças Climáticas](#).

to be as practical as possible for investors in the Brazilian market, Box 6 presents the physical and transitional climate risks according to the classification structure adopted by the TCFD, and complements them with the definition or equivalent example given by the Central Bank of Brazil.³³

Box 6: Physical and transitional climate risks

Classification	Definition
TRANSITION RISKS	Possibility of losses for the institution caused by events associated with the process of transition to a low-carbon economy, in which the emission of greenhouse gases is reduced or compensated and the natural mechanisms for capturing these gases are preserved.
Policy and legal	Changes in legislation, regulations or governmental conduct, associated with the transition to a low-carbon economy, that negatively impacts the institution.
Technology	Technological innovation, associated with the transition to a low-carbon economy, that negatively impacts the institution.
Market	Change in the supply or demand for products and services, associated with the transition to a low-carbon economy, that negatively impacts the institution.
Reputation	Unfavorable perception of customers, the financial market or society in general that negatively impacts the institution's reputation in terms of its contribution to the transition to a low-carbon economy.
PHYSICAL RISKS	Possibility of losses to the institution caused by events associated with frequent and severe weather or long-term environmental changes, which may be related to changes in climate patterns.
Acute	Extreme weather conditions including drought, inundation, flood, storm, cyclone, frost, and wildfires.
Chronic	Permanent environmental change, including sea level rise, scarcity of natural resources, desertification, and change in rainfall or temperature patterns.

Although not expressly listed in the Central Bank regulation, climate litigation risks are among the most relevant legal risks. In addition to their exponential growth,³⁴ climate cases, originally aimed at government policies, have been increasingly challenging corporate practices.

Additionally, the TCFD final report also identifies five areas in which companies can explore opportunities related to climate change mitigation and adaptation efforts (Box 7).

³³ According to CMN Resolution Nr. 4.943/2021, that amended CMN Resolution Nr. 4.551/2017.

³⁴ UNEP. (2021). [Global Climate Litigation Report: 2020 Status Review](#).

Box 7: Opportunities related to climate change, according to the TCFD

Classification	Examples
Resource efficiency	Reduction of operational costs, including energy, materials in general, water, and waste management. Technological innovation is helping this transition; it includes developing efficient heating solutions and circular economy solutions, advancements in LED lighting technology and industrial engine technology, modernizing buildings, using geothermal energy, availability of water use and treatment solutions, and development of electric vehicles.
Energy sources	The trend towards decentralized sources of clean energy, rapidly declining costs, better storage capacity, and the subsequent global adoption of these technologies are important aspects. Organizations that switch to low-emission sources can save on annual energy costs.
Products & services:	Organizations that innovate and develop new low-emission products and services can improve their competitive position and capitalize on changing consumer and producer preferences.
Markets	Organizations that proactively seek opportunities in new markets or asset types can diversify their activities and better position themselves in the transition to a low-carbon economy. New opportunities can also be captured through underwriting or financing green bonds and infrastructure.
Resilience³⁵	Opportunities include improving efficiency, creating new production processes, and developing new products. Opportunities related to resilience may be especially relevant for organizations with long-term fixed assets or extensive supply or distribution networks; for organizations that critically depend on utility networks and infrastructure or natural resources in their value chain; and organizations that may need long-term funding and investment.

To incorporate the analysis of climate risks and opportunities into their activities and investment decisions, investors can use public data or obtain information directly from companies through engagement, as will be further explored in item 4.2, below. From the analysis of that information, investors can understand which physical risks, transition risks and opportunities arising from the transition to a low-carbon economy are applicable to an asset. Understanding how the asset impacts the climate and how it is impacted (positively and negatively) by climate change allows investors to make informed decisions. In addition to affecting investment decisions, this understanding is the basis for the practice of stewardship, in accordance with the fiduciary duties discussed above.

Engagement can occur in stages: at first, investors request access to information about the company's climate policies, to then evaluate them from the perspective of ambition and integrity, and, finally, if they are insufficient, take the measures

³⁵ According to the TCFD final report, the concept of climate resilience involves organizations developing adaptive capacity to react to climate change in order to better manage associated risks and seize opportunities, including the ability to respond to the risks of climate change. transition and physics.

discussed in sections 4.3 and 4.4, below. The information considered relevant to investors will depend on their profile and on the profile of the invested asset. However, some topics can be considered essential to understand a company's practices and its decarbonization strategy.³⁶ The non-exhaustive list below includes the main topics related to climate change to be considered by investors:

I. Company emissions and emissions reduction ambition: indication of how the company is performing in the transition to a low-carbon economy, including both risks and opportunities, including:

- ▶ Information on Scope 1, 2, and 3 emissions. According to the GHG Protocol,³⁷ Scope 1 emissions are the company's own operational direct emissions from owned or controlled sources, Scope 2 emissions are those from electricity, steam, heating and cooling purchased for the company's own use, and Scope 3 emissions are those arising from the company's value chain, both from suppliers and consumers.
- ▶ Information on the ambition to reduce GHG emissions in the short, medium, and long term - for example, achieving net-zero emissions by 2050, in line with the Paris Agreement - and on the integrity of these commitments.
- ▶ Information on the company's operational strategy for decarbonization, including, for example, details on changes in production processes, investments in innovation, use of carbon credits to offset emissions, adoption of internal carbon prices, and management of any stranded assets.

II. Climate governance: indication of how the company manages decisions related to climate change. Two aspects are worth mentioning:

- ▶ Internal governance of responsibility for managing climate risks and opportunities, including the information reporting chain, the frequency of senior leadership discussions and deliberation on climate issues, the existence of committees specializing in climate issues, and whether the Board of Directors with expertise on the subject.
- ▶ Linking executive compensation to ESG performance, including the climate topic.

³⁶ For example, the [Climate Action100+](#), An investor-led initiative (through the AIGCC, Ceres, IGCC, IIGCC, and PRI investor networks) to engage the world's largest greenhouse gas-emitting companies, defined three key "requests" that investors should address: Emission reduction, governance and reporting. Furthermore, the initiative prepared a framework for analysis ([Net-Zero Company Benchmark](#)) based on the three orders, containing metrics to help investors assess corporate practices based on publicly disclosed information by companies. The disclosure indicators are: (1) ambition to achieve zero net emissions by 2050 (or earlier); (2) long-term greenhouse gas (GHG) emission reduction target (2036-2050); (3) medium-term GHG emission reduction target (2026-2035); (4) short-term GHG emission reduction target (until 2025); (5) decarbonization strategy; (6) capital allocation aligned with zero net issuance in 2050 or earlier; (7) regulatory engagement; (8) climate governance; (9) just transition; and (10) adherence to disclosure as recommended by the TCFD.

³⁷ GHG Protocol, an initiative resulting from a partnership between the World Resources Institute (WRI) and the World Business Council for Sustainable Development (WBCSD).

III. Adherence to voluntary reporting frameworks: in addition to being a source of relevant information that is useful to investors, companies' adherence to reporting structures is indicative of their commitment to transparency and the transition to a low-carbon economy. The main frameworks³⁸ include the following:

- ▶ TCFD recommendations: final task force report with recommendations for the disclosure of information. Companies that disclose climate information in line with these recommendations are required to report on governance, strategy, risk management, and targets and metrics.
- ▶ CDP³⁹: environmental and climate information reporting framework adopted by more than 13 thousand companies worldwide.
- ▶ Climate Disclosure Standards Board (CDSB)⁴⁰: reporting structure aligned with TCFD recommendations. Composed of companies and non-governmental organizations (NGOs), the CDSB aims to facilitate reporting standardization.
- ▶ Global Reporting Initiative (GRI)⁴¹: comprehensive reporting framework for sustainability practices, adopted by around 10,000 companies around the world.
- ▶ Sustainability Accounting Standards Board (SASB): the SASB Standards guide companies' disclosure of financially relevant sustainability information to their investors. Available for 77 industries, the Standards identify the subset of ESG issues most relevant to financial performance in each industry.
- ▶ International Sustainability Standards Board (ISSB): new initiative announced during COP26, in Glasgow, and still under development. The idea is for the ISSB to establish a comprehensive global baseline of sustainability-related disclosure standards that provide investors and other capital market participants with information about the sustainability-related risks and opportunities of companies to help them make informed decisions.

In addition to specific information for each company, it is relevant that investors monitor the risks and opportunities associated with global or regional events and trends, for example:

- ▶ Intensification of climate regulation;

³⁸ The report by [SDG Global Compass](#), developed by GRI, United Nations Global Compact and World Business Council for Sustainable Development (WBCSD), recommends CDP, GRI and CDSB when mentioning reliable reporting frameworks to be used by companies on the SDGs, which include Goal 13 - Climate Action.

³⁹ CDP is a non-profit organization that manages the global disclosure system for investors, companies, cities, states and regions to manage their environmental impacts.

⁴⁰ [CDSB](#) is a non-profit organization that works to provide material information to investors and financial markets by integrating climate change-related information into key financial reports.

⁴¹ GRI is an independent international standards organization that helps companies, governments and other organizations understand and communicate their impacts on issues such as climate change, human rights, and corruption.

- ▶ Advancement of climate science, affecting, for example, scenario analysis, and climate stress testing;
- ▶ Implementation of carbon trade barriers and obligations involving supply chains;
- ▶ Carbon pricing;
- ▶ Carbon taxation;
- ▶ Access to credit and capital requirements linked to climate indicators;
- ▶ Sectoral practices and elimination or maintenance of subsidies;
- ▶ Reduction in the cost of new technologies and its implications;
- ▶ Development of regulated and voluntary carbon markets;
- ▶ Development of nature-based solutions and payment for environmental services;
- ▶ Greater scrutiny of the ambition and integrity of corporate climate commitments, from a regulatory and self-regulatory point of view, especially with regard to greenwashing and climate-washing; and
- ▶ Trends in climate litigation, especially involving the private sector.

It is also important, from the perspective of ESG integration, to analyze how climate issues relate to other environmental, social and governance megatrends, as well as aspects that specifically affect the country (or countries, in the case of transnational issues), the sector, the portfolio, and/or the company in question.

There are several sources of climate information available to investors, for example, a) ESG ratings, which assess the management of environmental, social and governance aspects of companies, using predefined criteria, which may contain relevant information on the climate agenda, b) company disclosures - voluntary, or, as of 2023, mandatory inclusion in the Reference Form (as explored further) -, and c) consultation of emissions and performance records, such as the GHG Protocol⁴², Public Emissions Registry⁴³, CDP⁴⁴, and Science Based Targets Initiative⁴⁵ (SBTi).

⁴² [GHG Protocol](#).

⁴³ [Registro Público de Emissões](#), an initiative of the Center for Sustainability Studies (GVces) of the São Paulo School of Business Administration of Fundação Getúlio Vargas (FGV EAESP).

⁴⁴ CDP.

⁴⁵ The SBTi is a collaboration among CDP, the United Nations Global Compact, the World Resources Institute, and the World Wide Fund for Nature. Since 2015, more than 1,000 companies have joined the initiative to set a science-based climate target.

PART II

4. Stewardship instruments available to minority shareholders and institutional investors in Brazil



When practicing climate stewardship, investors have at least four options for escalation tactics and modes of action⁴⁶: (i) **monitoring and assessment of climate aspects** based on information disclosed by the companies (*loyalty*); (ii) **participation in the investee's corporate governance**, engaging in dialogue processes with a view to influencing decisions, exercising voting rights, and participating in corporate bodies (*voice*); (iii) **climate litigation**, encompassing the filing of lawsuits and acting with regulators (*litigation*), and, finally, (iv) **divestment** (*exit*), when the company does not have relevant goals or does not meet them.

There is no formal order for the use of these strategies, which can be adopted separately or simultaneously. However, it is recommended that decisions to scale these initiatives be taken judiciously, starting, whenever possible, with the establishment of dialogue channels with the most appropriate corporate bodies.

Whatever the choice may be, the legal instruments for monitoring and engaging investors in the climate agenda are provided for in the Brazilian Corporate Law, in the administrative regulation of the CVM and in the private regulation of B3 (*Brasil, Bolsa, Balcão*, the Brazilian Stock Exchange), especially in its differentiated levels of corporate governance listing.

4.1 Monitoring and Assessment of Climate Risks

In order to monitor and assess climate risks, it is essential that investors have access to information that is sensitive to this matter in the development of the investee's economic activity.

⁴⁶ The report [Retrato da Sustentabilidade no Mercado de Capitais](#) by ANBIMA (2021) indicates that 24% of asset managers seek engagement in order to influence the management of the companies, 20% participate in order to obtain additional information in the ESG analysis, 16% participate, but without a defined objective; and 40% do not employ any engagement actions (p. 44).

Monitoring can be preparatory or supplementary to engagement, as dialogue requires resources and can develop over years. Therefore, monitoring plays an important role in the process of selecting investee companies with which investors will decide to engage, seeking a more active participation in their corporate governance. Moreover, engagement also serves as a way of obtaining information for monitoring.

Regulation of the Brazilian capital market is based on the principle of full disclosure, requiring securities issuers to disclose, in a broad and standardized way, a series of information about business activity, business risks, and aspects of corporate governance.

Publicly traded companies are required to periodically disclose information in the Reference Form and in Financial Statements (quarterly and annually), as well as, on an occasional basis, with the publication of material facts and notices to the market.

Reference Form. In the Reference Form, an annual document similar in contents to an offering memorandum, investors find the largest volume of information about the company. It must be presented at the time of registration as a publicly traded company, and updated periodically or when there is a material fact involved.

This is a moment of transition with regard to informational requirements on climate risks in the regulation of the Brazilian capital market. CVM Instruction Nr. 480/2009⁴⁷, which determines what information must be included in the Reference Form of publicly traded companies, was modified by CVM Resolution Nr. 59/2021, with consolidation of rules in CVM Resolution Nr. 80/2022 and CVM Resolution Nr. 87/2022. Among other changes, it is worth mentioning the introduction of a requirement for companies to explain applicable climate risks. The CVM sought to take the first step towards mandatory disclosure of certain information on issues related to the ESG agenda, indicating their relevance and establishing consistency and comparability. The new rules will enter into force in early 2023.

By 2023, the Reference Forms of publicly traded companies will contain an explanation of the environmental risk factors⁴⁸, and, in the description of the company's environmental policy, the costs of complying with environmental legislation and possible adherence to internationally accepted standards.⁴⁹

It must be highlighted that, until recently, the regulation applicable to publicly traded companies determined the disclosure of environmental issues and risks, but did not expressly require disclosure of risks related to climate change. Despite the regulatory omission, companies committed to the climate agenda were already

⁴⁷ [Instrução CVM nº 480/2009](#).

⁴⁸ See field 4.1, j, CVM Resolution Nr. 80/2022.

⁴⁹ See fields 7.5, b, and 7.8, CVM Resolution Nr. 80/2022.

expected by the market to voluntarily (i) prepare and disclose, annually, their goals and targets for reducing greenhouse gas emissions related to their economic activities; and (ii) prepare and publish, annually, their short-, medium- and long-term plans to manage their emissions and achieve their goals and targets.

As of 2023, the current “socio-environmental” section of the Reference Form will be required to be broken down, introducing the duty to specifically report climate risks separately from social and environmental risks.

Additionally, as of 2023, the Reference Form will mention the following information on the ESG agenda, with the potential to include climate issues in the information set made available by publicly traded companies (Box 7).

Box 7: Climate Aspects introduced in the Reference Form by CVM Resolution Nr. 59/2021

Information	Reference Form Field
Indication as to whether the issuer discloses ESG information in the annual report or other document specifically for this purpose	1.9.a
Indication of methodology or standard followed in the preparation of the annual report or document	1.9.b
Indication as to whether the annual report or document is audited or reviewed by an independent entity, identifying that entity, if applicable	1.9.c
Indication of the page on the world wide web where the report or document can be found	1.9.d
Indication as to whether the report or document produced considers the disclosure of a materiality matrix and key ESG performance indicators, and which are the material indicators for the issuer	1.9.e
Indication as to whether the report or document considers the Sustainable Development Goals (SDGs) established by the United Nations and which are the material SDGs for the issuer	1.9.f
Indication as to whether the report or document considers the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD), or recommendations of financial disclosures from other recognized entities that are related to climate issues	1.9.g
Indication as to whether the issuer carries out greenhouse gas emission inventories, indicating, if applicable, the scope of inventoried emissions and the page on the world wide web where additional information can be found	1.9.h
Indication of directors’ comments on opportunities included in the issuer’s business plan and related to ESG matters	2.10
If any, channels in place for critical matters related to ESG and compliance issues and practices to reach the Board of Directors	7.2.c

Composition of remuneration, including, among other information, the main indicators related to ESG issues, if applicable	8.1.c
Description of risk factors with the actual potential to influence the investment decision related to environmental issues and specifically climate ones (including physical and transition risks)	4.1.k and 4.1.l
Risk management policy and internal controls, including environmental and climate risks	5.1 (combined with 4.1.k and l)

The new rules follow the regulatory strategy known as “comply or explain”. Thus, the issuer of securities must explain any reason for not disclosing ESG information, not adopting a materiality matrix, not adopting key performance indicators for the ESG information disclosed, not considering the SDGs or not adopting the recommendations related to climate issues emanating from the TCFD or other recognized entities, or not preparing an inventory of greenhouse gas emissions.⁵⁰

Financial Statements. Annually, at the end of the fiscal year, publicly traded companies must prepare and disclose their Financial Statements, the Management Report and the Opinion of the independent auditor.

The Brazilian regulation on accounting standards for publicly traded companies follows the standard of the International Accounting Standards Board (IASB), in accordance with CVM Instruction Nr. 457/2007 and the Accounting Pronouncements Committee (CPC). Companies listed in higher levels of corporate governance at B3 must also follow international standards IFRS or Generally Accepted Accounting Principles (US GAAP). IASB published an article positing that, although there is no express mention of climate change current IFRS rules require that the assessment of climate-related risks must be incorporated into the companies’ financial statements.⁵¹ Additionally, investor groups representing more than USD\$103 trillion in assets under management globally, expressed their agreement with the IASB’s understanding that climate-related risks are material factors that must be adequately reflected in the companies’ financial statements.⁵²

Financial statements must contain information related to environmental risks and the value of environmental liabilities of a company, to be specifically mentioned in the explanatory notes. Thus, legal contingencies arising from climate issues must be included in the company’s accounting documents.

In addition to the Financial Statements and for standardization and comparability purposes, companies are also required to submit the Standardized Financial Statements Form and Quarterly Information to the CVM.

⁵⁰ See CVM Resolution Nr. 59/2021, field 1.9, i.

⁵¹ ANDERSON, Nick. (2019). [IFRS® Standards and climate-related disclosures](#).

⁵² PRI. (2020). [Investor groups call on companies to reflect climate-related risks in financial reporting](#).

Material Facts and Notices to the Market

Important factors related to climate change issues may also be disclosed as material facts or notices to the market if they have the potential to influence the price of a company's securities, as well as investment decisions.⁵³

Other documents

Annual, Integrated, and/or Sustainability Reports are not mandatory, but have been gaining traction in the Brazilian market.

International standards are moving towards greater alignment and comparability of Sustainability Reports, such as, for example, the initiative created by the International Sustainability Standards Board (ISSB), under the supervision of the IFRS Foundation. The ISSB is a private body responsible for developing and approving the sustainability disclosure standards formulated by IFRS. Global standards and disclosure requirements are planned for the development of corporate sustainability report in all jurisdictions. This type of report has the potential to become mandatory in the future, if, like the IFRS financial disclosure standards, it is adopted as such by Brazilian regulators.

Furthermore, in the new rules on disclosure in the Reference Form provided for in CVM Resolution Nr. 59/2021, the preparation of the Sustainability Report gains greater prominence under the criterion of "comply or explain", that is, the company must prepare such document or explain any omissions.

Companies with dual listings

Some Brazilian publicly traded companies also have their securities listed in other markets - especially in the United States -, subject to certain rules in other jurisdictions. The U.S. Securities and Exchange Commission (SEC) proposed, in March 2022, a climate disclosure standard. The standard proposes that data disclosure occur within a reasonable timeframe, as companies gather information on their greenhouse gas emissions, assess climate risk, and develop transition plans. The proposed standard builds on TCFD recommendations, and mandates phased climate disclosure, including Scope 1 and 2 emissions for all companies and material Scope 3 emissions for the largest companies, including Fortune 500 companies.

Additionally, according to the proposed rules, information on carbon offsets or renewable energy certificates must be provided, including information on how offsets are used. Companies must disclose data on all adopted climate targets, stating which greenhouse gas emissions are subject to such targets, the deadlines

⁵³ See [Resolução CVM nº 44/2021](#).

for achieving them, and how the targets will be achieved. They must also disclose how they price carbon, if they do so, and the assessment of climate-related risks and impacts. Overall, the proposed rule requires disclosure of information that is most critical to investors' understanding of companies' risk and climate impact, as well as their ability to thrive in a low-carbon economy.

This informational regime proposal is more rigorous compared to CVM rules, which will mandate that companies with dual listings generate more detailed climate information for the market.

Information and General Shareholders' Meetings

Investors can obtain information at General Meetings, since supervising the management of the company's business, as defined by law, is an essential right of shareholders.⁵⁴ At the General Shareholders' Meeting, shareholders holding 5% of the share capital may request information on "any relevant acts or facts related to the company's activities".⁵⁵ Recently, the CVM reduced the percentage required for the exercise of this right, which may vary between 1% and 5%, depending on the value of the total share capital (Box 8).⁵⁶

Box 8: Shareholder participation percentages to exercise certain rights in General Meetings, according to CVM Resolution Nr. 70/2022

Share capital Interval (BRL\$)	Minimum Percentage (%)
From 0 to 100,000,000	5
From 100,000,001 to 1,000,000,000	4
From 1,000,000,001 to 5,000,000,000	3
From 5,000,000,001 to 10,000,000,000	2
Over 10,000,000,000	1

As a more extreme measure, and only when there is a well-founded suspicion of serious irregularity, the Brazilian Corporate Law allows the shareholder with a relevant participation in the share capital (Box 8) to file a judicial request for the exhibition of the company's books/records.⁵⁷

⁵⁴ See Article 109, III, Brazilian Corporate Law.

⁵⁵ See Article 157, paragraph 1, "e", Brazilian Corporate Law.

⁵⁶ New percentages provided for in CVM Resolution Nr. 70/2022. The new rules were originally introduced by CVM Instruction Nr. 627/2020, based on a 2018 study prepared by the Economic Analysis and Risk Management Advisory - ASA/CVM, [Critérios para a participação de acionistas em assembleias de companhias de capital aberto](#).

⁵⁷ See Article 105, Brazilian Corporate Law, as well as CVM Resolution Nr. 70/2022.

4.2 Engagement

4.2.1 Engagement through dialogue

The first step towards investor engagement with the company's climate agenda is to strengthen ties with controlling shareholders, board members, and senior management. The objective of this approach should be to open channels of dialogue on relevant points on climate issues related to the company's strategies, transition plans and adequacy of the business model.

The UK Stewardship Code⁵⁸ lists twelve principles to guide best practices, and three of them are related to engagement: (i) engagement to maintain or increase the value of assets; (ii) when necessary, participation in collaborative engagements; and (iii) when necessary, escalation of stewardship activities to influence companies' practices.

Examples of dialogue engagement methods include, but are not limited to:

- ▶ Meetings with the chair or other members of the board of the investee company,
- ▶ Meetings with the investee company's management, and
- ▶ Letters to the investee company to raise concerns.

Most of the time, investors hold engagement meetings with the teams connected to the investor relations, public relations, or corporate social responsibility bodies of the investee companies.⁵⁹ In practice, investors value the direct participation of representatives with decision-making power, and, specifically, the involvement of members of the leadership (such as CEO, CFO, and others).⁶⁰

Through engagement meetings, investors can monitor, influence the company's management regarding ESG practices, including the climate agenda, obtain information necessary for making investment decisions and obtain information for a possible decision to escalate the engagement. Investors can engage individually or collectively⁶¹ (the latter case is also known as collaborative engagement). Both

⁵⁸ The [UK Stewardship Code](#) (2020) is authored by the Financial Reporting Council - FRC, a private and independent regulatory body of the English government that regulates public interest auditors, accountants and actuaries, setting high standards of corporate governance, reporting and auditing and holding those responsible for delivering them to account.

⁵⁹ O'NEIL, Rebeca. (2016). [The Full Picture: Investor Relations Meets Sustainability](#).

⁶⁰ Ceres. (2019). [CHANGE THE CONVERSATION Redefining How Companies Engage Investors on Sustainability](#). "While IR departments are the usual first stop for interested investors, companies send a powerful message when the CEO, CFO and other members of leadership can speak knowledgeably about the business value of sustainability".

⁶¹ The [Investor Forum](#), a dialogue facilitation initiative created in the United Kingdom, establishes 10 guiding principles for the process of collective engagement, including confidentiality, prohibition of the use of inside information, complementarity to the direct engagement of members, possibility of leaving the group at any time, and establishment of a focal point for the dialogue with the investee.

modes of engagement bring advantages and disadvantages, as well as challenges and opportunities.⁶²

Collaborative engagements are exercised by groups of institutional investors that engage with companies invested in ESG issues. This practice allows investors to communicate their concerns and expectations to the management of the investee company in a unified way, giving greater weight to requests and increasing the potential influence of engagement. This also facilitates the analysis of engagement points by the company's management team, who receives aligned demands from its investors.^{63 64}

In the context of collaborative investor engagement on climate issues, three initiatives are worth mentioning:

- ▶ IPC – *Investidores pelo Clima* (Investors for Climate): initiative led by NINT - Natural Intelligence, with support from *Instituto Clima e Sociedade – iCS* (Institute for Climate and Society), whose main objective is to engage and train professional investors in Brazil to advance in the portfolio decarbonization agenda, while seeking better risk-adjusted returns. This is the main Brazilian initiative on the climate agenda and is composed of 38 Brazilian professional investors, including asset managers, pension funds, insurance companies, and family offices.
- ▶ Climate Action 100+: largest investor engagement initiative in the world. It is an investor-led initiative to engage with companies that are the world's biggest emitters of greenhouse gases, as well as companies systemically important to the transition to a low-carbon economy. In May 2022, the initiative was composed of more than 700 investor signatories, representing more than USD\$68 trillion in assets under management.
- ▶ CDP Investor Network: Composed of 680 investors worldwide, with over USD\$130 trillion in assets under management. The network accesses and uses the environmental database of more than 13,000 companies (64% of the global market capitalization) and annually promotes collective engagement campaigns that encourage greater environmental transparency of companies⁶⁵, as well as their adhesion to the Science-Based Targets initiative.

4.2.2 Engagement through participation in corporate governance

⁶² For an overview of these perspectives, see PRI (2013), [Getting Started With Collaborative Engagement: Overview](#).

⁶³ PRI. (2013). [Getting Started With Collaborative Engagement How Institutional Investors Can Effectively Collaborate In Dialogue With Companies](#).

⁶⁴ Investor Forum. (2019). [Collective Engagement: An essential stewardship capability](#).

⁶⁵ REUTERS. (2022). [Investors push 10,000 companies to disclose environmental data to CDP](#).

Investors can also seek engagement on climate issues through greater participation in the corporate governance structure of investee companies. For this purpose, there are corporate mechanisms designed to protect minority shareholders that enable forms of participation in corporate bodies, or intensify the possibilities of monitoring the investee's business.

Most Brazilian publicly traded companies are controlled by a shareholder or a group of shareholders (controlling block), and the number of companies with dispersed ownership is low.⁶⁶ This is one of the facts that may explain the low level of engagement of institutional investors in Brazil, when compared to other relevant markets.⁶⁷ If there is little engagement in terms of financial issues, the role of institutional investors in non-financial matters is unknown, as the survey mentioned above (Box 1) illustrates.

In order to engage, investors can exercise the following rights: participation in investee companies' General Shareholders' Meetings, appointment of members of the Board of Directors and the Supervisory Board, and request that the latter is created.

It is worth noting that it is often necessary for investors to organize in groups in order to be able to exercise their engagement strategies, that is, to reach the percentages determined by law for the exercise of certain rights. The law sets forth the right of a shareholder holding shares representing at least 0.5% of the share capital to request the list of addresses of other shareholders, for the purpose of constituting a sole attorney-in-fact or requests for power of attorney.⁶⁸ There is also the possibility of a public request for a power of attorney for the exercise of voting, regulated by CVM Resolution Nr. 81/2022.⁶⁹ In order for the joint exercise of minority shareholders' rights to occur in a stable manner, it is possible to regulate voting practices in shareholders' agreements.⁷⁰

⁶⁶ Recent data on the control structure of Brazilian publicly traded companies are presented in: KPMG, [A governança corporativa e o mercado de capitais](#), 2020/2021, 15a. ed., p. 55.

⁶⁷ On investor activism in Brazil, see: COLLARES, Marta Leite. (2020). [Governança Corporativa: Fator Preponderante no Ativismo de Acionistas no Brasil](#), *Revista de Administração Contemporânea*, v. 24, n. 5, p. 414-431; VARGAS, Luiz Henrique F., BORTOLON, Patrícia M., BARROS, Lucas A. B. C. & LEAL, Ricardo P. C. (2018). [Recent activism initiatives in Brazil](#), *International Journal of Disclosure and Governance*, v. 15, n. 1, p. 40-50.

⁶⁸ See Article 126, paragraph 3, Brazilian Corporate Law. The possible challenge in exercising this right is revealed by a recent administrative sanctioning proceeding that investigated the alleged presentation of the list of shareholders' addresses without the respective names. See CVM. (2018). [CVM aceita acordo de R\\$ 85 mil com diretor da Cielo S.A.](#)

⁶⁹ CVM Resolution Nr. 81/2022..

⁷⁰ Since the joint action of investors is solely intended to enable the exercise of rights attributed to minority shareholders by law, in order to reach the percentages required by Brazilian Corporate Law, in principle, there are no competitive legal consequences and obligations in relation to the realization of takeover bid (OPA) in the event of a change in control, disclosure or market illicit actions. In some countries, the collective action called acting in concert raises some limits and legal obligations. About this point, see: PRI. (n.d.). [Addressing system barriers](#).

4.2.2.1 Engagement in General Shareholders' Meetings

The General Shareholders' Meeting is an important forum for potential shareholder engagement and for obtaining the information needed to assess climate risks and opportunities.

Can General Shareholders' Meetings deliberate on climate issues?

Relevant matters fall under the exclusive scope of attribution of the General Shareholders' Meeting, and must be deliberated by the shareholders holding the majority of the share capital. The law determines that the General Shareholders' Meeting is the forum for decisions on the amendment of the bylaws, election and dismissal of the members of the Board of Directors, definition of the remuneration package for directors and managers, and annual approval of financial statements, among other topics defined in the Brazilian Corporate Law. The bylaws may expand legal powers and include other matters for shareholders to decide upon.

The Brazilian Corporate Law does not establish express competence for the General Shareholders' Meeting to deliberate on climate matters. It does not, however, preclude the possibility that climate issues become the object of shareholders' analysis and decision. Article 121 empowers the General Shareholders' Meeting to "decide on all business related to the company's purpose and to take the resolutions it deems convenient for its defense and development".⁷¹ Usually, the topic related to climate risks is allocated to other governance bodies of the company, such as the Sustainability Committee or a specialized corporate officer.

Can investors call a General Shareholders' Meeting and request inclusion of climate issues?

In publicly traded companies, the Board of Directors is responsible for calling General Shareholders' Meetings, as well as defining the agenda and topics to be voted on by shareholders. The General Shareholders' Meeting may also be convened by the Supervisory Board or by any shareholder, when company management delays, for more than 60 days, the convening of the meeting in the cases provided for by law or in the bylaws.⁷²

Theoretically, any shareholder can request the inclusion of a certain subject in the meeting's agenda before publication of the call notice. However, management is not required to accept any such suggestion. The Brazilian Corporate Law provides, however, that shareholders representing at least 5% of the share capital may convene a General Shareholders' Meeting, when a duly substantiated request indicating the matters to be addressed is submitted, and management does not

⁷¹ See Article 121, Brazilian Corporate Law.

⁷² See Article 123, sole paragraph, Brazilian Corporate Law .

act on the request in 8 days.⁷³ Although the law does not expressly mention the possibility of minority shareholders including a matter on the agenda of a General Meeting convened by management, this option represents a less costly alternative by comparison to calling a specific meeting, and is therefore a valid engagement alternative. The power to include items on the agenda is set forth in CVM Resolution Nr. 81/2022⁷⁴, and must be exercised before the publication of the call notice for the General Shareholders' Meeting that specifies the agenda. The percentage reduction introduced by CVM Resolution Nr. 70/2022, mentioned above (Box 8), also applies to the right to convene discussed in this paragraph.

It is worth emphasizing that, as the General Shareholders' Meeting has the power to decide on all business related to the company's purpose, in theory nothing prevents shareholders with a relevant position from indicating the climate agenda for discussion among shareholders, in the presence of senior management.

⁷³ See Article 123, "c", Brazilian Corporate Law.

⁷⁴ See Article 37, CVM Resolution Nr. 81/2022. The rationale for this rule was as follows: "Law Nr. 6,404, of 1976, allows shareholders representing at least 5% (five percent) of the company's share capital to request that the management call a general meeting to resolve on the matters they specify (Article 123, sole paragraph, item "c"). Article 291 of the Brazilian Corporate Law allows the CVM to reduce this percentage by setting a scale based on the value of the companies' share capital. The provision that shareholders who own a certain stake in the share capital may include proposals for resolutions in the remote voting form is based on these two legal provisions. Whether a shareholder can call a general meeting to deal exclusively with the topics specified, it is reasonable to interpret that (s)he can include them in the agenda of a general meeting to be called. This option avoids the costs that would be borne by the company by calling an exclusive general meeting. It is also an effective mechanism to increase shareholder participation, albeit at a distance (remotely)". (CVM, [Relatório de Análise](#), Audiência Pública SDM no 09/2014 – Processo CVM no RJ-2011-13930, p. 30, with regard to 21-L, CVM Instruction Nr. 481/2009).

Box 9: What is a Shareholder Resolution or Shareholder Proposal? Does the Brazilian system allow the use of this form of engagement?

In other markets, the shareholder resolution or shareholder proposal is used as a relevant instrument in the engagement of shareholders in climate issues, allowing the proposal of topics for deliberation at the General Shareholders' Meeting, as well as suggestions for specific climate action by management.

Part of the discussion on the legality of this mechanism in different legal systems involves different models of corporate governance, in particular, the legal division of powers and competences between shareholders and management.

In the context of climate stewardship, investors have used shareholder resolutions or shareholder proposals as an escalation tactic to bring specific requests to the management's consideration, as well as to publicly signal the relevance of the climate agenda.⁷⁵

Example:

BNP Paribas Asset Management has added the following shareholder resolution to the Exxon Mobil Corporation in the 2021 General Shareholders' Meeting agenda: shareholders request that the Board of Directors conduct an assessment and issue a report within the following year (at reasonable cost, omitting proprietary information) outlining whether and how ExxonMobil's lobbying activities (directly and through trade associations) align with the objective of limiting average global warming to well below 2 degrees Celsius (the goal of the Paris Climate Agreement). The report should also address the risks posed by any misaligned lobbying and the company's plans, if any, to mitigate those risks. The resolution was approved with 63% of favorable votes.

Transposing the idea of shareholder resolution or shareholder proposal to the Brazilian context, it is necessary to observe that the General Shareholders' Meeting may discuss and resolve any matter of interest to the company. In theory, climate issues can be submitted for discussion and decision by shareholders. As mentioned above, as long as the shareholder or group of shareholders of a percentage of share capital established in the regulation, they may call a General Meeting, defining its agenda, or request the inclusion of a climate-related topic in the agenda of a meeting convened by management. This is a potential path for the adoption of climate engagement through shareholder resolutions/shareholder proposals in Brazil.

⁷⁵ One initiative that has played a leading role in promoting climate action through the use of shareholder voting power is [Say on Climate](#). With the objective of promoting the transition to net-zero, the initiative calls on companies to annually disclose their emissions; produce a plan to manage emissions (known as a transition plan); and submit the plan to the shareholders' vote for approval at the General Meeting. The actual effectiveness of the mechanism to advance companies' transition to net-zero business models is a matter of debate. However, the initiative is popular, and, as a consequence, shareholders who support it have submitted shareholder resolutions at the General Meetings of companies, in order for shareholders to vote on the request for company management to prepare transition plans, and bring them to a vote at future meetings.

Who decides at General Shareholders' Meetings? How can investors engage at a General Shareholders' Meeting?

All decisions at General Shareholders' Meetings follow the majority principle.⁷⁶

While minority shareholders are generally unable to make decisions at General Shareholders' Meetings, they can, as mentioned above, request that climate issues be included on the agenda. This engagement strategy has the potential to raise the discussion of the quality of objectives and goals related to the climate agenda in the development of the company's activities.

Even though it is beyond their power to approve or reject the proposals made by management or controlling shareholders, the exercise of voting rights by minority shareholders at General Shareholders' Meetings is a valuable mechanism to signal disagreement with management decisions, through a separate declaration of vote, dissenting vote, or protest.⁷⁷ Furthermore, in deliberations regarding financial statements or executive compensation, non-approval votes should preferably be justified, specifically pointing out deficiencies and possible courses of action to address climate issues. It is also feasible to request that management puts forward a new proposal.

Box 10: Executive compensation and ESG metrics

The executive compensation package, voted annually at the *Assembleia Geral Ordinária* - AGO (Ordinary Shareholders' Meeting), encompasses fixed and variable amounts. Linking variable compensation to certain pre-established goals serves both to signal the company's business strategies and as a financial incentive for senior management. In general, the variable portion is tied to positive financial results in the fiscal year. In order to reinforce the purposes related to the ESG agenda, however, some companies adopt metrics linked to sustainability, including climate change.

Such parameters should not be generic and must have clear objectives. One of the climate governance indicators in the assessment structure⁷⁸ of the Climate Action 100+ initiative is the analysis of climate performance as a component in the remuneration scheme, with the definition of two sub-indicators. The first is that climate goals are expressly mentioned, suggesting that generic terms such as ESG or "sustainability performance" are not enough to indicate the company's real climate strategy. The second sub-indicator is that the CEO's and/or at least one senior executive's compensation incorporates the company's progress towards its GHG reduction goals.

⁷⁶ The quorum for approval at the General Meeting, as a rule, is a majority of votes cast (Article 129, Brazilian Corporate Law). A majority of the voting capital (qualified quorum) is the exception, required only to pass specific resolutions (Article 136, Brazilian Corporate Law).

⁷⁷ See Article 130, Corporate Law.

⁷⁸ [Climate Action 100 + Net-Zero Company Benchmark](#).

Besides the possibility of expressing agreement or disagreement with management action on climate issues, the presence of investors in General Shareholders' Meetings is also an opportunity to obtain access to information that is relevant to the climate agenda, and to make clarification requests for management representatives present at the shareholders' meeting.

Regarding good practices in General Shareholders' Meetings, the Brazilian Corporate Governance Code⁷⁹, in its principle 1.3, sets forth that "management must seek the engagement of shareholders, favor attendance at the General Shareholders' Meeting and the correct understanding of the matters to be resolved, as well as facilitate the appointment and election of candidates to the board of directors and supervisory board". So as to make this principle effective, the company must inform whether the business follows the good corporate governance practices: "i. the board must use the General Shareholders' Meeting to communicate the conduct of the company's business, therefore management must publish a manual to facilitate and encourage participation in those meetings, ii. the minutes must allow full understanding of the discussions held at the meeting, even if drawn up in the form of a summary of facts, and include the identification of the votes cast by the shareholders". If this recommendation is not followed, the company must justify its non-adoption.

Is it possible to vote remotely?

In publicly traded companies, it is possible to vote remotely at General Shareholders' Meetings, pursuant to CVM regulations.⁸⁰ Due to social distancing measures implemented during the Covid-19 pandemic, from 2020, holding fully or partially remote General Shareholders' Meetings is also allowed.⁸¹

What is the role of proxy advisors in climate engagement?

Proxy advisory firms are influential when it comes to voting by institutional investors. Firms such as Institutional Shareholders Service (ISS) and Glass Lewis provide voting recommendations for casting votes on relevant matters. These voting recommendations can have ample repercussions and exert potential pressure on the investee company to address climate issues, as they ordinarily receive significant support, especially from foreign investors.

⁷⁹ The Brazilian Code of Corporate Governance is in Annex D of CVM Resolution Nr. 80/2022.

⁸⁰ Article 121, sole paragraph, Brazilian Corporate Law, and CVM Resolution Nr. 81/2022.

⁸¹ Regarding the discipline of remote voting, voting ballots and virtual meetings, see the provisions of CVM Resolution Nr. 81/2022.

Box 11: Proxy Advisors and the ESG agenda

Voting advisory service providers (proxy advisors) make recommendations on key corporate governance issues, as well as on the climate agenda, for relevant votes at General Shareholders' Meetings. Annually, voting policies are published by proxy advisors, and include central issues associated with climate change, such as accountability of the members of the Board of Directors and how to vote on *Say on Climate* proposals (see note 75).

In Brazil, for the 2022 proxy season, both ISS and Glass Lewis pointed out the importance of shareholders taking the ESG agenda into consideration when voting, and ISS drew attention to proposals by both management and shareholders regarding the *Say on Climate* initiative.

4.2.2.2 Investor Engagement on the Board of Directors

Depending on the volume of investment and the percentage of the investor's share in the capital of the investee company, it is possible to appoint members to the Board of Directors.

All publicly traded companies, as well as semi-public companies (*sociedades de economia mista*) and companies with authorized capital (*companhias com capital autorizado*), must have a two-tier management structure, composed of Board of Directors and Executive Officers.

The number of directors is specified in the bylaws: at least 3 members, all elected by the General Shareholders' Meeting, following the majority principle and specific rules of the Brazilian Corporate Law.

Can the Board of Directors decide on climate issues?

Duties of the Board of Directors include determination of the company's business orientation, election and dismissal of officers and specification of their attributions, supervision of officers, examination of documents, requests for information on contracts or acts performed by the management team, and opinions regarding management reports.⁸²

The Brazilian Corporate Law does not expressly state an attribution of the Board of Directors to decide on climate issues, but this may be specified in the bylaws. In any event, it is possible for members of the Board to raise climate issues for consideration by company executives, as well as discuss risk management and opportunities related to climate change.

⁸² See Article 142, Brazilian Corporate Law.

Can investors vote to re-elect members to the Board of Directors?

An engagement tactic used by investors in other jurisdictions is to vote for or against reelection of members of the Board of Directors. In the context of climate stewardship practices, both institutional investors and proxy advisors have highlighted this practice as a means to send signals to companies and seek to influence the composition of the Board.⁸³ Investors have used their voting power to refrain from re-electing Board members, either as a means of holding the company accountable for underperformance in dealing with the climate agenda, or based on the understanding that Board members do not have the necessary credentials to effectively address climate issues.^{84 85}

This strategy is employed in other markets and can be replicated in Brazil, since minority shareholders may, if the election is by slate, nominate a slate different from the one proposed by the controlling shareholder; and, if the election is by list, minority shareholders might refrain from voting for the election or reelection of certain members of the Board of Directors that do not act on the climate agenda.⁸⁶ Although, in theory, a negative vote (a vote against the election of Board members) is not accepted, it is possible that the vote statement includes criticism of certain candidates.

When and how can investors appoint members to the Board of Directors?

The Brazilian Corporate Law establishes that shareholders with a relevant percentage in the share capital may elect members of the Board of Directors in a separate vote, allowing minority investors to have representatives in the company's top management.⁸⁷

⁸³ PRI. (2021). [How should responsible investors secure better boards?](#)

⁸⁴ Environmental Finance. (2021). [BlackRock votes against 255 directors for climate concern.](#)

⁸⁵ Responsible Investor. (2021). [Big European Asset Managers Lead US Peers on Climate-related director voting.](#)

⁸⁶ If the election for the members of the Board of Directors uses the slate system, the vote is directed to the set of names that form it. If the election is based on the list system, votes are directed to candidates for positions on the Board of Directors.

⁸⁷ See Article 141, Brazilian Corporate Law.

Box 12: Parallel to the Engine No. 1 case

An example of engagement through the strategy of appointing members of the Board of Directors is the Engine No. 1 case (Box 3). In 2021, to reinforce ExxonMobil's need to change strategy towards the energy transition, Engine No. 1 acquired 0.02% of ExxonMobil and used its shareholder status in a campaign to replace board members with candidates with credentials related to the climate agenda pointed out by the activist investor. The largest US pension funds and large institutional investors such as BlackRock, Vanguard and State Street have positioned themselves in favor of the shareholder engaged in the climate agenda, and three of the four candidates on the slate were approved.

The minimum percentages to nominate members of the Board of Directors in a separate vote are as follows⁸⁸: (i) shareholders holding at least 15% of the voting shares; and (ii) shareholders holding at least 10% of the share capital, and holding preferred shares, considering the percentages defined in CVM Resolution Nr. 70/2022.⁸⁹ It is important to note that, pursuant to Article 141 paragraph 6 of the Brazilian Corporate Law, the right to nominate members of the Board of Director is only applicable to shareholders who prove uninterrupted ownership of the shareholding required therein during the period of 3 (three) months, at least, immediately prior to the holding of the General Shareholders' Meeting”

It is also possible to request that the election is held pursuant to a multiple vote process, which can be done by shareholders representing at least 10% of the voting capital. In the multiple vote process, the number of votes is multiplied by the number of seats to be filled, and the shareholders may concentrate their votes on one candidate or distribute them as they wish. The multiple vote process request must be made up to 48 hours prior to the General Shareholders' Meeting, and the meeting's chairs must inform the number of votes needed for election of each member of the Board in advance.⁹⁰ If a member elected by multiple votes process is removed, removal of all remaining members of the Board, followed by a new election, is required.⁹¹

The election of the members of the Board of Directors can follow several rites, for instance, a simple majority vote process, or a majority vote with a multiple vote process. A third possibility is the election by separate voting of common and/or preferred minority shareholders, if the percentage required by law is reached. In

⁸⁸ See Article 141, paragraph 4, Brazilian Corporate Law.

⁸⁹ If these percentages of common and preferred shareholders are not reached, shareholders who are outside the controlling block may jointly appoint a member, pursuant to Article 141, paragraph 5, of the Brazilian Corporate Law, with the following wording: “It is verified that neither the holders of shares with voting rights nor the holders of preferred shares without voting rights or with restricted voting rights, respectively, made up the quorum required in items I and II of paragraph 4, they will be able to aggregate their shares to jointly elect a member and their alternate for the board of directors, observing, in this case, the quorum required by item II of paragraph 4.”

⁹⁰ See Article 141, paragraph 1, Brazilian Corporate Law.

⁹¹ See Article 141, paragraph 3, Brazilian Corporate Law.

order to avoid double counting, however, when choosing a separate vote process, the shareholder does not participate in the main vote, regardless of whether it is carried out with or without a multiple vote process.

Groups of shareholders may be formed in order to reach the percentage required to appoint members of the Board of Directors. Moreover, minority shareholders may execute an agreement in order to establish the rules for nomination.⁹²

Despite the possibility of minority shareholders earning seats on the Board of Directors, the majority of members are appointed by the controlling shareholder or group of shareholders that form the controlling block. Consequently, appointing members of the Board does not necessarily amount to the power to make decisions, but creates conditions for obtaining information, understanding top management choices, as well as diversifying points of view, specifically on climate issues. It is also important to consider that, for companies listed at higher levels of corporate governance at the Brazilian Stock Exchange - B3 (New Market and Level 2), at least 20% of the Board members must be independent, that is, must not have ties to the control group. In fact, a recent reform of the Brazilian Corporate Law established that all publicly traded companies must have independent directors.⁹³ This new rule is pending regulation by the CVM.

The corporate governance structures of publicly traded companies often include Committees tasked with assisting and informing decisions by the Board of Directors. Companies engaged in the ESG and climate agendas tend to establish a Sustainability Committee, or allocate the topic to a specific corporate officer.

4.2.2.3 Investor Engagement in the Supervisory Board

Depending on the percentage of the investor's participation in the share capital, it is possible to put forward a request of installation of the company's Supervisory Board, and appointment of its members.

Why request installation of the Supervisory Board?

The legal function of the Supervisory Board is to supervise management and verify compliance with legal duties, as well as to deliver opinions on the annual management report. Additional information, that is necessary or useful for deliberations by the shareholders, may be included in the opinion papers.⁹⁴ The Supervisory Board's functions include the supervision of the company's financial transactions. It is also possible for the Supervisory Board to report management

⁹² To learn more about the understanding of what is not considered 'acting in concert', problematic in other jurisdictions, see note 69.

⁹³ See Article 140, paragraph 2, Brazilian Corporate Law, amended by Law Nr. 14,195/2021.

⁹⁴ See Article 163, Brazilian Corporate Law.

members to the General Shareholders' Meeting for not taking the necessary measures to protect the company's interests.⁹⁵

The Supervisory Board may operate permanently or be installed at the request of shareholders holding at least 10% of the shares with voting rights, 5% of shares without voting rights⁹⁶, or in the percentages defined in CVM Resolution Nr. 70/2022.

The members of the Supervisory Board are empowered to act autonomously and individually, even if the body itself is collective. The opinion papers of its members may state their understanding on climate change issues concerning the company's activities. The members of the Supervisory Board have the right to request information and clarifications regarding the management of the company.⁹⁷ On the other hand, the Supervisory Board must provide information falling within its scope of attribution to shareholders or groups of shareholders representing at least 5% of the share capital.⁹⁸

Considering the monitoring functions performed by the Supervisory Board, as well as the possibility for its members to obtain relevant information and express opinions individually, the appointment of members by investors can be a relevant means of fostering climate stewardship.

Is it possible for investors to elect members of the Supervisory Board?

The Supervisory Board must be composed of three to five members, elected by the General Shareholders' Meeting. Moreover, in a separate vote, it is possible for one member to be elected by preferred shareholders, and another by minority shareholders holding at least 10% of voting shares.⁹⁹ It is important to bear in mind, however, that controlling shareholders have the right to elect the majority of the members of the Supervisory Board.

4.3 Investor-initiated climate litigation: possibilities under Brazilian Corporate Law

A decades-long debate, both theoretical and practical, has been taking place about the purpose of companies and for whom they should be managed. One current reaffirms Milton Friedman's ideas, in the sense that every company should only aim at maximizing the return on capital to shareholders; while another line of thought argues that business decisions must take into account the needs of all stakeholders and society in general. This debate became known as the fundamental clash between shareholder and stakeholder capitalism. In recent years, the debate

⁹⁵ See Article 163, IV, Brazilian Corporate Law .

⁹⁶ See Article 161, paragraph 2, Brazilian Corporate Law.

⁹⁷ See Article 163, paragraph 2, Brazilian Corporate Law

⁹⁸ See Article 163, paragraph 5, Brazilian Corporate Law.

⁹⁹ See Article 161, paragraph 4, Brazilian Corporate Law.

has gained strength with the discussion about the compatibility of integrating ESG factors in institutional investors' decision-making processes with their fiduciary duty. In this context, the discussion is about whether the integration of ESG factors would entail sacrifice of financial returns, and, therefore, the failure to fulfill the duty to maximize profits. Nowadays, although not unanimously¹⁰⁰, there is an understanding that ESG integration is part of the fiduciary duty¹⁰¹¹⁰², and that ESG investment funds perform better¹⁰³ than ordinary funds. Similarly, it is understood that stakeholder capitalism brings greater long-term returns¹⁰⁴, and that companies with good performance in ESG factors present better results.¹⁰⁵

In Brazil, the legal duty to consider climate criteria in company operations can be considered a corollary of the fiduciary duties created by the Brazilian Corporate Law. This takes place on two levels.

First, due to the fiduciary duty imposed on controlling shareholders by the sole paragraph of Article 116 of the Brazilian Corporate Law: "Controlling shareholders must wield their power in order to steer the company to accomplish its purpose and fulfill its social function; they have duties and responsibilities towards the other shareholders of the company, its employees, and the community in which it operates, whose rights and interests they must loyally respect and attend to".

Additionally, Article 154 of the Brazilian Corporate Law extends the duty to meet the requirements related to the public good and the social function of the company to directors and officers: "Article 154. The administrator must exercise the attributions that the law and the statute confer on them to achieve the company's established purposes and interests, satisfying the requirements of the public good and the social function of the company".

Since 1976, therefore, controlling shareholders, directors, and officers of Brazilian companies have a legal duty to internalize externalities that may affect stakeholders. The Brazilian Corporate Governance Code¹⁰⁶ reinforces these duties in its principle 2.1, by determining: "The board of directors must exercise its duties considering the long-term interests of the company, the impacts resulting from its activities on society and the environment, and the fiduciary duties of its members, acting as guardian of the principles, values, corporate purpose and governance of the company". This reinforcement becomes more concrete when the standard suggests that: "The board of directors must, without prejudice to other legal, statutory, and other practices provided for in the Code: (i) define business strategies, considering the impacts of the company's activities on society and the environment, aiming

¹⁰⁰ Financial Times. (2021). [ESG outperformance narrative 'is flawed', new research shows](#).

¹⁰¹ PRI. (2020). [The modern interpretation of fiduciary duty](#).

¹⁰² LIPTON, Martin et al. (2019). [Purpose, Stakeholders, ESG and Sustainable Long-Term Investment](#).

¹⁰³ S&P Global. (2022). [Interest in interest rates](#).

¹⁰⁴ Black Rock. (2022). [LARRY FINK'S 2022 LETTER TO CEOs: The Power of Capitalism](#).

¹⁰⁵ FROMER BABCOCK, Ariel et al. (2022). [Walking the Talk: Valuing a Multi-Stakeholder Strategy](#).

¹⁰⁶ See CVM Resolution Nr. 80/2022, Annex D.

at the company's perpetuity and the creation of long-term value; (ii) periodically assess the company's exposure to risks and the effectiveness of risk management systems, internal controls and integrity/compliance system, and approve a risk management policy compatible with business strategies; (iii) define the company's values and ethical principles, and ensure the issuer's transparency in its relationship with all interested parties; (iv) annually review the corporate governance system, with a view to its improvement".

The growing importance of the ESG agenda justifies that investors have access to relevant information regarding companies' climate policies. Furthermore, the regulatory and self-regulatory initiatives discussed in item 1.2, above, also create obligations for companies, which may, if not complied with, be challenged through litigation. It is important to bear in mind that even self-imposed initiatives through voluntary frameworks, once taken on by companies, can generate scrutiny through judicial or extrajudicial litigation, especially regarding their integrity, as well as greenwashing and climate-washing practices.

Although there are still no known Brazilian cases seeking to compel management to fulfill these duties¹⁰⁷, in other jurisdictions, in the wake of the dissemination and strengthening of climate litigation around the globe, investors are increasingly initiating judicial or extrajudicial litigation with a view to discussing climate issues (Box 13).

¹⁰⁷ On the low effectiveness of enforcement in the Brazilian market to protect investors, see OECD (2020), [Private Enforcement of Shareholder Rights: A Comparison of Selected Jurisdictions and Policy Alternatives for Brazil](#). For empirical data on the low existence of actions under the responsibility of administrators in Brazil, see RODRIGUES, Ana Carolina (2011), [A responsabilidade civil dos administradores de companhias abertas não financeiras por danos causados à sociedade e aos acionistas e o desenvolvimento do mercado de valores mobiliários brasileiro](#).

Box 13: Recent examples of investor-initiated climate litigation

Company Involved	Year	Country	Case
McVeigh	2018	Australia	<ul style="list-style-type: none"> - Mark McVeigh, a member of the Australian Pension Fund Retail Employees Superannuation Trust (REST), filed a lawsuit, in 2018, alleging that the fund violated the Corporations Act of 2001 by failing to provide information related to business risks arising from climate change and plans to address these risks. - Before the trial began, in 2020, REST reached an agreement with the plaintiff recognizing that “climate change is a material, direct and current financial risk to the superannuation fund across many risk categories, including investment, market, reputation, strategy, governance and third-party risks”; - In order to address this risk, REST has agreed, among other commitments, to the implementation of a net-zero emissions target by 2050, to measure, monitor, and report on climate progress in accordance with the TCFD.
Exxon	2019	USA	<ul style="list-style-type: none"> - The City of Birmingham Retirement and Relief System presented, in 2019, a stockholder derivative complaint against the directors and members of the board of Exxon Mobil Corporation, seeking damages for breaches of fiduciary duties, losses, and unjust enrichment. The suit alleges that Exxon had for decades “misled shareholders about the material risks that climate change posed and poses to its business in order to increase its short-term profits and falsely inflate their assets, revenues, and stock price.” A final outcome has yet to be reached.

<p>Santos</p>	<p>2021</p>	<p>Australia</p>	<ul style="list-style-type: none"> - The company was sued by activist shareholder group Australian Center for Corporate Responsibility - ACCR in 2021, for its claims that it produces “clean fuel” and that it plans to achieve net-zero emissions by 2040; - The ACCR argues that this is an incorrect representation, as the extraction of natural gas involves the release of “significant amounts of carbon dioxide and methane into the atmosphere”; - The second part of the claim aims to obtain statements from Santos that it has a “clear and credible” plan to achieve net-zero emissions by 2040.
<p>McGaughey</p>	<p>2021</p>	<p>United Kingdom</p>	<p>Claim filed by pension fund beneficiaries against University Superannuation Scheme (USS), the largest private pension fund in the UK;</p> <p>The case is a derivative claim based on the directors duty to act in the beneficiaries best interest, under the Companies Act of 2006 and fiduciary duties;</p> <p>Plaintiffs argue that fossil fuels have been the worst performing asset class since 2017, and that failure of current and former directors to establish a credible divestment plan from fossil fuel has harmed the fund’s performance.</p>

Shell	2022	United Kingdom	<ul style="list-style-type: none"> - In March 2022, ClientEarth, an NGO and activist shareholder, filed a derivative action in the United Kingdom seeking to hold Shell’s board of directors accountable for not adequately preparing for the energy transition. This is the first case in which this legal strategy has been employed; - In 2021, as indicated in Box 5, Shell was ordered by a Dutch district court to reduce its overall emissions, including Scope 3, by 45%, compared to 2010, by the end of 2030. However, the board deemed parts of the decision irrational and essentially incompatible with its business. The company appealed the decision; - ClientEarth maintains, based on 2021 studies, that the board failed in its duties because Shell’s strategy is inconsistent with the Paris Agreement’s 1.5°C temperature target and the plan to reach net-zero emissions by 2050.
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Considering the growing importance of climate litigation - including as a governance instrument, that is, as a means of driving changes in the practices and policies of governments and companies - it is important to assess what instruments Brazilian Corporate Law makes available to investors who intend to escalate their climate efforts through courts. Said corporate litigation instruments do not preclude other, more commonly debated and employed, legal arguments and procedural avenues for climate litigation in Brazil.

It is also relevant to consider exposure of institutional investors to climate litigation initiated by beneficiaries - as the McVeigh and McGaughey cases (Box 13) illustrate -, based on a failure to consider climate risks in their investment decisions.¹⁰⁸

If shareholders suffer damages as a direct result of breach of the fiduciary duties described above, they can file individual or collective claims aimed at companies, controlling shareholders, and/or management, depending on the characteristics of the specific case, through lawsuits.

Law Nr. 7,913/1989, with subsidiary application of Law Nr. 7,347/1985 (Public Civil Action Law), sets forth a remedy that is specific for the capital market, the *public civil action* for liability for damages caused to investors in the securities market, through which redress of losses to investors and prevention of potential damages can be sought. The statute sets forth a non-exhaustive list of wrongdoings:

¹⁰⁸ For a study on the distribution of equity risk ownership, see SEMIENIUK, Gregor et al. (2022). [Stranded fossil-fuel assets translate to major losses for investors in advanced economies.](#)

fraud, insider trading, and breach of duty to disclose information.¹⁰⁹ The Public Prosecution Service, the CVM, and investor associations have standing to file this type of collective action.

If there is direct damage to the company resulting from breach of fiduciary duties, *derivative claims* may be filed¹¹⁰. Filing this type of claim requires a prior decision of the General Shareholders' Meeting, authorizing the company to seek compensation for losses from its. This claim can also be, in some cases, filed by any shareholder, if the General Shareholders' Meeting decides to take legal action but does not go forward within three months of the decision. If the General Shareholders' Meeting decides not to sue, shareholders representing the percentages of the company's share capital according to CVM Resolution Nr. 70/2022 (Box 8), may pursue the claim in its place.

Controlling shareholders may also be held liable, based on Article 246 of the Brazilian Corporate Law, which establishes that the controlling company shall redress damages arising from acts against company interests, conflict of interests, or abuse of control power, per Articles 116 and 117 of the same statute.

In some cases, instead of damage redress, shareholder claims seek to invalidate *decisions taken at General Shareholders Meetings*. In these situations, an annulment claim is the legal remedy available in Brazilian law.

In the *extrajudicial* sphere, in case of potential illegality, doubts, or lack of information regarding the agenda of the General Shareholders Meetings, it is possible to request, before the CVM, a 30-day extension or a 15-day interruption of the meeting.¹¹¹

It is worth remembering that *arbitration* as a means of resolving disputes has gained considerable traction in the Brazilian capital market, and is currently widely employed to bring forth claims related to investor rights.¹¹² However, little is known about the contents of arbitral claims, as issues submitted to arbitration are, in general, confidential.

Note, however, that CVM Resolution Nr. 80/2022, in force since May 2, 2022, amended the list of obligations applicable to publicly traded companies to include disclosure of corporate claims - defined by the rule as any judicial or arbitral proceeding based, wholly or in part, on corporate or securities legislation, or on CVM

¹⁰⁹ See Article 1, Law Nr. 7,913/1989.

¹¹⁰ See Article 159, Brazilian Corporate Law.

¹¹¹ See Article 124, paragraph 5, Brazilian Corporate Law and CVM Resolution Nr. 81/2022.

¹¹² Examples of arbitral proceedings involving environmental issues are those initiated by investors against Vale, claiming compensation for damages caused by failure to disclose the risks that led to rupture of the dam in the municipality of Brumadinho. Vale informs in its 2021 Reference Form: "In Brazil, Vale is defending itself in (i) an arbitration brought by 166 minority shareholders, (ii) an arbitration brought by a trade association that intends to represent all of Vale's minority shareholders, and (iii) an arbitration brought by foreign funds" (Vale, [Formulário de Referência](#), 2021, item 4.5. Processos Sigilosos Relevantes, p. 151).

rules - in which the issuer, its shareholders or its management appear as parties, and that a) involve rights or interests that are diffuse, collective, or homogeneous in nature, or b) in which the effects of a potential adjudication may reach the company or equity holders who are not parties to the claim, such as claims to hold management or the controlling shareholder liable or to annul corporate decisions.

Finally, in case of suspicion of illegal practices - in particular, about insufficient information disclosed by issuers, breach of fiduciary duties, or practices related to abuse of control power -, it is possible to file a complaint, or a request for clarification or investigation, before the CVM.

4.4 Divestment

Divestment as a stewardship mechanism has gained traction in recent years, especially in the context of the divestment from fossil fuels. Defenders of the practice argue that divestment penalizes the company and reduces its market value.¹¹³ However, the understanding that engagement is more effective than divestment in order to drive companies to perform better in terms of socio-environmental¹¹⁴ and climate issues¹¹⁵ has been on the rise. Due to unintended consequences associated with divestment, there has been much debate about whether the practice is the best way to drive changes in companies¹¹⁶ and address the risks associated with climate change¹¹⁷.

In this regard, it is important to consider two points. First, large institutional investors often have highly diversified portfolios that are representative of global capital markets (universal ownership)¹¹⁸, which exposes their portfolios to more widespread risks and can limit the effectiveness of their divestment strategies. Second, divestment can be ineffective or counterproductive to mitigate the systemic risk posed by climate change if it gives way to less scrupulous investors, or investors with non-existent or insufficient ESG standards.

¹¹³ Forbes (2021). [The Case For Fossil Fuel Divestment](#).

¹¹⁴ BROCCARDO, Eleonora; HART, Oliver D.; ZINGALES, Luigi. (2020). [Exit vs. voice](#).

¹¹⁵ Forbes (2022). [Don't Sell Your Fossil-Fuel Stock If You Want to Make a Climate-Change Difference in 2022](#).

¹¹⁶ PRI (2022). [Discussing divestment: Developing an approach when pursuing sustainability outcomes in listed equities](#).

¹¹⁷ Financial Times. (2021). [The ESG investor's dilemma: to engage or divest?](#)

¹¹⁸ UNEP Finance Initiative. (2011). [Universal Ownership – Why environmental externalities matter to institutional investors](#).

Conclusion

Investors have a range of instruments to practice climate stewardship, some specific to certain jurisdictions. Considering this context, this guide systematizes the instruments available to investors in Brazil, with the aim of contributing to the dissemination of good climate stewardship practices.

Climate change is potentially the biggest challenge of the 21st century, and the capital market plays an essential role in tackling it. Institutional investors are especially well positioned to, through climate stewardship, positively influence the incorporation of the climate agenda into the businesses of their investee companies, reducing externalities, minimizing their exposure to risks, and maximizing the use of opportunities, so as to preserve the interests of beneficiaries and contribute to long-term economic and climate well-being.





ANNEX - CLIMATE TOOLKIT FOR INVESTORS

1. MAJOR THEMES OF THE CLIMATE AGENDA

<p>Company emissions</p> <ul style="list-style-type: none"> -GHG Inventories -Ambition -Integrity 	<p>Transition Risks</p> <ul style="list-style-type: none"> - Policy and legal - Technology - Market - Reputation <p>Physical Risks</p> <ul style="list-style-type: none"> - Acute - Chronic 	<p>Opportunities</p> <ul style="list-style-type: none"> - Resource efficiency - Energy sources - Products/services - Markets - Resilience
<p>Climate governance</p> <ul style="list-style-type: none"> - Committees - Disclosures - Expertise of board members - Executive compensation 	<p>Adherence to voluntary frameworks</p> <ul style="list-style-type: none"> - Ambition - Implementation 	<p>Advancement of climate regulation</p>
<p>Advancement of climate science</p>	<p>Carbon trade barriers (e.g. CBAM)</p>	<p>Supply Chain</p> <ul style="list-style-type: none"> - Documentation - Monitoring - Boycotts
<p>Carbon pricing</p>	<p>Carbon taxation</p>	<p>Access to credit and capital requirements</p>
<p>Sectoral practices and subsidies</p>	<p>New technologies</p>	<p>Carbon markets</p> <ul style="list-style-type: none"> - Regulated - Voluntary
<p>Nature-based solutions and payment for environmental services</p>	<p>Greenwashing/ Climate-washing</p>	<p>Climate litigation</p> <ul style="list-style-type: none"> - Judicial - Extrajudicial



2. CLIMATE STEWARDSHIP STRATEGIES* **

Strategy	Purpose	Means/Situations
Monitoring (loyalty)	<ul style="list-style-type: none"> - Assess climate risks - Select companies for engagement 	<ul style="list-style-type: none"> - Financial statements, reference forms, and other corporate documents
Engagement (voice) <ul style="list-style-type: none"> - Individual - Collective 	<ul style="list-style-type: none"> - Collaborate with controlling shareholders and management on the climate agenda 	Dialogue Participation in Corporate Governance: <ul style="list-style-type: none"> - General Shareholders' Meeting: inclusion of an item in the agenda, declaration of vote against the majority, information request - Board of Directors: election of members with climate expertise - Supervisory Board: installation request, election of minority shareholders' representative, information request
Litigation	<ul style="list-style-type: none"> - Request provision of undisclosed or insufficiently disclosed information - Seek damages 	<ul style="list-style-type: none"> - Direct damage to the shareholder: individual claim, or collective claim through associations - Damage to the company: derivative claims - Claims before the CVM
Divestment (exit)	<ul style="list-style-type: none"> - Reduce exposure 	<ul style="list-style-type: none"> - Insufficient or non-existent climate practices by investee and/or ineffective engagement

* Single or joint use

** No specific order/escalation possible