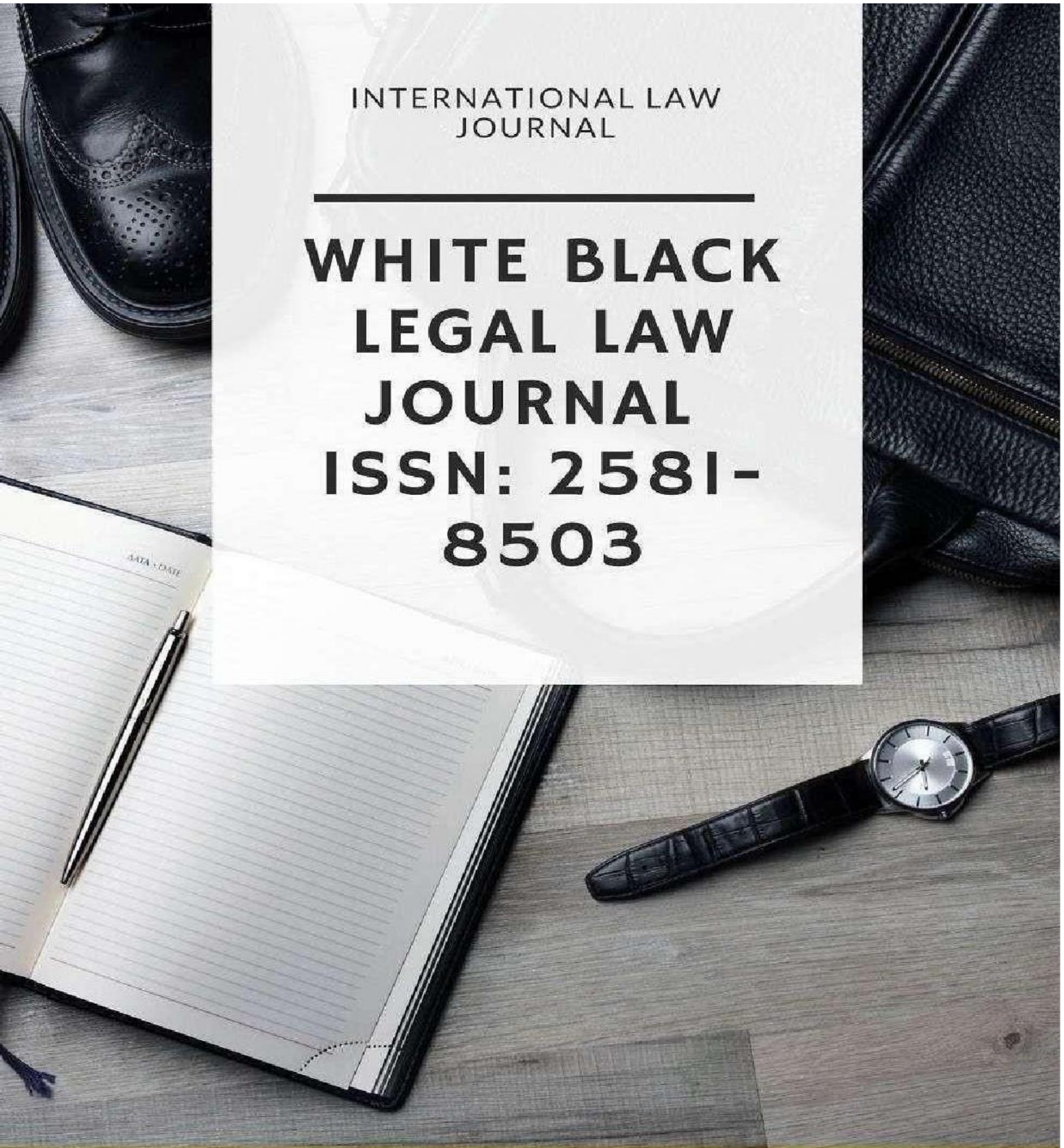

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INTEGRATING ESG PRINCIPLES INTO CROSS-BORDER MERGERS AND ACQUISITIONS: REIMAGINING CORPORATE GOVERNANCE AND LEGAL DUE DILIGENCE

AUTHORED BY - SHREYA S

Abstract

This essay critically examines the radical transformation of cross-border mergers and acquisitions (M&A) that has been initiated by the incorporation of Environmental, Social, and Governance (ESG) principles in legal and corporate frameworks. ESG, which was once a voluntary moral concept, has now become an obligatory legal and fiduciary responsibility shaping world business practice. Statutory developments such as the European Union's Corporate Sustainability Due Diligence Directive (CSDDD), France's Duty of Vigilance Law, and India's Companies Act, 2013, alongside SEBI's Business Responsibility and Sustainability Reporting (BRSR), mandate companies to embed sustainability and human rights into governance structures. Judicial precedents, including La Poste (2023) and Shell Climate Litigation (2021), reinforce ESG accountability, requiring corporations to mitigate environmental and social harm. While concerns including regulatory heterogeneity, greenwashing, and cost continue, ESG integration now reshapes fiduciary responsibility, ensuring cross-border M&A transactions foster responsible capitalism, ethical governance, and long-term sustainable value creation in the global economy.

Introduction

The incorporation of Environmental, Social, and Governance (ESG) values into cross-border mergers and acquisitions (M&A) represents a paradigm shift that goes beyond the conventional boundaries of financial and legal due diligence, infusing sustainability, accountability, and ethical stewardship at the very core of corporate strategy. In contrast to traditional due diligence, which mostly gauged tangible risks including taxation, valuation, and compliance with regulations, contemporary ESG due diligence requires corporations to analyse the long-term social, environmental, and governance implications of their transactions. It is a recognition of the increasing knowledge that corporate development cannot be detached from the sustainability of the ecosystems and societies it touches. This transformation is not only normative but also legally embedded, as new statutory and regulatory standards for jurisdictions increasingly require ESG compliance as a legal obligation as opposed to a voluntary effort.

In this regard, the European Union's Corporate Sustainability Due Diligence Directive (CSDDD) represents a landmark evolution in global corporate governance. It places legally enforceable obligations on businesses to recognize, prevent, mitigate, and report adverse human rights and environmental effects throughout their activities and international supply chains. This raises ESG factors to the same level of legal consideration as financial and operational due diligence with direct impact on the way multinational companies design and negotiate cross-border deals. Under the CSDDD, failure can bring on massive fines, legal exposure, and reputational risk, thus obliging boards and deal advisors to incorporate ESG analysis into each phase of the M&A life cycle ranging from target selection and valuation to post-merger integration. The directive also supports international efforts like the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises, upholding a consistent global standard of responsible business conduct.

In India, too, ESG integration has been gaining momentum through statutory requirements and regulatory tools that include sustainability reporting as a central aspect of corporate governance. Section 134(3)(m) of the Companies Act, 2013 requires directors to report on corporate social responsibility (CSR) and energy conservation in their board reports, setting the fiduciary responsibility of directors for responsible corporate behaviour. Additionally, the Securities and Exchange Board of India (SEBI) has formalized ESG accountability through the Business Responsibility and Sustainability Reporting (BRSR) framework requiring listed companies to report ESG-related risks, goals, and performance metrics. The BRSR expands the concepts of transparency and protection of the stakeholder by bringing sustainability reporting into the same tier as financial disclosure requirements so that investors and regulators can objectively evaluate a company's non-financial risks.

Convergence of such frameworks supports a new reality: ESG compliance is now a governance necessity and a strategic driver in the success of cross-border M&A. Global investors, private equity funds, and institutional lenders increasingly consider ESG compliance a capital access and deal approval condition. This change has redefined the notion of "value creation" in M&A not just as profit maximization, but as creating sustainable, inclusive, and reputationally resilient value. In addition, ESG-compliant deals are better positioned to survive post-transaction scrutiny from regulators, courts, and civil society groups, hence avoiding legal exposure and reputational damage.

In integrating ESG as the main evaluation factor, dealmakers now consider transactions through a cross-practice risk perspective one that includes environmental burdens, social justice, labour rights, and ethical governance frameworks. This evolution is not merely a compliance reaction but a strategic shift toward responsible capitalism in which sustainability is an inherent gauge of corporate legitimacy. Finally, ESG integration in cross-border M&A helps ensure transactions support global sustainable development objectives, respect human rights, and protect intergenerational equity thereby morphing corporate deal making into a force for both economic and moral advancement.

Explanation of Key Concepts

1. Environmental, Social, and Governance (ESG): Conceptual Foundations

1.1 Meaning and Evolution of ESG

ESG stands for Environmental, Social and Governance and is an elaborate way through which the performance of companies is measured not only in terms of profits but also concerning the wider impacts of business actions on the environment, society, and ethics. ESG shows how the corporate governance system has moved over time from shareholder orientation to stakeholder orientation.[1]

Traditionally, corporations were evaluated based on economic criteria like income generation, profitability for investors, and market value. Nevertheless, the growth of globalization, environmental pollution, worker abuse, and unethical activities by multinational corporations exposed the inefficacy of using only economic parameters to evaluate corporations' legitimacy[2]. Thus, ESG was created as a means of correcting corporations' governance structure by incorporating sustainability and ethics into their operations.

The growing importance of ESG can be attributed to various global sustainability agendas like the Paris Agreement, the UN's Sustainable Development Goals (SDGs), and the UN Guidelines

[1] R Edward Freeman, *Strategic Management: A Stakeholder Approach* (Pitman 1984) 46

[2] Andreas Rasche, Dirk Ulrich Gilbert and Sandra Waddock, *Corporate Social Responsibility, Accountability and Governance* (Cambridge University Press 2013) 88

on Corporate Conduct on Human Rights (UNGPs). Together, these frameworks indicate that corporations have duties that transcend profit maximization and extend to environmental protection and social well-being.[3]

1.2 Environmental Dimension of ESG

The Environment component of ESG considers the environmental effects of business operations and assesses issues such as climate change mitigation, carbon dioxide emissions, conservation of biological diversity, energy transformation to renewables, waste management, and sustainable use of resources. Contemporary approaches to environmental governance acknowledge that environmental damage is a material financial and legal risk that may influence the value of corporations.[4]

Climate governance measures adopted internationally under initiatives such as the Paris Climate Agreement have influenced the environmental responsibilities of businesses by compelling them to align their business activities with global climate objectives. Businesses must not only adhere to national environmental regulations but also adopt a climate perspective when planning for the future.

The transformative judicial significance of environmental ESG obligations was illustrated in *Milieudefensie v Royal Dutch Shell plc* (2021), where the Hague District Court ordered Shell to reduce its carbon emissions by 45% by 2030 relative to 2019 levels.[5] The Court held that multinational corporations possess an independent duty of care to prevent dangerous climate change, thereby extending environmental accountability beyond states to private corporate entities.

The Shell Climate Case fundamentally reshaped corporate governance jurisprudence by recognizing climate-related obligations as part of directors' fiduciary responsibilities. The judgment also established that climate risks are not merely reputational concerns but legally enforceable duties capable of attracting judicial scrutiny and corporate liability[6].

1.3 Social Dimension of ESG

Social in ESG is defined as the engagement of firms with their stakeholders, such as employees, customers, nearby communities, and other people affected by the business. This includes issues

[3] United Nations Guiding Principles on Business and Human Rights (UN Human Rights Council, 2011)
[4] Cary Krosinsky and Nick Robins, *Sustainable Investing: The Art of Long-Term Performance* (Earthscan 2012) 121
[5] *Milieudefensie v Royal Dutch Shell plc* (Hague District Court, C/09/571932, 26 May 2021)
[6] Jolene Lin, 'Climate Change Litigation Against Corporations' (2022) 34 *Journal of Environmental Law* 211

like workers' rights and workplace safety, inclusivity, consumer protection, and responsible supply chains[7].

The significance of social responsibility in recent years has been shaped by international human rights treaties, which include conventions of the International Labor Organization and the United Nations Guiding Principles on Business and Human Rights. The key premise here is that multinational businesses, due to their economic clout, should avoid being complicit in labour and human rights violations.

An important example of social governance failure was the collapse of the Rana Plaza building, wherein the collapse of a manufacturing facility dealing with garments in Bangladesh led to the deaths of more than 1,100 employees. This highlighted the shortcomings in global supply chain governance and created more pressure for mandatory human rights due diligence of businesses[8].

This meant that companies involved in mergers and acquisitions across borders had to assess labour practices, business ties, and community effects while conducting ESG due diligence. Social sustainability has thus become a critical factor affecting corporate legitimacy and reputation in international business dealings.

1.4 Governance Dimension of ESG

Governance pertains to the system of management within the organization that guides, controls, and ensures accountability. The key factors here include board independence, executive compensation, shareholder rights, anti-corruption, auditing, corporate accountability, and ethics[9].

The topic of corporate governance became a hot subject for discussion owing to the financial scandals like the Enron scandal and Satyam Scandal, highlighting the damaging effects of poor board supervision and accounting fraud.

In modern times, there has been an increasing trend of including ESG factors in the board's duty of care. Boards have started assessing the risks of climate change and other social risks, recognizing them as material business risks that may impact shareholders[10].

[7] David Vogel, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (Brookings Institution Press 2005) 67

[8] Mark Anner, 'Binding Power: The Sourcing Squeeze, Workers' Rights, and Building Safety in Bangladesh' (2018) 10 *International Labour Review* 45

[9] Organisation for Economic Co-operation and Development, *OECD Principles of Corporate Governance* (OECD Publishing 2015)

[10] Beate Sjåfjell and Benjamin Richardson, *Company Law and Sustainability* (Cambridge University Press 2015) 103

2. ESG in Cross-Border Mergers and Acquisitions

2.1 Transformation of Traditional Due Diligence

Previously, cross-border M&A due diligence only included financial valuations, tax structures, intellectual property, contractual liabilities, compliance with competition law, and operational efficiency. Due diligence for transactions was primarily conducted to discover any business risks that might impact the profitability or legality of the transaction[11]. Nonetheless, the development of sustainable governance and transnational corporate accountability has broadened the scope of due diligence requirements.

Due to globalization, multinational companies now conduct their businesses using extremely fragmented supply chains operating in countries with different environmental regulations, worker rights, and systems of governance. As such, financial due diligence is no longer sufficient in determining any risks that may affect the stability of the transaction since it cannot account for environmental risks, human rights issues, climate change, corruption, and reputational risks[12].

Thus, the adoption of ESG principles during M&A due diligence marks a fundamental departure from viewing corporate value from a shareholder perspective to a stakeholder-based approach that prioritizes sustainability and ethical management. In ESG due diligence, it is no longer enough for the acquirer company to focus on the financial returns but rather look at the wider impacts on the environment and society resulting from the target company's operations[13]. This trend has gained momentum due to increased government regulation and pressure from investors. Institutional investors and sovereign wealth funds are beginning to see that the ESG performance of companies plays a critical role in their sustainability. This has led to the incorporation of sustainability indicators within investment frameworks.

2.2 ESG Risk Assessment in Cross-Border Transactions

The risk assessment process in relation to ESGs in cross-border M&As entails the identification and measurement of environmental risks, labour risks, governance risks, climate risks, and supply chain compliance risks in connection with the targets. Unlike regular due diligence, which is mostly concerned with the present situation, ESG risk assessment centers on

[11] Dennis J Block, Nancy E Barton and Stephen A Radin, *The Business Judgment Rule* (6th edn, Wolters Kluwer 2019) 1450
[12] John Elkington, *Cannibals with Forks: The Triple Bottom Line of 21st Century Business* (Capstone 1997) 72
[13] Gunnar Friede, Timo Busch and Alexander Bassen, 'ESG and Financial Performance: Aggregated Evidence from More than 2000 Empirical Studies' (2015) 5 *Journal of Sustainable Finance & Investment* 210

sustainability risks that can give rise to regulatory liabilities, litigation, reputation risks, and operational risks[14].

Typical elements that go into environmental risk assessment include carbon footprint, environmental litigations, hazardous waste management, climate risk disclosure, and compliance with national and international environmental laws. The social aspect of the due diligence process covers such aspects as labour laws, discriminatory practices in the workplace, human rights compliance, employee safety and health practices, and consumer protection.

For example, the impact of ESG risk identification is highlighted in the acquisition-related litigation in Chevron-Texaco Litigation, where environmental liability claims stemming from the pollution by Texaco of its facilities in Ecuador created legal troubles for Chevron after acquiring the firm[15]. Thus, the example underscores the role that ESG risks identified in due diligence can play in generating lengthy lawsuits across nations.

Supply chain-related issues have also underscored the need for social due diligence in multinational business transactions. Firms have been coming under pressure on account of labour practices, working conditions, and violations of human rights standards at facilities located overseas. To protect against such social liabilities, firms involved in acquisitions conduct an exhaustive ESG audit to ensure compliance with human rights standards abroad.

ESG risk management in the modern-day is thus used as a tool to manage liability risk as well as a governance strategy geared toward safeguarding shareholders' long-term interests.

2.3 Regulatory Frameworks Governing ESG Due Diligence

The institutionalization of ESG principles in cross-border M&A governance processes has been profoundly affected by changes in domestic and international regulations that compel firms to undertake certain sustainability obligations. One of the important trends includes the European Union Corporate Sustainability Due Diligence Directive (CSDDD), according to which corporations should assess, prevent, mitigate, and manage negative consequences on the environment and human rights at all stages of business activities and supply chain management[16].

It is evident that CSDDD can be seen as an important change from voluntary measures associated with corporate social responsibility towards binding commitments regarding

[14] Michael Blowfield and Alan Murray, *Corporate Responsibility* (3rd edn, Oxford University Press 2019) 201
[15] *Aguinda v ChevronTexaco Corp* 303 F 3d 470 (2d Cir 2002)
[16] European Commission, Proposal for a Directive on Corporate Sustainability Due Diligence COM (2022) 71 final

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sustainable development of organizations[17]. Moreover, CSDDD obliges corporations to conduct elaborate due diligence and allows holding companies liable if they are not able to prevent any damage to the environment or human rights.

Likewise, the Duty of Vigilance Law was passed in France in 2017, making it mandatory for large companies to implement vigilance plans for risk identification and mitigation in connection with subsidiaries and their supply chains in regard to both environmental and human rights issues[18]. This act now forms the backbone of the human rights due diligence legislation across jurisdictions around the world.

On the other hand, ESG governance in India has progressed as a result of statutory and regulatory developments in the form of Companies Act, 2013, and the BRSR framework introduced by SEBI. Section 134(3)(m) of the Companies Act, 2013 imposes a duty on the part of companies to disclose matters relating to energy conservation and sustainable practices. Meanwhile, BRSR obliges listed entities to provide information in connection with risks, governance measures, and sustainability performance metrics related to ESG issues.[19]

As can be seen from above, the connection between corporate governance, sustainable development regulation, and transnational commercial dealings is getting closer day by day.

2.4 ESG and Fiduciary Duties in Corporate Governance

The increasing integration of ESG factors in corporate governance has had profound implications for the concept of fiduciary obligations of directors. Traditionally, the directors' obligations focused mainly on maximizing shareholder value and ensuring financial gains. Yet, modern corporate governance has evolved such that long-term shareholder value can no longer be viewed independently of environmental sustainability, corporate governance, and stakeholder well-being.[19]

Judicial and regulatory bodies have come to accept that environmental hazards, climate change vulnerabilities, labor disputes, and corporate governance problems are among the major material risks in a business that can affect its profitability and legitimacy. Failure by directors to consider ESG matters may thus result in charges of negligence, breach of fiduciary duty, or insufficient disclosures.

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[17] French Commercial Code, art L 225-102-4

[18] Securities and Exchange Board of India, 'Business Responsibility and Sustainability Reporting by Listed Entities' (SEBI Circular, 10 May 2021)

[19] Lynn Stout, *The Shareholder Value Myth* (Berrett-Koehler Publishers 2012) 56

It was further emphasized in the case of Milieudefensie v Royal Dutch Shell plc, in which the district court of The Hague successfully tied up corporate climate duties with more general corporate governance obligations[20]. It was evident from the ruling that corporate boards have binding obligations to manage their organizations' affairs in line with international standards of sustainability.

The same is also clear in Vedanta Resources Plc v Lungowe, where the Supreme Court of the United Kingdom made it clear that parent companies have the legal duty to care about the environmental and human rights violations committed by their subsidiaries overseas[21].

In other words, the development of the concept of fiduciary obligation is part of a larger jurisprudential trend towards sustainable corporate governance, whereby board members are required to weigh financial performance against environmental stewardship and ethical accountability.

Integrated Arguments and Counterarguments

3.1 Strategic Advantages of ESG Integration in Cross-Border M&A

The adoption of ESG considerations within cross-border M&A deals has become a necessity that has the potential to increase sustainability, enhance investor trust, and improve deal security. By adopting ESG practices, the buying entity can uncover risks which are usually not captured through financial due diligence, such as environmental damage, worker exploitation, poor governance, and reputation risks.[22]

In today's global business environment, the reputation of firms plays an integral role in their valuation. Investors, institutions, and regulatory bodies consider the sustainability performance and good governance of companies when making assessments on top of financial results. Therefore, ESG-compliant transactions often come with a better reputation within the market.[23]

It is even more apparent in environmentally sensitive acquisitions that the importance of ESG due diligence cannot be overstated. Inadequate evaluation of any environmental liabilities might lead to significant financial repercussions as well as international litigation for the corporations making acquisitions. One such example includes the Chevron-Texaco Litigation case, in which Chevron had to deal with lawsuits for many years due to the dumping of

[20] *Milieudefensie v Royal Dutch Shell plc* (Hague District Court, C/09/571932, 26 May 2021)
[21] *Vedanta Resources Plc v Lungowe* [2019] UKSC 20
[22] Michael Blowfield and Alan Murray, *Corporate Responsibility* (3rd edn, Oxford University Press 2019) 215
[23] Robert G Eccles, Ioannis Ioannou and George Serafeim, 'The Impact of Corporate Sustainability on Organizational Processes and Performance' (2014) 60 *Management Science* 2835

hazardous waste attributed to its operations in the Ecuadorian Amazon region[24]. The case highlighted the fact that the environmental liabilities taken over in any acquisition could prove to be problematic for the corporation over many years to come.

On the other hand, proper ESG integration practices may positively impact the valuations and attractiveness of corporations. Many institutional investors tend to favor corporations with strong sustainability governance since ESG compliance signals long-term stability and low regulatory risk to investors. As such, sustainable business practices have been elevated from moral issues to tangible economic factors affecting investments worldwide[25].

Lastly, an ESG integration process would help with the smooth transition after mergers and acquisitions by ensuring compatibility of governance, labor policies, and sustainability goals in both corporations.

3.2 ESG as a Fiduciary and Governance Imperative

Integration of ESG in cross-border M&A activities has completely revolutionized the way directors' fiduciary responsibilities are perceived and understood. Fiduciary responsibilities have traditionally been understood in terms of maximizing shareholder wealth. It is now recognized, however, that in today's context, the idea of maximizing shareholder wealth cannot be divorced from issues such as environmental sustainability, social responsibility, and good governance[26].

The judicial evolution towards recognizing the significance of considering such risks as environmental degradation, exploitation of labour, corruption, and poor governance in decision making indicates the increasing importance accorded to the issue of ESG.

This change has been facilitated by judicial innovations in various jurisdictions. First, in the case of Milieudefensie v Royal Dutch Shell plc, the District Court of the Hague found that multinational corporations have an autonomous duty to decrease greenhouse gas emissions in line with international climate targets[27]. Thus, it incorporated the corporate climate responsibility into the sphere of corporate governance. This decision has greatly broadened the horizon of fiduciary responsibility, acknowledging that climate governance constitutes a legal requirement as opposed to being an ethically motivated practice.

Second, in Vedanta Resources Plc v Lungowe, the UK Supreme Court held that multinational

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[24] *Aguinda v ChevronTexaco Corp* 303 F 3d 470 (2d Cir 2002)

[25] Gunnar Friede, Timo Busch and Alexander Bassen, 'ESG and Financial Performance: Aggregated Evidence from More than 2000 Empirical Studies' (2015) 5 *Journal of Sustainable Finance & Investment* 210

[26] Lynn Stout, *The Shareholder Value Myth* (Berrett-Koehler Publishers 2012) 63

[27] *Milieudefensie v Royal Dutch Shell plc* (Hague District Court, C/09/571932, 26 May 2021)

parent companies are under an enforceable duty to protect individuals from environmental and human rights violations perpetrated by their foreign subsidiaries[28].

Similarly, constitutional environmental jurisprudence has been instrumental in broadening the scope of accountability in corporate law within India. The judgement in the case of M.C. Mehta v Union of India has established that the preservation of the environment is one of the fundamental rights guaranteed under Article 21 of the Constitution of India[29]. This jurisprudence also serves to enhance ESG management through an association of environmental issues with constitutional and public interests considerations.

This development has led to ESG management becoming an integral aspect of M&A transaction in India.

3.3 Challenges of ESG Integration in Cross-Border Transactions

Despite its critical importance, there exist several legal and practical obstacles to ESG integration in cross-border M&A deals. One of the most prominent problems stems from the presence of fragmented regulation. Countries implement various ESG disclosure regimes, sustainability-related legislation, labor policies, and environmental protection laws, thus posing complications in terms of due diligence processes and post-merger compliance management[30]. While the EU implements relatively strict ESG disclosure and due diligence rules under the CSDDD framework, other developing jurisdictions continue to rely on relatively lax regulatory regimes. Such a disparity may pose regulatory compliance issues for multinational firms that operate in multiple jurisdictions.

One more problem that poses difficulties for ESG integration is the issue of greenwashing. In this regard, corporations often tend to engage in deceptive sustainability marketing efforts and misreporting practices in an attempt to enhance their reputation and attract investments. Given the lack of uniform ESG reporting guidelines, companies can resort to selective disclosure procedures and inconsistent sustainability ratings[31].

The problem of greenwashing becomes especially important during the process of mergers and acquisitions because, through due diligence, corporations acquire inaccurate information about their sustainability performance. This may lead to lawsuits, regulatory inquiries, disputes between shareholders, and reputation damage after a deal is completed.

[28] *Vedanta Resources Plc v Lungowe* [2019] UKSC 20
[29] *M.C. Mehta v Union of India* (1987) 1 SCC 395
[30] Beate Sjåfjell and Benjamin Richardson, *Company Law and Sustainability* (Cambridge University Press 2015) 144
[31] Virginia Harper Ho, 'Modernizing ESG Disclosure' (2020) 2020 *University of Illinois Law Review* 277

Moreover, the expenses connected with the assessment of the ESG performance of businesses might be especially high for smaller companies. Indeed, an exhaustive ESG evaluation presupposes the application of comprehensive auditing, the establishment of sustainability reporting, compliance review, and stakeholder engagement. This could substantially increase the cost of M&A deals. In turn, critics maintain that overly strict ESG regulations may become non-tariff trade barriers for foreign investors in developing countries[32].

However, this list of potential issues related to ESG governance does not undermine its importance. On the contrary, it underlines the need for well-established norms of ESG practices.

3.4 Greenwashing, Litigation Risks, and Regulatory Enforcement

With the emergence of ESG governance, there is an increasing possibility of legal action as well as enforcement actions with regards to ESG. There is now increased exposure to the risk of legal liability in relation to misrepresentations regarding sustainability disclosure, false environmental claims, and breaches of mandatory human rights due diligence requirements[33]. Environmental "greenwashing" has emerged as a key legal threat for companies in countries with sophisticated sustainability regulations. Legal bodies as well as investors are becoming more proactive when dealing with cases where corporations represent themselves as eco-friendly but operate in contradiction to their own ESG goals.

Another example of judicial enforcement of ESG duties is the Duty of Vigilance regime in France and the La Poste case. In France, the court determined that a company could be held legally liable for failing to take adequate steps in implementing a vigilance plan that prevents any damage to the environment and human rights in global supply chains[34].

Moreover, there has been an expansion in climate litigation. The cases of Urgenda Foundation v State of the Netherlands and Milieudefensie v Royal Dutch Shell plc exemplify how courts are increasingly willing to hold both states and corporations liable for climate obligations[35]. Collectively, the cases demonstrate that courts increasingly consider climate governance to be a legally enforceable element of corporate responsibility.

Therefore, ESG litigation risks have become an important factor in cross-border M&A deals.

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[32] John Gerard Ruggie, *Just Business: Multinational Corporations and Human Rights* (WW Norton & Company 2013) 189

[33] Suzanne Kim, 'ESG Litigation and Corporate Accountability' (2022) 48 *Delaware Journal of Corporate Law* 411

[34] *La Poste Vigilance Litigation* (Paris Judicial Court, 5 December 2023)

[35] *Urgenda Foundation v State of the Netherlands* (Supreme Court of the Netherlands, 20 December 2019)

In M&A deals, acquiring companies increasingly include ESG representations, warranties, indemnifications, and disclosure provisions to protect themselves from liability for sustainability issues.

Thus, the overlap between ESG governance and litigation shows that sustainability governance has been institutionally incorporated into transnational corporate law.

Conclusion

The general applicability of ESG principles in cross-border M&A governance and legal frameworks represents not only a procedural shift but a paradigmatic change in the corporate responsibility philosophy. What was once considered peripheral or voluntary moral obligations have become enforceable legal norms integrated into statutory and judicial frameworks by jurisdictions. Tools like the EU's Corporate Sustainability Due Diligence Directive (CSDDD), France's Duty of Vigilance Law, and India's Business Responsibility and Sustainability Reporting (BRSR) show the legal institutionalization of human rights and sustainability due diligence in transnational business activities. These reflect a clear shift away from corporate philanthropy towards legal compliance. Judicial decisions such as the La Poste and Shell cases have further solidified the binding character of ESG responsibilities, proving that business decision-making in mergers and acquisitions can no longer ignore climate footprint, social good, or governance integrity. Courts more and more consider ESG as not merely aspirational policy but as a key element of fiduciary and legislative obligations. This court validation reinforces the use of due diligence, stakeholder consultation, and transparency in cross-border deals, transforming deal structures and negotiation approaches.

Yet, despite challenges like regulatory fragmentation, disparate disclosure practices, the lingering presence of greenwashing, and possible short-term economic costs to business, transitional barriers impede smooth implementation. These bars, however, are transitional in nature, typical of a developing legal environment making every effort to converge profit and principle. With jurisdictions moving ESG standards towards convergence in multilateral frameworks, international agreements, and corporation governance revisions, a globalized ESG regime is gradually taking shape.

The future of M&A law therefore lies in the incorporation of ESG as a substantive standard one that moves beyond the overly technical boundaries of compliance and enters the territory of corporate identity and legitimacy. ESG-driven M&A transactions will more and more set investor confidence, corporate valuation, and reputational capital in the global market. Finally, this change guarantees that cross-border mergers and acquisitions become tools of sustainable development, responsible capitalism, and intergenerational fairness, reconciling business needs with the wider moral and environmental needs of the 21st century.