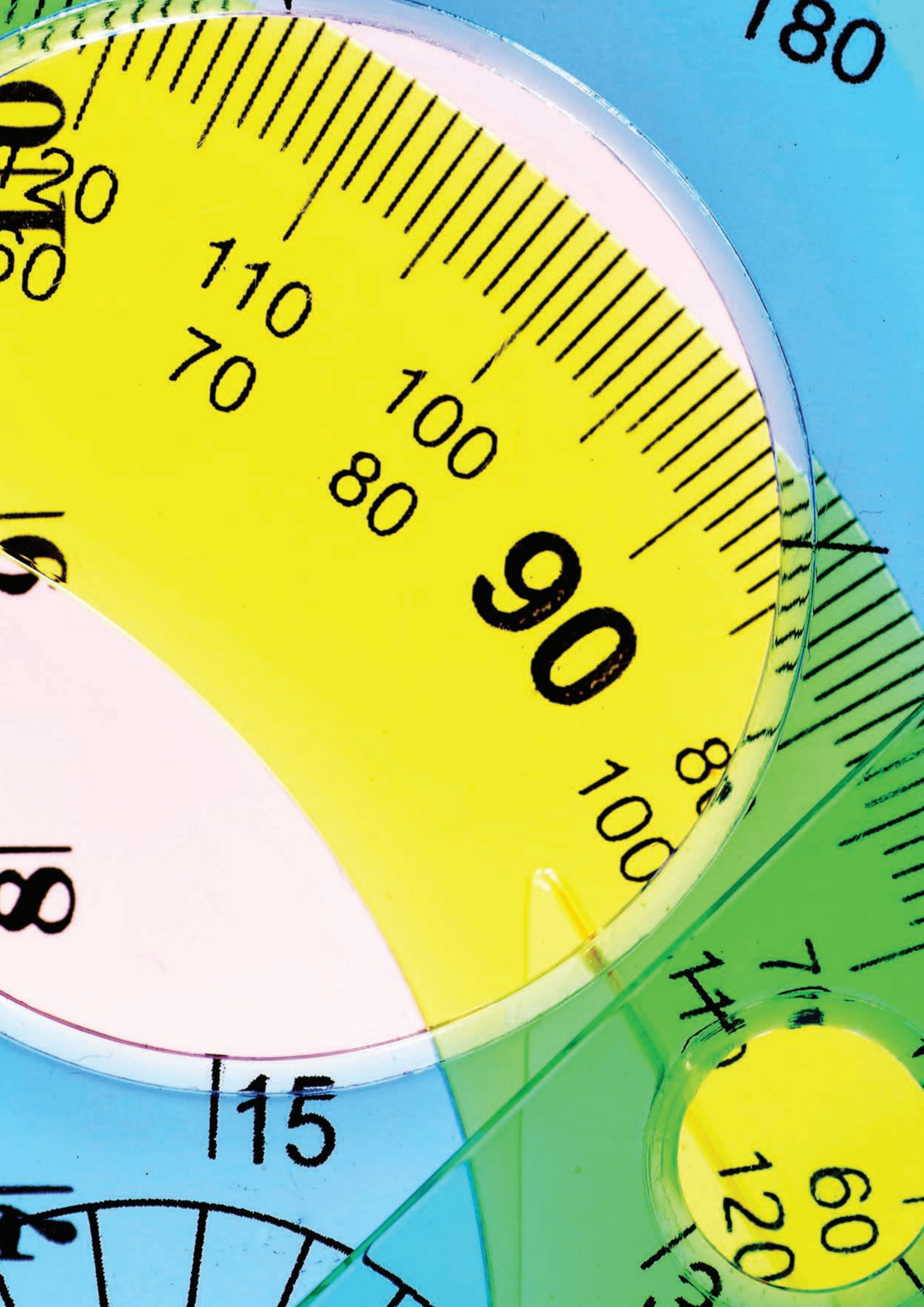
WHITE & CASE

Human rights benchmarks: Corporate performance rankings on the rise

What businesses need to know for a strategic approach



180
110
70
100
80
90
100
15
120
60

Human rights benchmarks: Corporate performance rankings on the rise

What businesses need to know for a strategic approach

By Clare Connellan, Jacquelyn MacLennan, Owen Pell, Tallat Hussain, Emily Holland, Margaret Spicer, Allison Kepkay, Shannon Lane

In an increasing number of sectors, companies' operations and disclosures are publicly evaluated by "benchmarks" that compare their performance on human rights and recognized environmental, social and governance (ESG) issues.

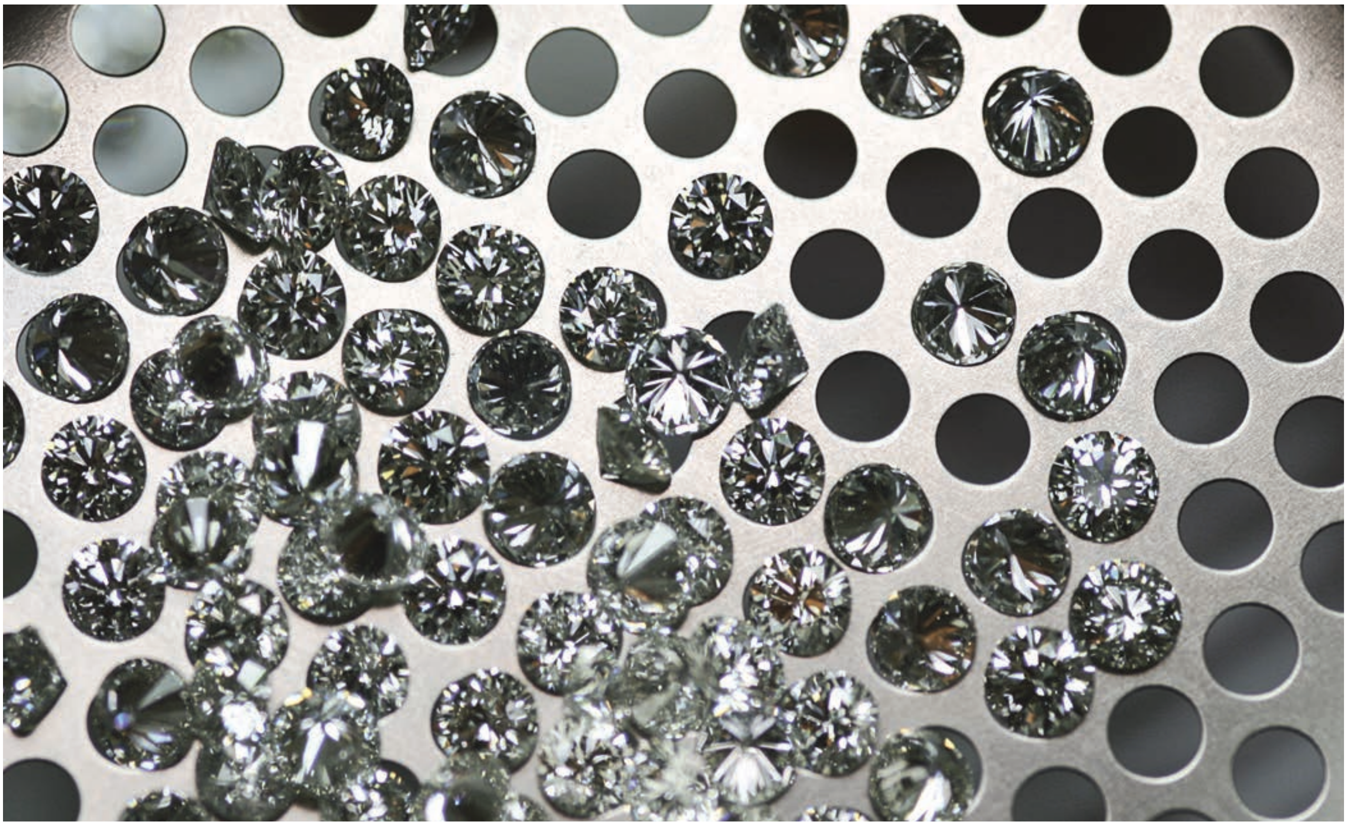
Human rights and ESG benchmarks are public rankings or analyses—typically based on publicly available information—produced by civil society or non-governmental organizations (NGOs), foundations, investor groups and others, notably civil society organizations with funding from governments and investors. Benchmarks such as the Corporate Human Rights Benchmark (CHRB), KnowTheChain (KTC) and Ranking Digital Rights (RDR) aim to provide transparent data on corporate performance and disclosures to enable better decision-making, including by the investment community. The benchmarks consider specific human rights and ESG issues, review how companies respond to perceived human rights and ESG risks, help businesses identify gaps in their compliance efforts and provide information to a range of stakeholders, including some who may use this data to pressure companies to change their business approaches.

To many businesses, human rights and ESG benchmarks can seem onerous, overly confusing and thus highly tempting to ignore. But given the trend toward greater corporate transparency—and the growing use of these benchmarks in assessing corporate performance—ignoring them is rarely a viable option.

Several different audiences, including investors and financial managers,[1] pay attention to human rights and ESG benchmark rankings. By understanding more about benchmarks and working with inside or outside counsel, companies may exercise some control over benchmark results.

In addition, businesses can benefit from thoughtful engagement with benchmarking organizations for both research and methodology. Company engagement may help create methodologies that better reflect business realities, and the benchmark methodologies themselves may provide useful frameworks for internal use, even for companies that are not being ranked.

> **Even if benchmarks do not yet directly impact your industry, they signal important changes, with increasing implications for legal risk, corporate brand management and access to capital.**



THE BUSINESS CASE FOR UNDERSTANDING HUMAN RIGHTS AND ESG BENCHMARKS

Some companies are skeptical about engaging with human rights and ESG benchmarking because they question whether human rights and ESG disclosures and compliance have a direct economic effect on their bottom line. Some businesses and/or legal counsel are wary about the potential for litigation targeting their statements on human rights commitments. On the other hand, a lack of disclosure on human rights and ESG issues poses risks—as evidenced by the intense scrutiny, and in some cases litigation, that companies have faced around climate-related risks in the United States, the UK and other countries.

Businesses also criticize aspects of the approaches that some benchmarks follow, such as how to credit appropriately or differentiate companies that attempt to be more ambitious on human rights issues. In addition, some companies find engagement difficult when the major benchmarks are themselves still changing in an evolving landscape of corporate human rights compliance.

At the same time, benchmarks are expanding to include ever more companies and industries and, in many cases, can provide data-driven insights to support corporate strategy and management as well as visibility to stakeholder audiences that follow benchmark rankings.

Paying careful attention to the areas that benchmarks assess can help your business make informed decisions regarding disclosures, corporate governance, due diligence, compliance systems, training, crisis management and stakeholder engagement.

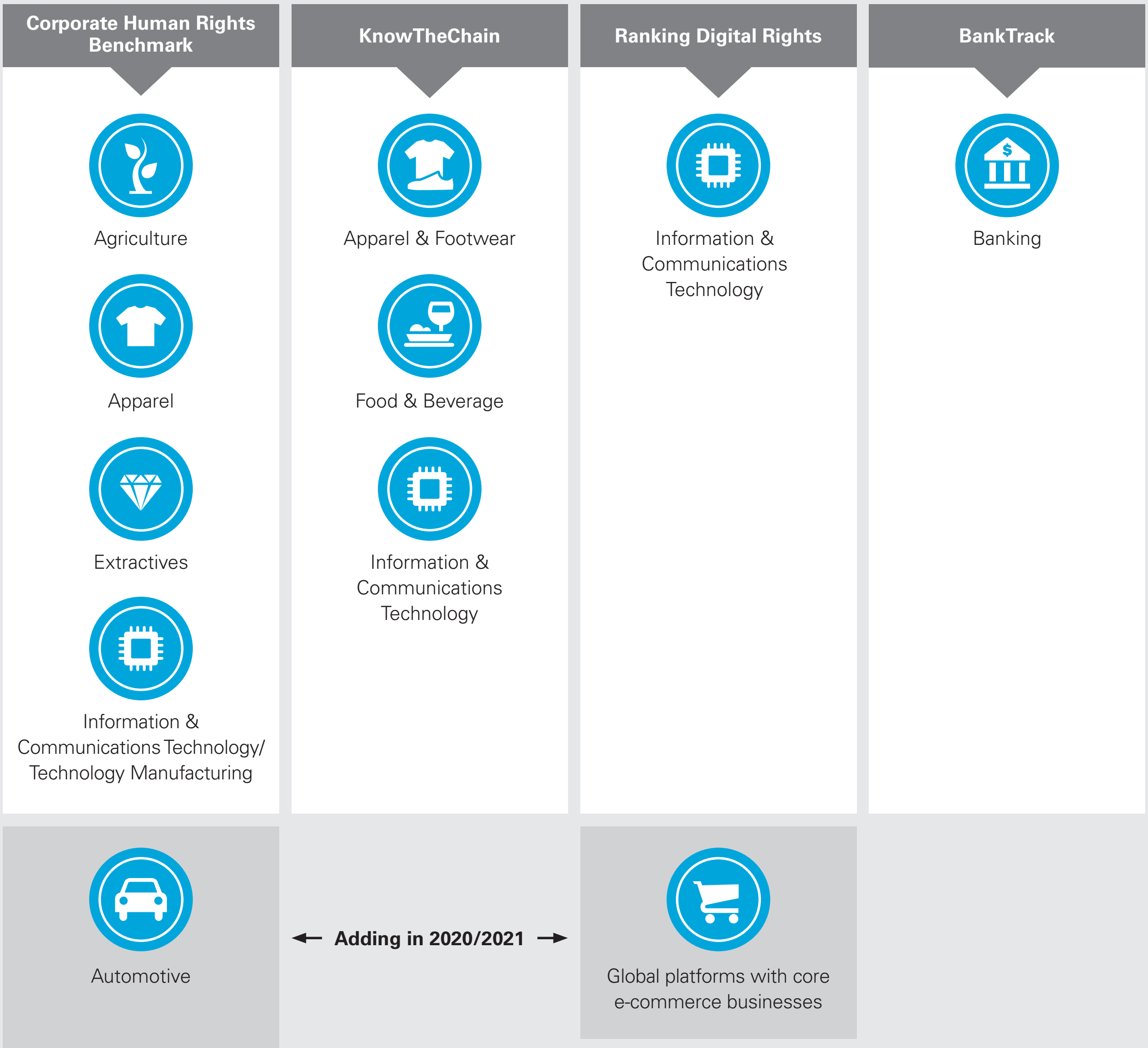
Benchmark data supports internal business management

Benchmarks can provide evidence-based insights to inform internal analyses, flag current or potential risks, assist companies in operationalizing how they assess potential risks and deliver quantitative comparisons with corporate peer groups. Over time, reviewing benchmark data can help executives better grasp where problems lie in operational areas and supply chains. That creates an opportunity to improve efficiency and train personnel to spot risk management issues more quickly. Benchmark information can also support the incremental evolution of a company's human rights compliance program, including human rights risk and impact assessments, development of coherent policies and procedures, governance reform, improved transparency on human rights topics and implementation of grievance mechanisms.

> “
> **Benchmarks are expanding to include ever more companies and industries.**

According to Kilian Moote, Project Director for KTC, which produces a benchmark focused on forced labor

WHICH SECTORS DO THE LEADING BENCHMARKS ASSESS?



and human trafficking in supply chains, benchmarks are a means to an end: "The most productive response from a benchmarked company should not be 'How do we respond to the benchmark?' Rather, companies should ask 'Do we understand the issues, and are our procedures appropriate to address those issues, understand the impacts of our programming and talk about our efforts?'"

Another major benchmark, the CHRB, assesses companies on six themes—governance and policies, embedding respect and human rights due diligence, remedies and grievance mechanisms, human rights practices, response to serious allegations (defined below) and transparency—and how companies' approaches to each align with the UN Guiding Principles on Business and Human Rights (UNGP). Endorsed by the UN Human Rights Council in 2011, the UNGP are the first global, governmentally agreed standard that provides human rights guidelines applicable to all business enterprises and furnishes a global framework around which international practices and policies are converging. The UNGP form the basis for many human rights benchmarks and human rights disclosure and compliance regulatory requirements. Legislation and regulations, including (but not limited to) the UK Modern Slavery Act (MSA), California Transparency in Supply Chains Act (CATSCA) and France's Duty of Vigilance Law, all establish an expectation by governments that companies implement the UNGP.

DISCLOSURE-BASED BENCHMARKS

Evaluate whether legally mandated corporate statements exist and whether they comply with minimum disclosure requirements, and/or best and emerging practices.

ISSUE-SPECIFIC BENCHMARKS

Gauge corporate performance on specific human rights and sustainability issues against a variety of indicators, including established human rights and sector-specific standards and norms.

Examples include:

The Modern Slavery Registry[2] tracks and collects corporate statements to comply with the UK Modern Slavery Act (MSA) and California Transparency in Supply Chains Act (CATSCA). The registry benchmarks the MSA statements of companies in the FTSE 100 and furnishes information on their reporting practices, which has reportedly influenced change among some companies

Reports from NGOs, such as **Development International**[3] and the **ENOUGH Project**,[4] assess CATSCA statements and disclosures and diligence conducted pursuant to Section 1502 of the US Dodd-Frank Wall Street Reform & Consumer Protection Act (the US Conflict Minerals Rule)

KnowTheChain[5] **(KTC)** measures corporate policies and practices to mitigate the risk of forced labor and human trafficking in companies' supply chains, as well as corrective action plans, remediation programs and responses to forced labor allegations. KTC currently focuses on the apparel & footwear, food & beverage, and information and communications technology (ICT) sectors

Behind the Brands[6] produces scorecards on the agricultural sourcing policies of large food and beverage companies across several themes that impact food security

CDP[7] (formerly the Carbon Disclosure Project) scores major businesses on environmental performance, including with respect to climate change, water security and deforestation

Oxfam International's Supermarket Scorecard[8] measures companies' publicly available food supply chain policies, commitments and actions

Fashion Revolution's Fashion Transparency Index[9] assesses global fashion brands and retailers on social and environmental disclosures

Access to Medicine[10] analyzes pharmaceutical companies' provision and pricing of medicines

Access to Nutrition[11] scores food and beverage manufacturers on their contributions to good nutrition

What do human rights and ESG benchmarks measure?

Benchmarks focus on human rights, labor rights, political rights, "digital rights" (human rights in the Internet era) and wider sustainability efforts. They generally review corporate statements on policies and processes, how companies manage their processes, and corporate responses to human rights and/or environmental complaints. Several different types of benchmarks exist.

What *isn't* a human rights benchmark?

(For this purpose)

Many other groups evaluate and analyze trends with respect to human rights, but don't rank aspects of corporate performance, including:

Related assessments, reporting platforms and indices—such as the UNGP Reporting Framework,[17] the Global Reporting Initiative (GRI) Sustainability Reporting Framework[18] and Vigeo Eiris[19] assessments

Reports by membership-based organizations—such as the Ethical Trading Initiative[20] (ETI) and Global Network Initiative[21] (GNI)

Indices and ratings developed and made available by commercial companies for a fee to help investors construct a portfolio that is broadly aligned on ESG criteria—such as products from MSCI,[22] RepRisk,[23] RobecoSAM,[24] Sigwatch,[25] Sustainalytics[26] and ZSL SPOTT[27]

PROGRAM-FOCUSED BENCHMARKS

Evaluate corporate disclosures, internal systems and external business processes against established human rights standards and sector-specific standards and norms.

Corporate Human Rights Benchmark[12] (CHRB) assessed approximately 200 large, publicly traded global companies in the agricultural products, apparel, extractives and ICT/technology manufacturing sectors in 2019. The CHRB plans to add rankings for the automotive sector in 2020

BankTrack[13] assessed 50 of the largest private sector commercial banks globally in 2019 using criteria based on the UNGP requirements, following 2016 and 2014 benchmarks, which ranked them on their human rights policy commitments, due diligence, reporting and approach to access to remedy

Ranking Digital Rights[14] (RDR) evaluates the disclosed commitments and policies of dozens of the world's largest Internet, mobile and telecommunications companies (including the parent company, operating company and selected services) affecting freedom of expression and privacy of Internet users worldwide. RDR asks whether a company offers clear, accessible complaint mechanisms that enable users to seek a remedy if they feel the company's actions violated their rights to freedom of expression or privacy

The Responsible Mining Foundation's Responsible Mining Index[15] assesses large, global mining companies' activities in six economic and ESG areas: economic development, business conduct, life cycle management, community well-being, working conditions and environmental responsibility

The World Benchmarking Alliance[16] (WBA) measures sustainability performance and contributions toward achieving the UN Sustainable Development Goals (SDGs). The WBA and the CHRB have long been linked, and the CHRB is in the process of becoming part of the WBA. The WBA developed a Climate and Energy benchmark to assess the climate action performance of companies in the oil & gas, electric utilities and automotive sectors, and plans to release rankings addressing the automotive sector. The WBA also recently launched the Sustainable Seafood Index, focusing on leading seafood companies' contributions to sustainable management of oceans and coastal ecosystems. It plans to assess 2,000 keystone actors on social elements, including human rights, building on the CHRB core UNGP indicators

The 2019 CHRB rankings revealed that only a handful of companies made demonstrable progress in aligning their systems to the UNGP, while most companies scored well below the leaders (50 percent of benchmarked companies scored less than 20 percent overall), and some companies did not engage at all. Those that improved their scores year-on-year, though, tended to be companies that meaningfully engaged with the CHRB.

Two elements seem to have contributed to the highest and lowest CHRB corporate scores in 2019: (i) responses to so-called "serious allegations" (a measurement theme focused on responses to significant allegations from external sources) and (ii) corporate governance and policies. According to the CHRB's 2019 Key Findings Report, "of the almost 150 allegations reviewed, in only 3 percent of cases do the companies show that they provided remedy that was satisfactory to the victim."[28]

RDR focuses on data privacy issues at 24 of the world's most powerful Internet, mobile ecosystem and telecommunications companies. In 2019, the RDR Corporate Accountability Index revealed that, despite some improvements, most companies still do not adequately inform consumers about data collection and sharing practices, lack transparency with respect to data requests and content removal, and fail to anticipate and manage privacy and expression-related risks associated with business models and new technologies.

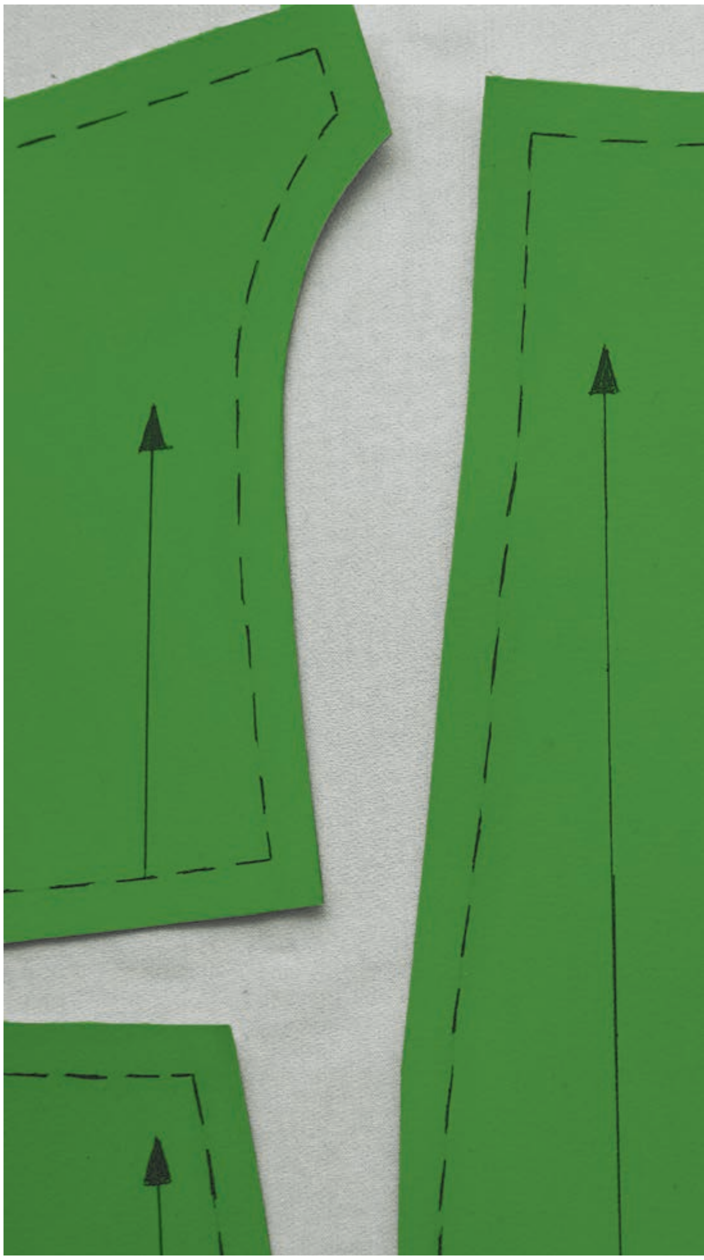
BankTrack's 2019 Human Rights Benchmark indicates that four out of five of the 50 largest private commercial banks are "failing" on human rights, having implemented less than half of the UNGP requirements. According to BankTrack: Most banks' reporting covers only internal policy developments (not key human rights risks, specific impacts or related indicators); no banks have established or participated in effective grievance mechanisms for individuals affected by financing impacts; just over one-fifth of assessed banks demonstrate senior-level sign-off on policy commitments; and none communicate how their efforts lead to improvements for rights-holders. The average score of benchmarked banks in 2019 was 28.6 percent, up just slightly from 28.3 percent in 2016.

Investor interest drives much of the current emphasis on benchmarking

Investors, lenders and other stakeholders are hungry for data, and ESG reporting and concerns about social and environmental risks—and corporate management of these risks across global value chains—increasingly drive their decisions. Performing well in benchmarks, when combined with corporate disclosure regimes, can improve a company's access to capital, particularly from investor groups that use benchmark results in their investment decisions.

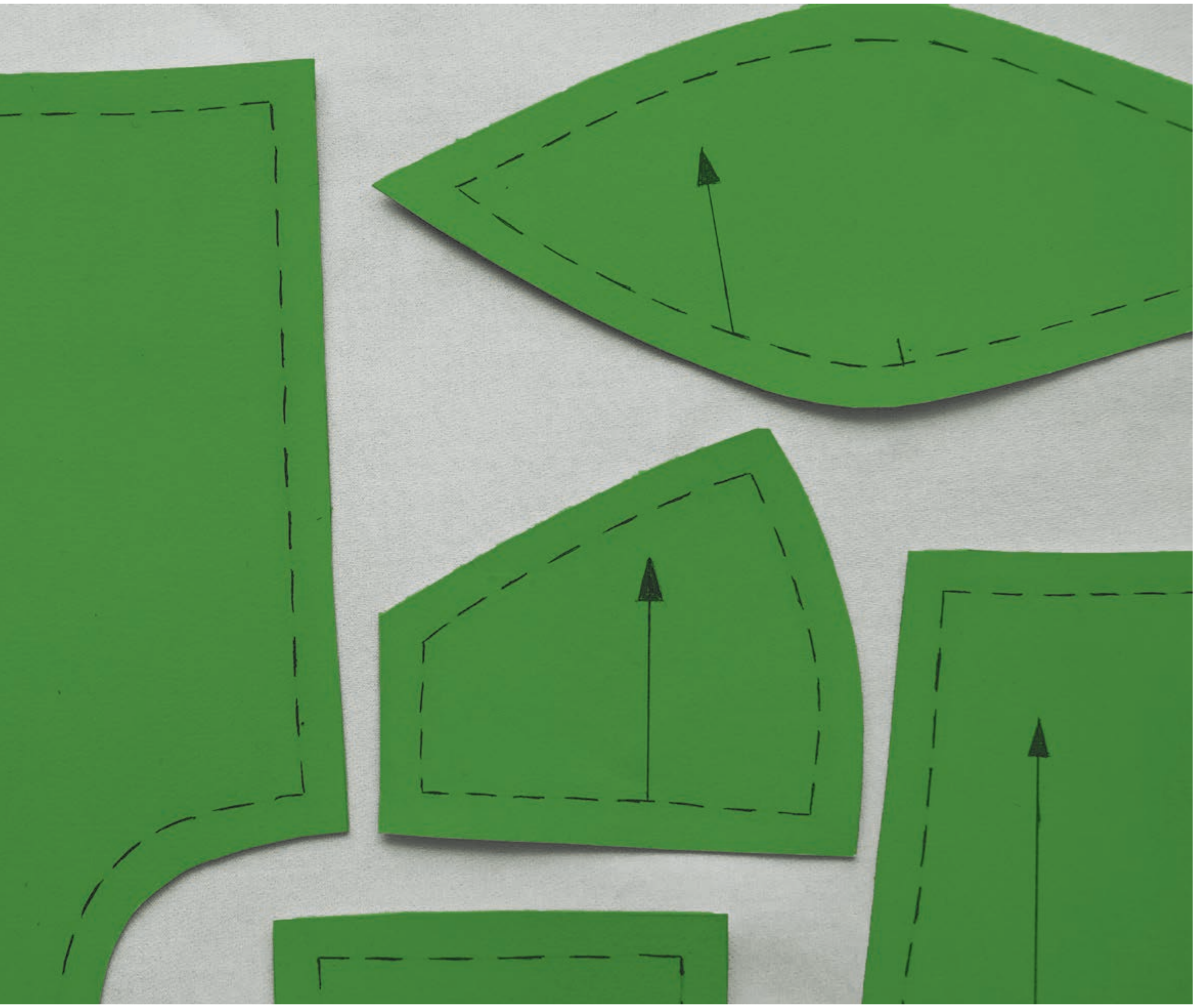
Accustomed to reviewing financial and other information from ratings agencies, many investors view benchmarks as a type of rating with ESG data and increasingly use ESG-related criteria to evaluate companies as investment prospects. As legally required and voluntary disclosure and transparency obligations grow, investors are likely to become even more accustomed to including benchmark rankings in their decision-making. Lenders also may be committed to considering environmental and human rights in their financing decisions by their adherence to the Equator Principles, a risk management framework used by financial institutions to assess and manage environmental and social risks in project finance.

Eric-Paul Schat, Senior Director of Sustainability, Environmental Health & Safety at NXP Semiconductors, describes benchmarking as a "critical information that helps investors make decisions, which of course depends on the context." Raul Manjarin, a sustainability expert at Credit Suisse, says he informs his due diligence analysis by using information from multiple sources and reviewing transaction-specific documentation (such as environmental and social impact assessments), answers to sustainability questions sent directly to companies, and corporate policies, commitments, certifications and documented capacity and performance.



"

Benchmarks can provide data-driven insights to support corporate strategy and management.



As more investors promote human rights and practice responsible business conduct in their own operations, they will become even more likely to turn to benchmarks to assess their potential investments. Some benchmarks have enlisted investors to identify companies and sectors to assess.

For example, KTC has been endorsed by investors representing more than US$4.8 trillion in assets, the majority of whom say they use KTC data to advocate for action with companies. The Investor Alliance for Human Rights highlighted BankTrack's 2019 rankings as providing "critical information" for its members as they engage portfolio banks on aligning their policies and practices to the UNGP.[29] The CHRB, endorsed by the Investor Alliance for Human Rights, collaborates with the Alliance and the UN Principles for Responsible Investment (PRI) on a number of initiatives. According to the CHRB, some investors report integrating the CHRB scores into their automatic voting processes (for example, voting against corporate management at annual general meetings if they score poorly), and investors representing more than US$5 trillion under management wrote to all companies benchmarked by the CHRB in 2016 to ask how they were responding to results. In 2016, when the US Securities and Exchange Commission requested comments on a proposal to require listed companies to report on sustainability and corporate responsibility issues, a number of investor organizations referenced the CHRB and KTC in their comments supporting an ESG reporting requirement.

Shareholders use benchmarks to press for corporate action

According to the CHRB and RDR, a number of shareholder resolutions have used data from these benchmarks to attempt to influence corporate behavior. In 2017, the Australasian Center for Corporate Responsibility formally licensed the CHRB's methodology as a basis for its research into the human rights performance of listed Australian companies and introduced a shareholder resolution at the annual general meeting of a low-performing company, which contributed to the eventual development of an agreement addressing labor in its supply chains. A US shareholder advocacy organization, As You Sow, has called attention to some companies' CHRB and KTC scores as a basis for proposals to pressure corporate boards to report on company processes to identify and analyze human rights risks in their operations and supply chains.

Other entities produce their own benchmarks. For example, a UK shareholder entity, ShareAction, has created a Workforce Disclosure Initiative that asks companies to report data on workforce management and supply chains and provides feedback on their disclosures. At the same time, some companies on the receiving end of these and similar campaigns have relied on strong benchmark scores as evidence that their compliance is sufficient.

Whether or not they expressly reference benchmark data, shareholder human rights resolutions are on the rise. Kraft Heinz Co. implemented a global human rights policy in response to a 2019 shareholder resolution requesting information on the company's process for identifying and assessing human rights risks across its operations and supply chain (the resolution was withdrawn when the company agreed to publish a policy and implement a due diligence process). A similar proposal at Microchip Technology Inc. achieved a majority of votes (51.3 percent). Meanwhile, a proposal that would have required Macy's Inc. to do the same was defeated at the company's annual shareholder meeting with 35 percent voting in favor and 52 percent against.

Benchmarks showcase early-stage results to consumers and regulators

Over time, benchmark results can be a tool that differentiates your business from your competitors among clients, customers and other audiences.

To date, there is little evidence that benchmark scores significantly affect consumer purchasing decisions or lead to immediate consumer boycotts. Still, one stated aim of some benchmarks is to influence how consumers approach socially responsible companies, and several of them are exploring ways to improve consumer literacy on these issues.

The CHRB says it has engaged with a number of governments that have expressed interest in, or applied elements of, the CHRB's methodology in national-level assessments of companies. Within the EU, discussions of EU non-financial reporting and due diligence issues mention the CHRB. Campaigns in certain European countries seek to use an abridged version of the CHRB methodology as evidence of the need for legislation requiring human rights due diligence. The CHRB results also may be influencing some government reviews of National Action Plans (NAPs) on business and human rights (government-led strategies designed to help countries fulfill their responsibility to protect against human rights abuses by third parties, including businesses). The CHRB is providing input on a study assessing potential revisions to Germany's NAP, and the UK has defended its decision to delay its NAP review, in part to allow the CHRB to demonstrate the proof of concept of benchmarks in a mixed-regulatory approach to improving human rights performance. The CHRB argues that without a baseline understanding of corporate implementation of the UNGP, there is little hope of tracking the impact of (or need for) additional regulations, a lesson learned from the lack of oversight of the implementation of the UK MSA.

“

Many investors view benchmarks as a type of rating with ESG data and increasingly use them to evaluate companies as investment prospects.

HOW YOUR HUMAN RIGHTS AND ESG BENCHMARKING SCORES MAY BE IMPROVED

If one or more human rights and ESG benchmarks review—or could soon review—your industry, it may make business sense to participate thoughtfully and/or disclose additional information on current practices, provided that your company has fully explored the impact on its legal or reputational risk profile. Although some aspects of the current benchmarks don't necessarily match actual corporate realities, generally no company wants to end up on the low end of the listings purely as a result of not engaging with benchmarking.

You can potentially improve your benchmark scores simply by ensuring that benchmarks focus on information your company may already be disclosing publicly. Some companies have reported that benchmarks may miss or fail to appropriately take into account information that is, in the company's view, responsive.

Most benchmarks are transparent about the specific documents that will form the basis for their review, and most engage with companies to some degree before they release benchmark scores. Importantly, your company controls which policies, procedures, reports and statements it chooses to implement and publicize. This means you can make sure the benchmarks know what you are doing and thereby exercise some degree of control over your benchmark results. And communication and follow-up with the benchmarks are advisable, where possible.

CURRENT APPROACHES USED BY SPECIFIC BENCHMARKS

Corporate Human Rights Benchmark

200 Large listed companies in Agriculture, Apparel, Extractives and Information & Communications Technology/ Technology Manufacturing sectors

6 Themes
50 Indicators per company
5 Levels within each indicator
66% of CHRB-benchmarked companies engaged with the CHRB during the research cycle

LOOKING AHEAD:

- Adding automotive sector
- Updating methodologies for all sectors
- The CHRB is in the process of becoming part of the WBA
- Next rankings to be published in 2020

KnowTheChain

121 Large listed companies in Apparel & Footwear, Food & Beverage and Information & Communications Technology sectors

7 Themes
23 Indicators per company
77% of KTC-benchmarked companies engaged with KTC during the research cycle

LOOKING AHEAD:

- More companies to be assessed (181)
- Updating methodologies for all sectors
- Next rankings to be published in 2020/2021

Ranking Digital Rights

24 Internet, mobile ecosystem and telecommunications companies

35 Indicators per company
54% of RDR-benchmarked companies engaged with RDR during the research cycle

LOOKING AHEAD:

- Adding more companies (for example, global platforms with core e-commerce businesses)
- Updating methodologies (human rights harms associated with targeted advertising and algorithmic decision-making systems)
- Next rankings to be published in 2021

BankTrack

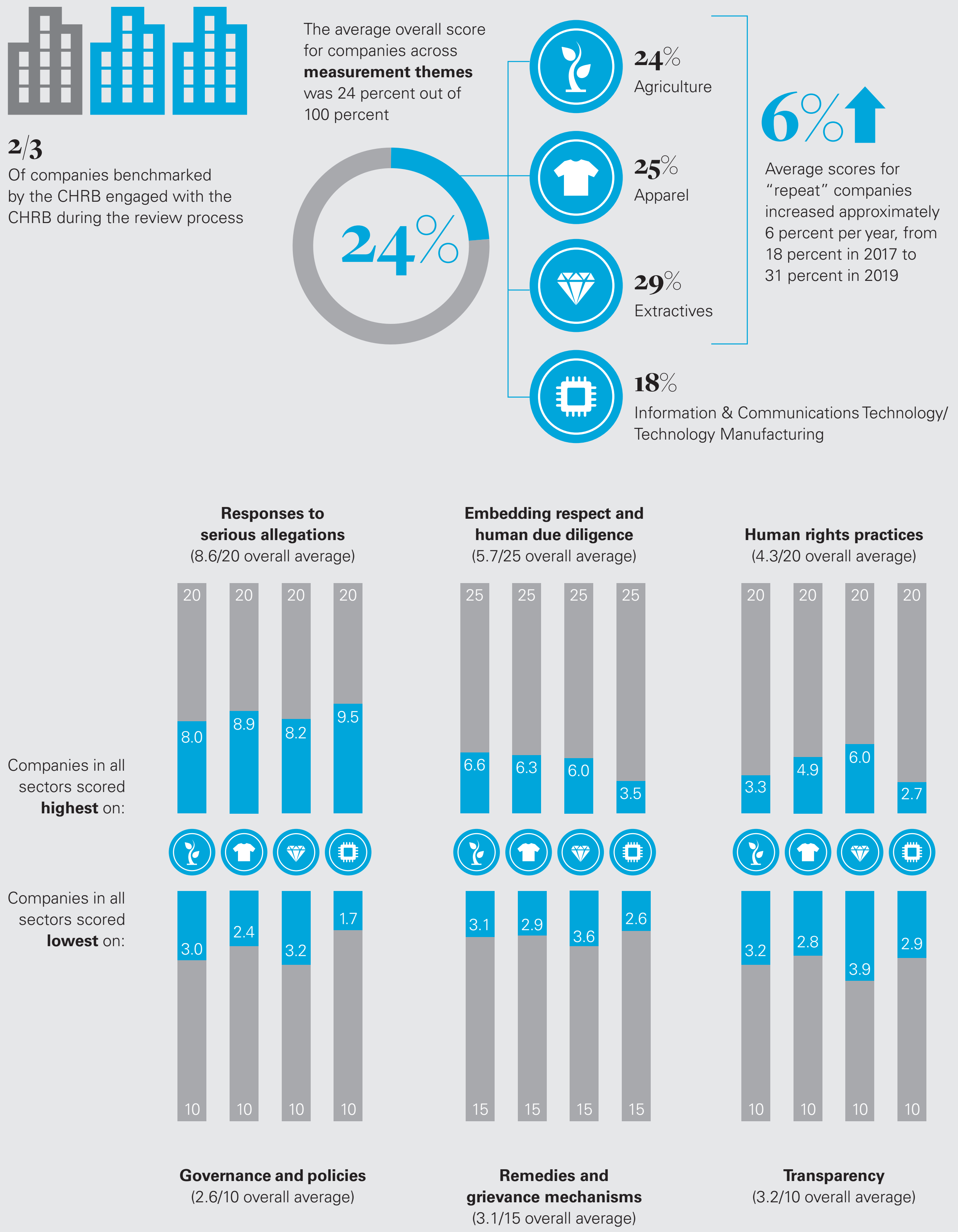
50 Large private commercial banks

14 Indicators per company
58% of BankTrack-benchmarked companies engaged with BankTrack during the research cycle

LOOKING AHEAD:

- Next rankings to be published in 2021/2020

CORPORATE HUMAN RIGHTS BENCHMARK 2019 RANKINGS: KEY FINDINGS



Identify the relevant benchmarks for your company and conduct an internal assessment

Start by finding out which benchmarks are currently reviewing or may soon review your business.

Learn the specific criteria these benchmarks use. Then assess your own operations against these criteria, perhaps also conducting relevant competitor, customer and user analyses.

Benchmarks can only analyze what a company is seen to be doing. They cannot assess or provide a score based on what a company may be doing but chooses not to disclose. According to Amy Brouillette, Research Director at RDR, "We focus on transparency because it is central to accountability: Without a basic level of transparency, neither companies nor the governments that regulate them can be held accountable when violations happen."

Your assessment should focus on priorities such as:

1. Identifying salient human rights risks for your company and/ or industry
2. Improving commitments to respect human rights
3. Identifying necessary due diligence and putting this into operation
4. Engaging with affected stakeholders (rather than passively acknowledging allegations with respect to corporate practices)
5. Introducing remediation mechanisms
6. Increasing transparency in response to reporting and compliance regulatory obligations that complement existing compliance systems

Understand how benchmarks may share your information

The CHRB and KTC have established a Memorandum of Understanding, whereby any information a company shares with one benchmark may be used by the other, which the KTC states may not be known to some companies they assess. Note that the CHRB and KTC base all of their research on publicly available data. They are not sharing confidential information, but rather links to publicly available sources and their interpretations of whether corporate policies and actions meet certain criteria. Doing this speeds up the research process.

Review your company's current public disclosures

You may be able to improve your benchmark scores by focusing on the self-reporting your business already conducts.

Much current benchmarking is based on publicly available information in jurisdictions with mandatory reporting, such as UK MSA and California CATSCA reports required by legislation and Duty of Vigilance reports required in France.

Benchmarks also collect and assess information from a company's website, publicly available policies and codes, regulatory and stock exchange filings, and financial and non-financial reporting. The CHRB conducts additional diligence on corporate responses to allegations regarding human rights violations using media and NGO reports, among other sources.

You can potentially improve the quality of self-reported information with respect to corporate programs and practices, and the disclosure statements that you provide to regulators, through careful, meaningful and strategic transparency, and in so doing improve benchmarks' assessments of your programs, practices and disclosure statements.

Participate in conversations with groups that evaluate your operations

Some benchmarks, like ratings agencies, collect non-public information by engaging with companies before scoring them.

There are benefits to engaging with benchmarks at different stages. For example, a discussion may help to explain specific issues or convey a need to adjust aspects of benchmark methodologies so that the results better reflect business realities. Several benchmarks invite companies to participate in conversations with their research teams at the outset of the process and/or once they award preliminary scores but before they publish the scores. The benchmarks also enable companies to better understand global expectations and how their current approaches may not yet fully align with developing standards.

Authenticity is critical

It is important to mean what you say for benchmarking purposes, including when discussing difficult or problematic areas, such as corporate responses to allegations of negative human rights impacts. Disclosing metrics that demonstrate forward progress can help bolster your company's credibility. However, any statement you make must be verifiable. So carefully consider whether your company can demonstrate that it has the systems in place to deliver globally on any statements it makes, in order to avoid exposure to liability. Legal counsel can help ensure that benchmark submissions are robust, verifiable, aligned to best and/ or market practices and take full account of relevant legal risks.

Harness the results for action

Corporate rankings, particularly when picked up by media outlets, investors and consumers, are helping legal and compliance teams to raise human rights and/or sustainability agendas internally, especially with leadership teams. Ultimately, benchmarking is one aspect of a larger movement to convince companies to respect human rights and address their human rights risks as a business and

UNPACKING DUE DILIGENCE

Developing and implementing a program to identify, address and manage human rights risk in a company's operations and supply chain starts with human rights due diligence. Like other types of due diligence, human rights due diligence must be conducted in a properly considered way. Outside counsel may be needed to protect sensitive materials under applicable legal professional privilege, thus enabling deep-dive investigations and carefully reasoned conclusions.

compliance priority. If a company is benchmarked against its peers and found wanting, this may impact its reputation, attractiveness to investors and ultimately share price or enterprise value. Like antitrust and anti-bribery concerns, a human rights "compliance" issue easily may become a board-level issue.

So what specific steps should a company take as a legal, compliance and business management priority? Here are some tips to keep in mind:

- Leadership from the top is crucial to help your company deliver sufficiently robust and consistent human rights risk management mechanisms globally
- Structured governance is essential to ensure effective implementation and accountability at operational levels
- Policies and procedures should anticipate developments in industry best practices, put in place measures designed to prevent human rights violations linked to operations and furnish a substantive defense to human rights-related claims
- Meaningful stakeholder engagement should take into account and manage diverse sets of perspectives and concerns
- It is critical to set up effective, prompt and appropriate channels for receiving complaints or concerns, to assess the effectiveness of any remedy provided and to embed those findings into a company's overall compliance system
- Understand external factors—including litigation and regulatory enforcement trends, stakeholder expectations and new types of human rights-related claims—so that your business keeps pace with developments in human rights practice
- Mainstream human rights issues into your business decision-making flows and develop goals that are clear-cut, unambiguous, repeatable and achievable at scale across your entire business operations
- Make sure your company fully understands the legal consequences of all compliance and diligence systems that it designs and may choose to make transparent

Looking ahead to the next stage of benchmarking

Human rights and ESG benchmarks look like they are here to stay. However, the field is crowded, and the current landscape can be confusing, with different approaches and standards being applied.

The future of benchmarking could include investors and others melding the data in different ways to inform short-, medium- and long-term decision-making by a variety of stakeholders, and perhaps even the downstream creation of an "index of indices." A 2019 MIT Sloan School of Management report showed that different rating agencies aggregate different ESG data for companies in the same sectors.[30] The upshot may be that investors, and ultimately regulators and exchanges, adopt uniform human rights and ESG disclosure standards to solve the problems of data comparability.

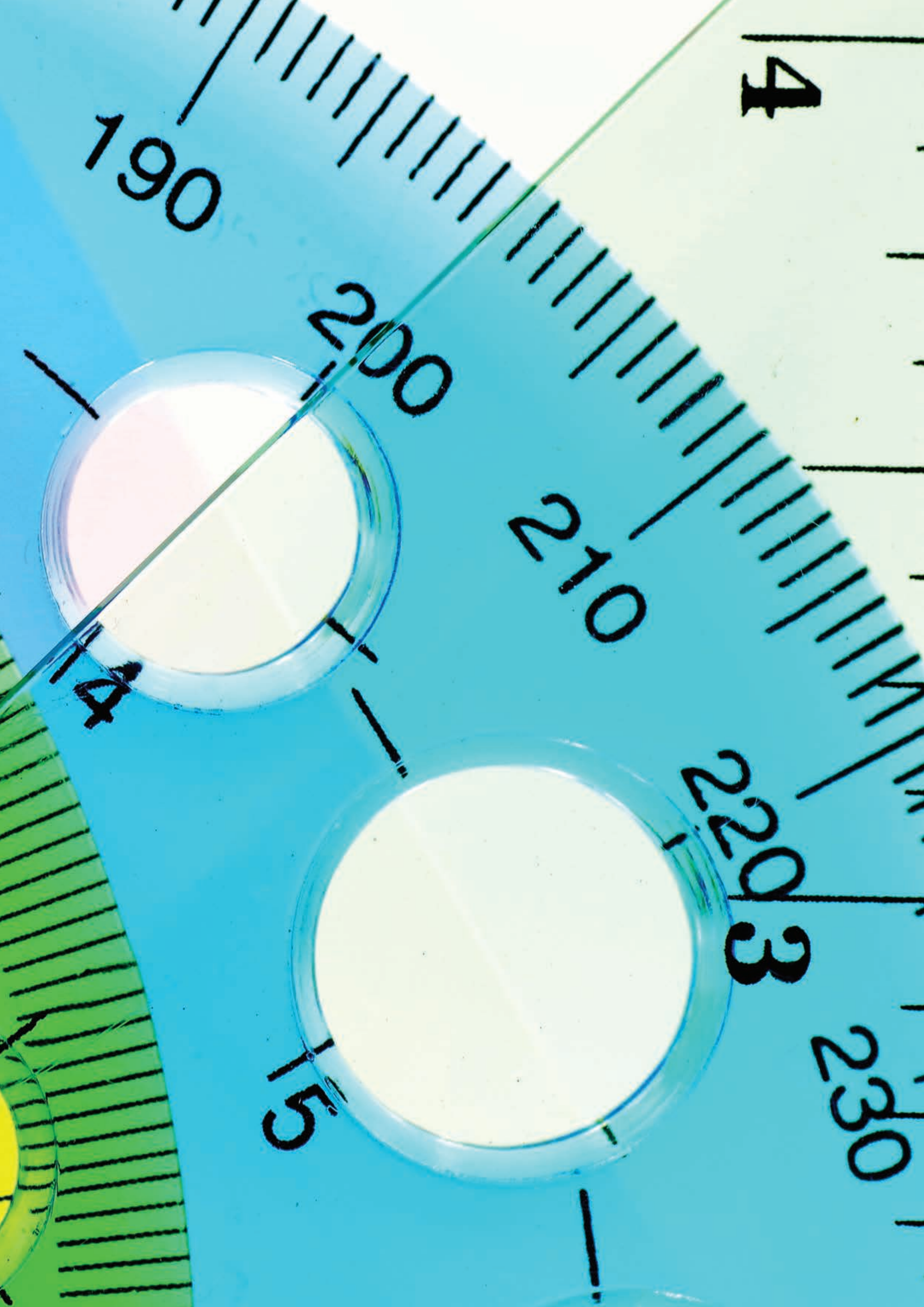
In the near term, benchmarked companies should prepare for the increased scrutiny that benchmarking will inevitably yield and consider their options to engage thoughtfully with benchmarking groups, with a full understanding of the legal, operational, reputational and financial implications of the information they choose to share. Companies that do not have human rights policies and processes in place, are not working to identify and analyze their human rights risks and/or are not reviewing how they do business and engage in disclosure would be well advised to consider the potential benefits in changing their approach. Companies that do all of this are to be commended, but still need to understand the full ramifications of their choices in disclosing information.

Even if benchmarks do not yet directly impact your business, they signal important changes for all businesses, with increasing implications for legal risk, corporate brand management and access to capital.

> **Benchmark results can be a useful tool to differentiate your business from your competitors with clients, customers and others.**

1 Investors can take very different approaches. See: *McKinsey Quarterly*, "Five Ways That ESG Creates Value," November 2019 (https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/five-ways-that-esg-creates-value); *The Wall Street Journal*, "A User's Guide to the ESG Confusion," November 12, 2019 (https://www.wsj.com/articles/a-users-guide-to-the-esg-confusion-11573563604); and MIT Sloan School of Management, "Aggregate Confusion: The Divergence of ESG Ratings," August 15, 2019 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3438533).
2 https://www.modernslaveryregistry.org/
3 https://www.developmentinternational.org/
4 https://enoughproject.org/
5 https://knowthechain.org/
6 https://www.behindthebrands.org/
7 https://www.cdp.net/en
8 https://www.oxfam.org/en/behindtheprice/scorecard
9 https://www.fashionrevolution.org/about/transparency/
10 https://accesstomedicinefoundation.org/access-to-medicine-index
11 https://www.accesstonutrition.org/
12 https://www.corporatebenchmark.org/
13 https://www.banktrack.org/
14 https://rankingdigitalrights.org/
15 https://responsibleminingindex.org/en
16 https://www.worldbenchmarkingalliance.org/
17 https://www.ungpreporting.org/
18 https://www.globalreporting.org/information/sustainability-reporting/Pages/default.aspx
19 http://vigeo-eiris.com/
20 https://www.ethicaltrade.org/
21 https://globalnetworkinitiative.org/
22 https://www.msci.com/
23 https://www.reprisk.com/
24 https://www.robecosam.com/en/
25 https://www.sigwatch.com/index.php?id=173
26 https://www.sustainalytics.com/esg-ratings/
27 https://www.spott.org/
28 https://www.corporatebenchmark.org/sites/default/files/2019-11/CHRB2019KeyFindingsReport.pdf
29 https://www.banktrack.org/article/4_out_of_5_banks_failing_on_human_rights_report_shows
30 MIT Sloan School of Management, "Aggregate Confusion: The Divergence of ESG Ratings," August 15, 2019 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3438533)

NY010920/TL/R/978840_14


190
200
210
220
230
4
3
14
5

WHITE & CASE

whitecase.com