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Barriers to and Possibilities for the Promotion of Sustainable Companies in Core Company Law

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The hypothesis underlying the [Sustainable Companies](#) project is that environmental sustainability in the operation of companies cannot be effectively achieved unless the objective is properly integrated into company law and thereby into the internal workings of the company. To test this hypothesis and to prepare the ground for well-founded proposals for reform at the end of the project period, an important first stage in the Sustainable Companies project has been to map the barriers to and possibilities for the promotion of sustainable business in the hitherto often ignored area of company law. Team members in our project, from a wide range of jurisdictions including countries in Europe, the Americas, Africa and Asia, have written country reports over the same set of questions. These reports have formed the basis for the ongoing work with three cross-jurisdictional papers identifying the barriers to and possibilities for sustainable companies in three important areas: Firstly, core company law; secondly, accounting rules and thirdly, the regulation of company groups. This presentation gives the tentative results of the work with the first paper.

The tentative results of the comparative company law analysis is that shareholder primacy and the perceived overarching goal of maximising shareholder profit present the most important barriers to the contribution of companies to environmental sustainability. The role of the board is central to the way companies are run and thereby to the contribution of companies to the mitigation of climate change. Inspired by the ideas of agency theory, directors of the board are increasingly seen as agents for the shareholders as principals, with profit maximisation as the goal. In many jurisdictions, company law is seen as regulating the purpose of the company through its regulation of the relationship between the shareholders on the one hand and the board and management on the other. Through that company law is seen as supporting the shareholder primacy drive, although shareholder primacy arguably is more a social norm than a legal one. At the same time, there is an increasing focus on corporate social responsibility and the ethical obligations of a company to consider the environmental and societal impacts of its business. As we will hear from the paper presented directly afterwards, this has made inroads into the area of accounting law as it has in an increasing number of corporate governance codes. Arguably, this makes little impact on the discussions and decision-making in corporate boards. Exceptionally, the consideration of the environment is directly included in legal requirements of the duties of the board, as in the UK Companies Act of 2006, while in jurisdictions like Germany we even see an increased emphasis in company law on a pluralistic view of the interests of the company. Certainly company law in many jurisdictions opens up for the inclusion of environmental concerns and also to the prioritisation of environmental protection over short-term profit, but the social norm of shareholder primacy seems to restrict the scope of action for the board left to it by company law.

This paper will therefore in closing put forward that law reform seems to be necessary to support the possibilities that company law today actually gives sustainable business and to remove the barriers created mainly through social norms that have been allowed to develop in the vacuum caused by the lack of definition of the purpose of companies in company law. Reforming core company law may turn out to be necessary for achieving sustainable companies, both to make more effective the external regulation of companies and to realise the potential within each company to make its own independent, creative and active contribution to the mitigation of climate change.