

Onboarding Nature

Imagine if the nature of business was Nature's business



“Instead of “going public,” you could say we’re “going purpose.” Instead of extracting value from nature and transforming it into wealth for investors, we’ll use the wealth Patagonia creates to protect the source of all wealth.”

Yvonne Chouinard, Founder of Patagonia, where Nature is the only shareholder

Onboarding Nature

Toolkit 2024

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Chapter 1

UNDERSTANDING THE IMPORTANCE OF NATURE AS A STAKEHOLDER



"We are talking only to ourselves.
We are not talking to the rivers, we are not listening to the wind and stars.
We have broken the great conversation.
By breaking that conversation we have shattered the universe.
All the disasters that are happening now are a consequence of that..."¹

1 Berry, T. (1997). The Dream of the Earth. Sierra Club Books.

IMAGINE A WORLD WHERE THE NATURE OF BUSINESS IS NATURE'S BUSINESS

The relationship between business and Nature

Business activities impact the state of Nature. This has been set out in multiple reports, including the Taskforce on Nature-related Financial Disclosure² and the WWF Living Planet Reports.³ Both the 2015 Paris agreement⁴ and the Global Biodiversity Framework⁵ set 2030 as a critical 'deadline' to ensure a liveable Earth by meeting their established targets. Yet, 6 out of 9 Earth systems planetary boundaries⁶ have been breached; and 5 out of 26 pivotal tipping points⁷ are under threat, leading to irreversible change - meaning that beyond these limits, the Earth systems may not be able to self-regulate in a healthy equilibrium.

Simultaneously, it has become increasingly apparent that it is impossible to operate a business separately from Nature. On the one hand, businesses depend on ecosystem services to operate.⁸ On the other hand, business activities adversely impact ecosystems and biodiversity. A narrow understanding of companies, as well as their supply chain partners' dependency and impacts, limits a business's ability to take meaningful sustainability action. From start to finish, the work of a business occurs in and around the non-human world. Consequently, Nature is one of businesses' biggest stakeholders, and recognising it as such ensures strong approaches to corporate social responsibility.⁹

*As highlighted in the Global Tipping Points Report 2023: "The existence of tipping points means that 'business as usual' is now over. Rapid changes to nature and society are occurring, and more are coming. If we don't revise our governance approach, these changes could overwhelm societies as the natural world rapidly comes apart. Alternatively, with emergency global action and appropriate governance, collective interventions could harness the power of positive tipping point opportunities, helping navigate toward a thriving sustainable future."*¹⁰

2 The Taskforce on Nature-related Financial Disclosures.

3 WWF (2022). 'How is Nature doing worldwide?.'

4 UNCC (last accessed March 2024). 'What is the Paris Agreement?.'

5 Convention on Biological Diversity (last accessed March 2024). 'The Biodiversity Plan For life on Earth'.

6 Stockholm Resilience Center (last accessed March 2024). 'All planetary boundaries mapped out for the first time, six of nine crossed'. University of Stockholm.

7 Stockholm Resilience Center (last accessed March 2024). 'New report: Tipping point threats and opportunities accelerate'. University of Stockholm.

8 Lambooy, T (2010). Corporate social responsibility: legal and semi-legal frameworks supporting CSR: Developments 2000-2010 and case studies. Uitgave vanwege het Instituut voor Ondernemingsrecht. (Kluwer, The Netherlands). Retrieved from <https://hdl.handle.net/1887/16169>. See chapters 11, 122 and 13 on the interplay between business and investors on the one hand, and biodiversity, ecosystems and ecosystems services on the other hand.

9 Lambooy, T (2022). 'Verankering van de belangen van toekomstige generaties en de natuur in de governance', in: Preadvies: Corporate governance en het maatschappelijk belang (Koninklijke Vereniging voor de Staatshuishoudkunde Preadviezen 2022). Verankering van de belangen van toekomstige generaties en de natuur in de governance - ESB

10 Lenton, T.M et al. (2023). 'Global Tipping Points'. University of Exeter Global Systems Institute.

The regulatory landscape of environmental governance

Governance is a fundamental pillar of the global sustainability strategy, both for corporate accountability and transparent reporting on Nature-related risks and the impacts of businesses. To move forward from 'business as usual', the question of *how governance models can change to better serve the social good* must be answered. Already, investors are increasingly relying on climate and Nature related reporting and disclosure mechanisms. With Environmental, Social and Corporate Governance (ESG) based regulations being adopted across the globe, the relevance of efforts to create Nature-inclusive governance structures is rising.

In the European Union, under articles 19a and 29a of the EU Corporate Sustainability Reporting Directive (CSRD),¹¹ companies are now required to report on how their 'business model and strategy take account of the interests of [their] stakeholders'. In The European Sustainability Reporting Standards,¹² i.e. the implementation mechanism of the CSRD, biodiversity and ecosystems are explicitly addressed in chapter 'ESRS E4 Biodiversity and ecosystems'. This mandatory standard requires that companies assess and disclose detailed aspects of both their dependency and impacts on Nature. In relation to the latter, the assessment and disclosure requirement extends to the ways in which a company.

"... affects biodiversity and ecosystems, in terms of material positive and negative, actual and potential impacts, including the extent to which it contributes to the drivers of biodiversity and ecosystem loss and degradation."

In the US, the Securities & Exchange Commission (SEC) published their Final rule¹³ in March 2024, stating that registrants must provide certain climate-related information in their registration statement and annual reports, particularly in relation to "climate-related risks that have materially impacted, or are reasonably likely to have a material impact on, its business strategy, results of operations, or financial condition".

On the African continent, more countries are introducing environmental disclosure mechanisms to prevent Nature-related efforts being undermined by greenwashing claims.¹⁴ Whilst on the Asian continent, where the ISSB¹⁵ standards are currently voluntary, they are expected to become mandatory in several countries by 2025.¹⁶

11 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

12 COMMISSION DELEGATED REGULATION (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards 2023/2772.

13 Securities and Exchange Commission 17 CFR 210, 229, 230, 232, 239, and 249 [Release Nos. 33-11275; 34-99678; File No. S7-10-22] RIN 3235-AM87 The Enhancement and Standardization of Climate-Related Disclosures for Investors.

14 Savage, R. (2022). More African countries ESG finance policies - study.

15 International Sustainability Standards Board.

16 Sandpiper (2023) ESG regulatory landscape in Asia.

ESG mechanisms link both the risks and impact inherent to the relationship between business and Nature. In line with the above observations, 85% of the world's largest companies¹⁷ depend on Nature and biodiversity; and generally businesses rely heavily on a healthy planet¹⁸ and Nature's bounty for their own functions and survival. As the World Economic Forum illustrates, Nature is the foundation of economic growth and job creation.¹⁹ The WEF further emphasises that Nature is the most important stakeholder²⁰ of our times; therefore, companies need to begin a conversation with Nature and listen to the Earth's natural systems.²¹

The unique role of business as an ally of the Rights and Voice of Nature

Progress addressing unsustainable environmental changes might be deemed slow, plagued by a perceived inability to imagine a different, better future. Yet, this is a crisis of imagination that businesses are particularly well positioned to address, given they are hotbeds of creative thinking, innovative solutions, and groundbreaking ideas.

Businesses are meant to lead on progress, add value and improve quality of life in society. This is what a few bold companies have done: put their creativity to the service of imagining how businesses could engage with Nature as a stakeholder. In a context where business can often be painted as a 'bad social and environmental actor', B Corp certified companies like Patagonia, Willcroft and Faith in Nature are opening up a field of possibilities for meaningful corporate reform, so that businesses can better serve the common good through Nature-inclusive governance models.

Notably, formalising the role of Nature as a stakeholder occurs alongside and in synergy with the Rights of Nature movement (RoN). Right of Nature is a legal instrument to extend the protection of non-human species and ecosystems through a rights-based approach that legally establishes Nature's personhood. As of March 2023, over 500 Rights of Nature initiatives have been documented across 29 countries.²² For example, in Europe, the Spanish Parliament is the first national institution to have passed a law (in September 2022), granting the lagoon Mar Menor and its basin legal personality; including the rights to protection, conservation, maintenance, and restoration in order to support its right to exist as an ecosystem and evolve naturally.²³

The exponential growth of Rights of Nature over the last two decades has spurred the emergence of Nature-inclusive governance in business. Where Rights of Nature occurs in the public sphere, Nature-inclusive governance occurs in the private sphere, focusing on private actors and governed by private law. Together, these tools have the possibility to transform our relationship

with Nature, shaping our understanding of Nature into one where Nature has agency, a voice, a role, and rights. These approaches may prove essential in achieving climate and sustainability targets, towards securing a just and regenerative future.

So. Imagine it is 2030 and beyond. Imagine a world where the Earth is flourishing under the stewardship of responsible business activities and human care. Imagine a world where the nature of business is for good, and all stakeholders are valued and prioritised.

Imagine a world where Nature is a stakeholder in every company because the nature of business is Nature's business.

Onboarding Nature Toolkit

This toolkit features case studies of companies that have formalised Nature's role in their corporate governance structure. From these case studies, four models for implementing Nature as stakeholder are identified: *Nature as Inspiration*, *Nature as Advisor*, *Nature as Director*, and *Nature as Shareholder*.

This toolkit is for private sector actors. Business is a significant driver of change, and companies have the advantage of being more agile and nimble. With this toolkit, we wish to accelerate change by inspiring private sector entities to include the voice of Nature in their decision-making models, i.e. through including Nature as a stakeholder in their corporate governance structures. We therefore invite you to join this conversation, to contribute your own imaginative ideas, and to onboard Nature as a stakeholder in your organisation.

This toolkit provides a conceptual background for each of the four models of Nature as Stakeholder, and equips your organisation with the tools to choose, personalise, and implement your own model.

Formalising Nature as a stakeholder in your business provides the following impacts and benefits:

For Nature, by enhancing the authenticity of your care and impact of your sustainability strategy.

For business, by making better, Nature-informed decisions, fulfilling ESG obligations and directors' duties, signalling to consumers and competitors, and protecting financial investments.

For the community of stakeholders, by taking better care of their interests and voices.

For the world, by contributing to better governance practices and outcomes for a Nature-positive world of action and regeneration and inspiring and empowering other actors.

17 S&P Global Sustainable 1 (2023). 'How the world's largest companies depend on nature and biodiversity.'

18 Business for Nature (last accessed March 2024) 'High Level Business Actions on Nature'.

19 World Economic Forum (2020). 'New Nature economy Report II: The Future Of Nature And Business'.

20 World Economic Forum (2020). 'Why nature is the most important stakeholder of the coming decade'.

21 World Economic Forum (2019) 'To save the planet, we need to listen to the Earth's natural systems'.

22 According to the Eco Jurisprudence Monitor. See also Putzer, A., Lambooy, T., Jeurissen, R. & Kim, E. (2022) 'Putting the rights of nature on the map. A quantitative analysis of rights of nature initiatives across the world'. *Journal of Maps*, 18:1, 89-96.

23 Ley 19/2022, de 30 de septiembre, para el reconocimiento de personalidad jurídica a la laguna del Mar Menor y su cuenca.

Key Terms & Concepts

Before introducing the models, it is important to establish a common vocabulary for identifying the relevant concepts. The incorporation of Nature into stakeholder and governance theories is an emergent phenomenon, the newness of which requires context.

Nature as Stakeholder

The definition of Nature is not univocal. Similarly, the concept of stakeholder is not devoid of controversy. Still, the alliance of Nature with stakeholder theory has caught the collective imagination across business, finance and environmental policy lines.

Nature as a semantic concept is not easily definable. From a Eurocentric perspective, it yields pluralistic and contextual meanings. For instance, Nature can mean what is not human or beyond-human; flora and fauna; ecosystems; ecosystem services; mountains; forests; rivers; the universe; the physical environment/place; the life force; the essence/quality/character of something.²⁴ Across the European Union, in the proposed Nature Restoration law,²⁵ Nature is understood as the 'land and sea areas, and specific habitats and species'.²⁶

'Nature', in that sense, is a Westernised social construct based on the separation between Nature and human society. In light of today's ecological circumstances, and through the centering of Indigenous worldviews, we see the (re)emergence of 'many Natures' in which humanity is entangled within a systemic planetary whole.²⁷ This toolkit showcases the varying interpretations of Nature that emerge from the case studies.

Stakeholder, as a term, dates from the 1700s and combines two words: stake and holder. It initially referred to someone who holds a stick that they drive into the ground to claim or demarcate their interest or rights to a land. It can also be defined as someone who is entrusted with the wagers of others; and/or as an entity that is affected or impacted by a business, in which it has a stake or a vested interest.

The OECD Guidelines²⁸ state that, as part of their due diligence, companies should meaningfully engage with stakeholders and their legitimate representatives, especially with respect to activities that may significantly impact them, as specified by the Guidelines. The OECD guidelines provide an outline of what meaningful stakeholder engagement entails and it explicitly covers the environmental impact of business.²⁹

- 24 Ducarme, F., Couvet, D. 'What does 'nature' mean?'. *Palgrave Commun* 6, 14 (2020).
- 25 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on nature restoration. COM/2022/304 final.
- 26 Including 'wetlands, forests, grasslands, river and lakes, heath & scrub, rocky habitats and dunes, pollinating insects, forest ecosystems, urban ecosystems, agricultural ecosystems, marine ecosystems, river connectivity'.
- 27 Aoki Inoue, C.Y. and Franco Moreira, P. (2016). 'Many worlds, many nature(s), one planet: indigenous knowledge in the Anthropocene'. *Revista Brasileira de Política Internacional*, vol. 59, núm. 2, 2016, pp. 1-19 Instituto Brasileiro de Relações. Internacionais Brasília, Brasil. See also The Earth Charter, the civil society document that promotes the diversity of life and taking care of the Community of Life.
- 28 The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. See: MNE Guidelines - Organisation for Economic Co-operation and Development (oecd.org).
- 29 The OECD Guidelines and stakeholder engagement - OECD Watch.

Consequently, stakeholder theory can be understood as underpinning the ethical obligations and purpose-led nature of a business in relation to their stakeholders, with a particular focus on stakeholder engagement and representation.³⁰ Therein, the concept of 'Nature as Stakeholder' is an emergent theme; where "nature is [deemed] essential for business and other organisations as it gives resources, affects other stakeholders, and has a moral right to be included in organisational decision-making".³¹

Nature as Stakeholder - whilst lacking legal personality/personhood in the vast majority of national jurisdictions, creative thinking spearheaded by bold corporate leadership has found a way to listen to the voice of Nature through the possibilities available in existing private law.

For the purposes of this toolkit, Nature as Stakeholder is meant as an empowerment terminology. In that, Nature is staking a claim to be heard in business affairs, through Nature-inclusive corporate governance practice.

Nature-inclusive governance

Governance is a pluralistic concept that relates to a range of systems (governmental, local, urban, etc.). The focus of this toolkit is on corporate governance, which is generally described as "a system of rules, practices and processes by which a company is directed and controlled" and is concerned with power, accountability and decision-making processes.³²

An important definition of corporate governance was recently adopted by the G20 and OECD countries, as "a set of relationships between a company's management, board, shareholders and other stakeholders. Corporate governance also provides the structure and systems through which the company is directed and its objectives are set, and the means of attaining those objectives and monitoring performance are determined."³³ This definition stresses the relational aspect of corporate governance and the way in which goals are formulated.

In the context of the Environmental, Social, and Governance framework ("ESG") for measuring a business's impact on society, the environment and governance are understood as the factors of decision-making relating to the distribution of rights and responsibilities in corporate settings (including

- 30 Van der Linden, B. (2021). 'Stakeholder theory: What it is and how to use it'. EDHEC Business school.
- 31 Kujala, J. et al. (2019) 'Engaging with the natural environment: Examining the premises of nature-inclusive stakeholder relationships and engagement'. In Ceranic Salinas, T. et al (eds.) *Proceedings of the International Association for Business and Society : Border Crossing : Proceedings of the Thirtieth Annual Meeting*. San Diego, California, March 21-24, 2019. Lambooy, T (2022). 'Verankerung van de belangen van toekomstige generaties en de natuur in de governance', in: *Preadvies: Corporate governance en het maatschappelijk belang* (Koninklijke Vereniging voor de Staatshuishoudkunde Preadviezen 2022). Verankerung van de belangen van toekomstige generaties en de natuur in de governance - ESB.
- 32 Chartered Governance Institute UK & Ireland (2024). What is corporate governance?.
- 33 OECD (2015). *G20/OECD Principles of Corporate Governance*. OECD Publishing, Paris.

directors, managers, shareholders and stakeholders).³⁴

Nature-inclusive joins a range of Nature-related terminology that are open to wider interpretation; it does not fit into a rigid definitional box. For example, in the spheres of agriculture,³⁵ urban planning³⁶ and renewables development,³⁷ The concept of 'Nature inclusivity' includes biodiversity and ecosystem conservation, protection and restoration measures as well as Nature-friendly approaches and Nature-inspired processes.

In the context of advancing sustainable business conduct and organisational culture and practices, this toolkit offers an additional dimension to the meaning of Nature-inclusivity:

Nature-inclusive governance refers to the inclusion of the representation, the voice, the vote and the interests of Nature as stakeholder, in the decision-making processes, governance structures and systems of corporate and business entities.

'The future we imagine is a regenerative economy or human inclusive ecosystem. The word we use is zoonomy: an economy that takes care of all life... Imagine a world in which equality and economy are no longer separate in any kind of relevant way'

*Klaas Kuitenbrouwer,
Co-creator of the Zoop model where Nature is an Advisor*

³⁴ S&P Global (2020). 'What is the 'G' in ESG?.'

³⁵ Petra van Egmond 'Nature inclusiveness is the future'. The Netherlands and The Agricultural Sector. Agrospecials editie 9.

³⁶ Gionfra, S., Kelder, E., Aivalioti, S; and Ball, C.(2023). Embracing biodiversity: Paving the way for nature-inclusive cities. IUCN.

³⁷ Nature-inclusive people-centered renewables. Civil society manifesto.

Outline

The **Onboarding Nature Toolkit** aims to provide inspiration and tangible examples for businesses, to guide them on the journey to recognise Nature as a stakeholder in their organisations.

The toolkit is arranged into 3 additional parts:


Chapter 2 provides an overview of 4 models: Nature as Inspiration, Nature as Advisor, Nature as Director, and Nature as Shareholder—and documents how these models are implemented through 9 case studies encompassing 10 different companies.

Chapter 3 describes the steps to take in implementing a Nature-governance model, with some practical questions and directions to help conceptualise, contextualise, and implement a model.

Chapter 4 is a collection of legal tools for the Netherlands that offers direction on concrete steps for companies and other business organisations prepared to legally implement a Nature as Stakeholder model. This project, and its accompanying website, will be updated as legal toolkits for other national jurisdictions are created.

Chapter 2

WAYS TO ONBOARD NATURE - EXPLORING THE FOUR EMERGENT MODELS



Overview

Nature is an inherent, and even primordial, stakeholder in all businesses. However, whether and how to recognise Nature's stakeholder status within its governance structure is very much open to a company's discretion and choice.

This chapter introduces 4 emerging models for onboarding Nature as a Stakeholder: *Nature as Inspiration*, *Nature as Advisor*, *Nature as Director*, and *Nature as Shareholder* (Table 1). Across these models, the conceptualisation of Nature and its role in an organisation can take diverse forms. This reflects the inherent plurality of business enterprises. As an illustration, this chapter presents the distinctive stories and approaches of ten leading organisations that have introduced Nature's voice into their decision-making process, and often, have formally embedded Nature as a stakeholder in their governance structure. These case studies reveal the ways in which each organisation's understanding of Nature, reason for acting, method of implementation, and resulting impacts are unique. While each organisation has recognised Nature as a stakeholder in its governance, and operations, none of their approaches are identical. Nonetheless, the conceptual underpinnings of each approach can be categorised into one of the four models.

Table 1 outlines the conceptual definition of each model, with a brief description of their particulars, and classification as to the nature of the entrenchment of the voice of Nature. The voice of Nature can be formalised on a *legal basis* (i.e. through private law mechanisms); or on a *policy basis* (through declaratory and strategic initiatives).

FOUR MODELS OF NATURE AS A STAKEHOLDER

Nature as Inspiration

Conceptual definition

Nature as Inspiration can either be a policy-based declaration of intent/values; or a legal entrenchment of Nature as Purpose in an organisation's constitutional documents.

Particulars

Nature as Inspiration, as a policy-based approach, is a cultural entrenchment of Nature and Nature-positive values in an organisation. The most notable example of Nature as Inspiration is the campaign for Mother Nature as CEO, featured in this toolkit (Willicroft, Blyde). This is a purpose- and mission-driven declaration of intent that is a first step onto the journey of formalising Nature as Stakeholder.

In its legal form, *Nature as Purpose* is an explicit commitment to Nature by the organisation, as included in the constitutional documents/Articles of Incorporation/Articles of Association/Bylaws. *Nature as Purpose* can operate on its own, and/or be supported by further organisational mechanisms to give Nature as voice

The most notable example is Faith in Nature, featured in this toolkit, where the Objects of the Company were amended to include a double obligation: to promote the success of the company, and to operate the business in a manner that benefits Nature.

Nature as Advisor

Conceptual definition

Nature as Advisor can be either a policy or legal commitment, to entrench Nature as a stakeholder in a consultative capacity, within the governance of a company, via the creation of an advisory board, or advisory board seat.

Particulars

This approach can be either a policy or a legal entrenchment of Nature, depending on the chosen vision and strategy of a company.

Nature as Advisor can be represented through an individual or through a committee; in addition, an advisory board/role can be either internal or external to an organisation.

Where it is legally entrenched (i.e. within a company's organisational constitutional documents), an advisory council has a mandate to advise the board concerning Nature-related decisions.

Where it is a policy-based entrenchment, the advisory board is a conversational space, where key topics are presented for consultation and discussion. The advisory board then makes its (non-binding) recommendations to the Board of Directors.

The most notable example of Nature as Advisor as a policy-based, external/satellite committee framework was developed by Corporate Regeneration, featured in this toolkit.

Companies that have adopted this alternative model of governance include (not featured in this toolkit): Copains (Impact board); Realco (Vision Board); NGroup (Impact Board), Danone BeLux (Stakeholder meeting).

The most notable example of *Nature as Advisor*, via an individual advisory role, was developed by the Zoöconomic Institute, featured in this toolkit. The 'Speaker for the Living' has an 'observer board seat in organisations certified as Zoöps.

Nature as Director

Conceptual definition

Nature as Director is a legal commitment to entrench the voice, the vote, and the interests of Nature in the constitutional, strategic and operational governance of the company.

Particulars

This approach is a legal entrenchment of the status of *Nature as Stakeholder*, within the constitutional and governance DNA of a company. Nature is given protection and rights, through both a revision of the Articles of Association, an upgrading of the Objects of a company, and an amendment to the organisational governance policy framework.

The creation of a directorship role entrenches Nature's input in the decision-making of the company, through a range of rights, including: voting, access to information, reporting review, etc. Nature as Director also has equal rights and duties as other company directors.

Nature as Director can take the form of a singular role, as an executive (operational) or non-executive (strategic) director; or in the form of a collective role, where the whole board acts as proxy for Nature.

The most notable examples of *Nature as Director*, featured in various forms in this toolkit, include Faith in Nature, House of Hackney (interviewed & mentioned), Hub Culture, and Palais de Tokyo.

Nature as Shareholder

Conceptual definition

Nature as Shareholder is a legal commitment to entrench the voice, the vote, and the interests of Nature, through the ownership structure and governance of the company.

Particulars

This approach is a legal entrenchment of Nature through an alternative ownership model, that shifts or expands the scope of decision-making and economic value to a wider pool of stakeholders¹.

Nature as Shareholder is generally based on the steward-ownership model², which is a legal structure that puts an emphasis on purpose over profits; self-governance, and long-term goals (legacy). As a guardian of the company's Nature-driven mission, *Nature as Shareholder* can be integrated through different forms: golden shareholder; neutralised capital; shareholder foundation; perpetual purpose trust.

The most notable examples of *Nature as Shareholder*, featured in this toolkit, include: Patagonia and Tony's Chocolonely.

1 Armeni, A., Lyon, C.; & Menter, J. (2023) Alternative Ownership Enterprises: An Introduction for Mission-Oriented Investors.
2 For further information and definitions of steward-ownership models, see also the We Are Stewards; Purpose Foundation (2020) Steward-ownership - A short guidebook to legal frameworks. NYU | Law.

NATURE AS INSPIRATION

“The biggest change we need to make in businesses is that holistic purpose and positive impact at the very least need to run in tandem or above the importance of returns and shareholders”

Brad Vanstone (Willicroft)

CASE STUDY 1

Willicroft

Willicroft is the only plant-based cheese B Corp in Europe, with a mission for positive environmental impact. Willicroft is a private limited company (BV), based in the Netherlands; with venture capital investors, and angel investors



| Definition of Nature | Motivation |
|---|---|
| For Willicroft, Nature is the main stakeholder as it is 'all around us'. It is also the future, and is therefore understood as encompassing everything, 'all of Nature'. | <p>The campaign for Mother Earth as CEO was born from these concerns:</p> <ul style="list-style-type: none"> • The seeming lack of rationale behind the food system which creates an imbalance in the world • The impact on the environment, as a result • The role of business in society <p>Willicroft is choosing to direct its time and energy to embody and encourage businesses to reclaim their purposeful, holistic nature.</p> |
| How is Nature represented? | What was implemented? |
| <p>Nature is represented through a pledge to (symbolically) appoint Mother Nature as CEO at Willicroft.</p> <p>This informal representation of Nature includes:</p> <ul style="list-style-type: none"> • Circumventing the lack of Dutch legal basis for non-physical entities by naming Mother Nature as de facto leader • Transformative cultural journey • Guiding question for decision-making: is this to have a positive or negative impact on Nature? • Reliance on members running the company to maintain Mother Nature as CEO • Integration of Nature into all decision making processes as employees ask themselves - What would Nature, my CEO, think? Would this decision have a positive or negative impact on Nature? • Informal representation through company members as the 'living embodiment of Mother Nature' • 'living embodiment of Mother Nature' asks the difficult/meaningful questions for business value and mission alignment | <p>Mother Nature was publicly appointed as CEO on social media, to demonstrate Willicroft's commitment to the values this represents.</p> <p>Cultural and practical applications</p> <ul style="list-style-type: none"> • Supply standpoints code of conduct • B Corp Certification with high performance on environmental impact • Measure emission of all products |
| Basis: Policy | Reporting & accountability mechanisms |
| <p>Currently it is a campaign for Mother Nature as CEO.</p> <ul style="list-style-type: none"> • Appoint Mother Nature as CEO on socials • Post monthly updates on impact progress • Set internal timeframe to apply for an industry accreditation | <p>Willicroft has committed to:</p> <ul style="list-style-type: none"> • Publishing a yearly impact report which shares a minimum of 3 decisions in which Nature was centred. • Undertaking investor screening (divestment protocol, i.e. choosing investors carefully, in line with values) • Honouring its mission-driven commitment (e.g. through B Corp certification as a mission lock) <p>In the future, Willicroft is considering establishing accountability mechanisms which incorporate consumers.</p> |

→ **Positive impact analysis:** Willicroft uses a *Nature as Inspiration* model, where Mother Nature is CEO. A nonbinding mechanism, the 'Mother Earth as CEO' mission serves as an inspirational model for Willicroft to consider the interest of Nature in the decision-making model. Brad Vanstone noted that "When [they] first made the appointment, it was a statement of the values [they] want to portray to the world, rather than a bulletproof system of governance." However, the company is evolving towards a deeper level of entrenchment. Willicroft's future goals include the creation of an Impact Board to give Nature a more embedded seat in the business. Nature could have the ability to block and propose different directions that should protect the wider impact of the business, which will only add more positive legal traction to an already impactful organisation.

As it stands, Willicroft is reaping the benefits in employee engagement, consumer sales and media coverage. Employees are motivated to provide meaningful products, consumers are excited to support an impact driven organisation while enjoying the added benefit of taste, functionality, price and health of food, and the media is equally excited to publish this innovation. This change is valued by Willicroft's employees, as "the holistic nature of what [they] are trying to do embeds in people." It has been a transformative cultural journey for the business.

"Nature is our raison d'être, it's our future, it's all around us but often ignored, it is our main stakeholder"

Brad Vanstone, Willicroft

CASE STUDY 2

Blyde

Blyde is a PR agency for sustainable brands and social enterprises, based in Amsterdam. The first B Certified PR agency in the Netherlands, Blyde is currently a private limited liability company (BV) with 5 shareholders; and considers embracing the steward-ownership model in the future.



| Definition of Nature | Motivation |
|--|---|
| There is no set or specific definition of Nature within Blyde. Instead, there is an implicit common understanding at the company that Nature means the planet, including all living and non-living entities. | <p>Blyde is a mission-led organisation with a mission to create a positive footprint worldwide.</p> <p>Conscious that the impact of human activities have created an imbalance in the world, Blyde espouses the philosophy that giving a voice to Nature in their organisation can remedy this imbalance.</p> <p>The campaign for mother Nature as CEO aligns with Blyde's core values to move away from the short-termism defining the current 'business as usual' model.</p> |
| How is Nature represented? | What was implemented? |
| <p>Nature is represented through a pledge to (symbolically) appoint <i>Mother Nature as CEO</i> at Blyde. This means that</p> <ul style="list-style-type: none"> • No individual proxy represents Nature. Instead, every employee is encouraged to consider Nature's voice in all their decision making • The presence of Nature permeates throughout the organisation • Nature as a subtle voice in every decision-making and strategic conversation • Mother Nature as CEO an agenda item in the hiring process conversation • Company members are guided by a simple question of ethical value in decision-making: 'is the impact positive or negative for the world?' | <p>The size of the company allows for a fluid, agile and adaptive approach to integrating the voice of Nature through Mother Nature as CEO in alignment with Blyde's values and mission.</p> <ul style="list-style-type: none"> • Nature is considered in all decisions on different levels, from the day-to-day operations to the strategic <p>Voice of Nature encapsulated by a question: <i>is it for the better of the world or Nature?</i> And supported by the:</p> <ul style="list-style-type: none"> • Impact project protocol (to identify positive/negative) • Deck of cards of key questions used to inform internal and external meetings with clients, and ensure the right conversations are being held in every meeting • Client screening process to ensure compatibility of values |
| Basis: Policy | Reporting & accountability mechanisms |
| <p>Following the steps for appointing Mother Nature as CEO (similar to Willicroft)</p> <ul style="list-style-type: none"> • Appoint Mother Nature as CEO on socials • Post monthly updates on impact progress • Set internal timeframe to apply for an industry accreditation | <p>Ethical questions are an integral part of Blyde's daily decision-making and activities.</p> <p>Whilst there is currently no formalised internal mechanism for addressing ethical misalignment or disagreement, they screen all their clients to ensure values alignment. When there is a difference in values, Blyde engages in a transparent discussion.</p> <p>Blyde also commits to reporting 3 cases on social media, demonstrating how planetary factors are considered in major business decisions.</p> |

→ **Positive impact analysis:** Driven by passion for Nature and to move beyond the short term motive of profit, co-founder Nynke van den Broek understands the urgency of taking Nature into account within Blyde's operations. She reflects on the impact of Mother Nature as CEO, and states the change aims to move "from profit to prosperity." As a small company, the Mother Nature as a CEO model has had an organic impact on the Blyde, empowering the organisation's stakeholders to take on the shared responsibility to speak for Mother Nature through a majority vote. Blyde is already considering their next step of evolution to further entrenched Nature as Stakeholder in their organisation. More broadly, Nynke encourages larger companies to adopt an entrenched structure to ensure all parts of the organisation embrace Nature-based decision making.

NATURE AS ADVISOR

**"The future we imagine is a regenerative economy or
human inclusive ecosystem. The word we use is zoonomy:
an economy that takes care of all life..."**

Klaas Kuitenbrouwer

CASE STUDY 3

Zoönomie Institute

The Zoönomie Institute governs and certifies Zoöp models and assists companies and organisations with the tools and training to implement Zoöp models, in order to help companies transform into regenerative organisations. A Zoöp is an organisational model, a learning process and a basis for collaboration between an organisation and an appointed Speaker for the Living. The 'Speaker for the Living' is an individual who represents the interests of other-than-human life, and assists on how to translate these into an organisation's activities.



| Definition of Nature | Motivation |
|--|---|
| <p>The Zoönomie Institute adopts a holistic and symbiotic view of the world as one living entity. Through this perspective, their understanding of Nature is the world as an inclusive ecosystem. This includes all living things, as well as humans, and the non-living extensions or processes of these living things, such as machines.</p> <p>Zoöp means: in cooperation with life (Greek zoë: life), and for the Institute, the ecological is also the social.</p> | <p>The overarching aim is to usher in a regenerative economy that takes care of all life. This is motivated by ongoing ecological degeneration and the understanding that all life participates in ecosystems. As a result, the Zoöp models reconceptualizes organisations within an ecological framework in order to support them in becoming symbiotic with the ecosystems they participate in.</p> |
| How is Nature represented? | What was implemented? |
| <p>Underrepresented voices of the living world are represented by a human 'Speaker for the Living,' who holds a <i>Board Observer</i> position. This role serves advisory and teaching purposes.</p> <ul style="list-style-type: none"> • The Speaker is independent and must hold themselves in an ombudsman capacity,³ where they are separate (and unaffiliated) from the organisation • The Speaker must have an internalised understanding of the interests of other-than-human life, an ability to articulate these interests, an understanding that they themselves are part of nature, and working knowledge of the organisation they collaborate with • The Speaker has no vote and works to teach and advise the board in a collaborative learning process | <p>To become a Zoöp:</p> <ul style="list-style-type: none"> • The applying organisation must be certified through the Zoönomie Institute to ensure the organisation aligns with the Zoöp principles • The organisation commits to the learning process of the Zoönomie Annual Cycle (ZAC) <p>The 'Speaker for the Living':</p> <ul style="list-style-type: none"> • Is trained and approved by both the Zoöp and the Zoönomie Institute • Works through the Annual Cycle with the Zoöp. The Annual Cycle is a learning process that asks basic ecological questions to help a Zoöp understand its role in ecosystems and how it can become a regenerative entity • Each year, the Speaker for the Living works with the organisation to improve its ecological integrity and to meet its goals |

³ An ombudsman is a nonlegal position with a unique mandate as part of a conciliation process.

| Basis: Legal | Reporting & accountability mechanisms |
|--|---|
| <p>The Zoöp model has a contractual format</p> <ul style="list-style-type: none"> • The Zoöp contract outlines the role of the Speaker for the Living • The contract is between the Zoöp ("the organisation") and the Zoönomie Foundation • Upon the contract being signed, the organisation has the right to use the Zoöp label • The Board observer ('Speaker for the Living') enters into an agreement (a "mandate") between the Zoöp and Zoönomie Institute • There must be concerted actions towards active regeneration and commitment to follow the Zoönomie Annual Cycle • The Speaker attends (at least) two board meetings a year and may get involved in operational/management meetings • The Speaker is compensated and receives a fee for their work (e.g. circa 30-40 hours of engagement) <p>Rights of Speaker for the Living:</p> <ul style="list-style-type: none"> • Access to all information relating to the meetings in which they participate | <ul style="list-style-type: none"> • Annual requirements: Zoönomie plan and self evaluation • The Zoönomie Institute trains the board observer on the learning cycle • Where a disagreement arises, the Zoöp ("organisation") has an obligation to explain why they denied a Board observer's recommendation • Although not an immediate breach of the relationship, consistent denials will be flagged and the Zoönomie Institute shall identify whether the organisation is still aligned with Zoöp thinking • If the organisation does not fulfil the obligations outlined in the contract, the Zoönomie Institute retains the right to withdraw the Zoöp label |

→ **Positive impact analysis:** the Zoönomie Institute is creating a ripple effect within the field of regenerative economy, spreading its influence globally. Internally, the Speaker for the Living, supported by the Annual Cycle, invites structural and concrete changes in the culture of the organisation. Klaas Kuitenbrouwer of the Zoönomie Institute notes that this model can help participants "Imagine a world in which equality and economy are no longer separate in any kind of relevant way." The format of the Zoöp model is also designed to facilitate its integration, i.e. 'to not make it a logistical headache'. In addition, the flexible, conversational and relational nature of this model is a strength; as the influence of the different voices of Life can be heard across both the governance and organisational levels. The impact of this model is particularly noted with regards to the ecological mindset that informs operations.

CASE STUDY 4

Corporate ReGeneration

Corporate ReGeneration is an impact governance consulting group. Its purpose is to include the voice of Youth into companies, so that they can speak for themselves and for Nature. With key services like setting up a 'ReGeneration Committee' and holding 'Stakeholder Assemblies' (see Appendix for further resources), Corporate ReGeneration's hands-on approach in strategically consulting an organisation's roadmap accounts for internal stakeholders and independent external actors, alike.

“[I have been] trying to convince the corporate sector to embrace new ways of working, new ways of producing but, most of the times I was missing something and this governance approach turns out to be more convincing and impactful”

Vincent Truyens

| Definition of Nature | Motivation |
|--|--|
| Corporate ReGeneration defines Nature in the context of planetary boundaries, and so encompasses climate change, biodiversity, and ecosystems. It also adopts a holistic understanding of Nature that includes human beings ('we are nature'); with an emphasis on the relationship between human beings and nature, in which Nature is a subject, rather than an object. | Corporate ReGeneration has positioned Nature as its main stakeholder to address ecological challenges more effectively. The integration of Nature governance and operations decision-making aims to create impactful societal change; and promotes a form of responsible risk-management. |
| How is Nature represented? | What was implemented? |
| <p>An advisory board with 5-10 guardianship positions is established. The board can be referred to as: ReGeneration Board, Impact Board, or Vision Board. The guardians represent 5 different dimensions of Nature as Stakeholder:</p> <ul style="list-style-type: none"> (1) Guardian(s) of Intergenerational Solidarity; (2) Guardian(s) of Social Equity; (3) Guardian(s) of Planetary Boundaries; (4) Guardian(s) of the Mission and Prosperity; (5) Guardian(s) of the ReGeneration. <p>Each Guardian position contains both an internal and an external representative (with at least 2 young individuals included in the total representation, one from within the company, and one as an external representative). The guardians must demonstrate that they are meaningfully engaged in the area of their guardianship theme (e.g. through activism, academia).</p> <p>The ReGeneration Board is further supported by a Stakeholders Assembly that meets once a year, and may encompass representatives from the value chain, academics, future generations, Nature-related NGOs, and artists.</p> | <p>Corporate ReGeneration brings together the youth and guardians speaking on behalf of Nature through the implementation of ReGeneration Boards.</p> <p>The Boards address topics relating to the Guardians themes which are generally raised by the Executive and CSR Boards. Topics can also be raised by the Guardians themselves. The minutes and suggestions which result from ReGeneration Board meetings are sent to the Board of Directors to inform their decision making.</p> |
| Basis: Policy | Reporting & accountability mechanisms |
| <p>The role of Guardian is based on a voluntary engagement, with the agreement to abide by</p> <ul style="list-style-type: none"> • Guidelines and a Code of Conduct to speak for Nature. And as agreed collectively • A description and agreed expectations for each guardianship role • Guardians in general <i>may</i> be compensated; whilst Youth Guardians <i>must</i> be compensated (stipend to be agreed) | <ul style="list-style-type: none"> • The ReGeneration Board shares its minutes with the organisation's Board of Directors. • Ideally, the boards share one or more common director/s to maintain transparency. • The ReGeneration Board produces annual reports with impact analysis on the previous year, and sustainable strategies for the upcoming year. • The representative for Nature makes suggestions to the board based on their expertise. The suggestions are not mandatory. • Corporate ReGeneration publishes an Activity Report, separate from the ReGeneration Board's annual report. |

→ **Positive Impact analysis:** The ReGeneration Board is designed to be inclusive of the diverse voices for Nature, in its many forms. In particular, youth stakeholders are invited to join the boardroom, and contribute to a solution-oriented and transparent culture of collaborative consultation. One of the key reported benefits of Corporate ReGeneration's collaborative approach is that it supports internal company representatives in promoting Nature-positive principles. This empowers companies to make meaningful contributions to sustainability.

The ReGeneration Board invigorates each guardianship to seek and gain relevant experience beyond their board seat and to cultivate expert knowledge and deep learning from one another. This crucial requirement sets the stage for building a strong foundation, and ensuring vigilance in relation to greenwashing concerns. As an additional layer of accountability, the voluntary advisory roles on the ReGeneration Board puts the onus of good, fair and equitable conduct on the representative. This two-way accountability method – on the organisation and the representative – strengthens transparency at both ends of the spectrum.

NATURE AS DIRECTOR

“The interesting thing that’s happened is just by doing that, and having Nature in the room, everyone else slightly alters. It’s like having that little reminder on your shoulder of, this is why I’m here and this is what I’m doing.”

Anne Hopkins, Faith in Nature

CASE STUDY 5

Faith in Nature

Faith in Nature is a family-owned, ethical eco-beauty brand based in the UK, with a mission to ensure that cruelty-free, vegan, naturally-derived, and ethically produced hair and body products are available to everyone. Faith in Nature is a private limited company under UK law, and the first to have given Nature legal representation status on a Board of Directors.



| Definition of Nature | Motivation |
|---|--|
| The company's terms of reference use the dictionary definition of Nature, meaning "the natural world and all non-human species that inhabit it"; and in practice, they include humans within that understanding. | The realisation that every decision made in the boardroom impacts on the natural world, without any formal input from Nature itself, was a lightbulb moment. Inspired by the Rights of Nature movement, the idea to grant Nature legal representation was the articulation that 'Nature is the boss' at Faith in Nature. The focus is on developing directors' understanding of the needs of Nature, so that they can be better placed to make decisions and vote with the best interests of Nature in mind. |
| How is Nature represented? | What was implemented? |
| <p>Nature is appointed as a non-executive board director where it has speaking and voting rights equal to all other directors on the board. To support the position, the representative also has the right to call on an experts committee to assist in decision-making.</p> <p>Nature Is represented by at least one human proxy, acting as a 'Nature Guardian' on behalf of Nature, who "shall be nominated by the Board in accordance with the Nature Nomination Policy and appointed by the holder(s) of a majority of the Voting Shares for the time being in accordance with Article 12.1"</p> | <p>Faith in Nature sought advice and support from two NGOs specialising in the promotion of Rights of Nature, who were commissioned to create a model for Nature as Director.⁴</p> <p>Operating in accordance with the UK Companies Act 2006, Faith in Nature amended their Objects clause in the Articles of Association, to embed both their combined commercial and environmental purposes, and the legal standing of Nature (as) Director on their board.</p> <p>Two co-proxies (on behalf of NGOs) were appointed as a binome, to represent, speak and vote for Nature on the board.</p> <p>Internal governance protocols were amended to reflect the demands for transparency and integrity of the decision-making process with Nature.</p> |

| Basis: Legal | Reporting & accountability mechanisms |
|---|---|
| <p>The Objects of the Company include the duty to "to promote the success of the Company,</p> <p>a. for the benefit of its members; and</p> <p>b. while delivering, through its business and operations, using its best endeavours to</p> <p>i. have a positive impact on Nature as a whole and to</p> <p>ii. minimise the prospect of any harmful impact of the business and operations on Nature,</p> <p>in a manner commensurate with the size and resources of the Company, taken as a whole"</p> <ul style="list-style-type: none"> • Rights of Nature (as) Director • Right to access information & data • Right to consult others • Right to a dedicated budget • Right of attendance • Right to decide what is a Nature-related matter • Right to direct the actions of the company • Right to call an experts committee • Right to delegate decision-making powers to the experts committee • Fee compensation for their engagement (contractually agreed) | <p>Nature-related matters</p> <ul style="list-style-type: none"> • On such matters, the <i>Nature as Director's</i> presence is required to make the board meeting quorate • Where a decision is reached against the advice of <i>Nature as Director</i> on a Nature-related matter, the Board has a duty to provide and record the 'balanced and comprehensive' reasons for the decision. <p>Annual Report</p> <ul style="list-style-type: none"> • A yearly report on the company's activities must be submitted to <i>Nature as Director</i>, before being made publicly available • <i>Nature as Director</i> has a right of reply and approval <p>Nature Guardian removal</p> <ul style="list-style-type: none"> • Resignation or removal of the Nature proxy must be justified with 'comprehensive and clear' reasons, "including any information relating to the Nature Guardian's disagreement with the board of the directors." |

⁴ Lawyers for Nature (UK); Earth Law Center (US), supported and Shearman & Sterling LLP - together designed the initial Nature On The Board initiative.

→ **Positive impact analysis:** Faith in Nature's Nature as a non-executive director position focuses on the Rights of Nature as Director to account for sustainable company initiatives. Inspired by the Rights of Nature movement, this 100% family owned organisation jumped right in when appointing two Nature proxies for their board. This Nature as a non-executive director position highlights the responsibilities between guardian and Nature, and guardian and the organisation. Simeon Rose of Faith in Nature noted that this change for them "is not some act of self flagellation, this is actually a tool to help [them] make better decisions for Nature." Governing documents are updated to include the process behind nominating Nature and the necessary appointments of voting shares so this non-executive director position still has teeth when making corporate decisions. Faith in Nature published the first Nature On The Board yearly report, available [here](#). More than a reporting and disclosure exercise, this report offers a thoughtful and reflective glimpse into the ecological dimension of the relationship between Nature, human beings and business. As the company aptly states, it is "not about [their] numbers – and there's no evidence to suggest that NOTB is in any way linked to [their] growth or profitability (even though [they] have grown over the last year). This report is solely about the NOTB process". What is clear from the report though, is that Nature as Director has had a regenerative impact in the development of the governance and organisational culture, and has undoubtedly inspired other organisations to consider changes to their own governance structures.

House of Hackney (also counselled by Lawyers for Nature) has nominated Nature as Director on their board as well; thus expanding their relationship with Nature from inspiration to advocating for Nature and giving it a voice. This British luxury interior and lifestyle brand, co-founded by Freida Gormley, is backed by regenerative economics to support its consumers' connection to Nature. In this model, the commitment to Nature is evident throughout the system - in employee engagement, supply chain evaluations, and the founders' commitment to self evaluate their decisions on a consistent basis.

CASE STUDY 6

Hub Culture

Hub Culture is a global collaboration platform, focused on digital currency (the Ven), digital identity (HubID), knowledge brokerage and community services (Pavilions). It is a limited company incorporated in Bermuda; with offices in Geneva, Hong Kong, London, San Francisco and New York.

| Definition of Nature | Motivation |
|--|---|
| As Hub Culture is headquartered in Bermuda, there is a deep commitment to the ocean. Therefore, the company's definition of Nature refer specifically to the Atlantic Ocean, including both animate and inanimate forms, | <p>Hub Culture has a history of innovation at the intersection of sustainability and technology, with a focus on climate and Nature.</p> <p>The idea to bring Nature on board emerged following COP 15, after which they decided to put the rights of Nature - i.e. the Atlantic Ocean - at the heart of their boardroom governance process, products and services.</p> |
| How is Nature represented? | What was implemented? |
| <p>Nature</p> <ul style="list-style-type: none"> Is represented by the entire company's board of directors, each acting as proxy for the Atlantic Ocean Is supported by appointed Advocates (Ocean experts) for an informed decision-making process | <p>Hub Culture sought advice from the Earth Law Center.</p> <p>Operating under the Bermuda Companies Act 1981, Hub Culture redesigned their board appointment agreement into a Proxy Appointment Agreement.</p> <p>The proxy Benefactor is listed as the Atlantic Ocean.</p> |
| Basis: Legal | Reporting & accountability mechanisms |
| <p>Through the contractual proxy agreement, every director agrees to</p> <ul style="list-style-type: none"> Represent the interests of Nature as a Board member Consult and take into account the advice of appointed Advocates, who can advise on company action compatible with the interests of Nature with regards to Board decisions, perspectives and action Accept the role of Proxy for the Company's sole appointed Board Member, the Nature Based Entity (NBE) that is the Atlantic Ocean Consider the perspective and needs of the Atlantic Ocean as part of the Board responsibility and decision-making | <p>Utilise AI and digital technology to track Nature oriented governance decisions within Hub Culture. These governance characteristics are visible to all Ocean Advocates working with Hub Culture. While there is no formal mandatory reporting required, the Advocates have agency to self evaluate.</p> |

→ **Positive impact analysis:** HubCulture's integration of Nature, specifically the Atlantic Ocean, marks their commitment to their local environment in Bermuda. The aim is to acknowledge and celebrate the organisation's physical location, through their operations and managerial powers. As Stan Stalnaker, Founding Director of HubCulture, said, "If we're going to put Nature on the board, we have to look where we're uniquely placed." Each director has the responsibility to act as an equitable, inclusive proxy for the Atlantic Ocean. This is further supported by the creation of third party accountability mechanisms, such as Ocean Advocates, who provide an informed, expertise-based perspective to the organisation's decision-making process. Having the Atlantic Ocean on the board results in a ripple effect - others within HubCulture are then prompted to also consider the impact of their decisions on the Atlantic.

Making the board a collective proxy for the Atlantic Ocean has impacted the way decisions are made. It has also influenced the direction of the business beyond its initial technology-driven ambitions, (e.g. Hub Culture has now joined a climate fund initiative focused on the Atlantic Ocean). The combination of human, AI and digitisation adds another layer of positive impact, as the decision-making process is documented through their technology. Decision-making is digitised into governance characteristics, visible to the advocate, and other companies, with the double aim to spread best practice and encourage more organisations to join the adventure.

CASE STUDY 7

Palais de Tokyo

Palais de Tokyo is the largest centre in Europe for modern art and contemporary creation, located in Paris. The museum is a SASU,⁵ a simplified joint-stock company, with a single shareholder that is the French State. It is also supported by corporate sponsors across two strands: arts & society; and arts & ecology.

| Definition of Nature | Motivation |
|---|--|
| <p>Palais de Tokyo aims to move beyond the separation between Nature and culture; therefore Nature is understood in broad terms to include Future Generations Z and Alpha. In this sense, culture, the interests of the young and future generations, and the interest of Nature are considered fundamentally intertwined.</p> <p>Palais de Tokyo also adopts a holistic understanding of Future Generations as including other-than-human life.</p> | <p>For Palais de Tokyo, arts and culture are not separate from Nature, but are interdependent.</p> <ul style="list-style-type: none"> • The health of the planet, and its climate in particular, are essential to guarantee the right to culture for Future Generations. • The climate crisis is also a crisis of imagination, therefore culture is needed in the efforts to address climate change. • It is the role of artists to imagine and create anew. |
| How is Nature represented? | What was implemented? ⁶ |
| <p>Palais de Tokyo gives Nature a voice as director (administrateur) on the board of its endowment fund called Palais de Tokyo Re-generation.</p> <ul style="list-style-type: none"> • Nature is represented by organisations rather than individuals to ensure a diversity of voices • Generation Z and Generation Alpha are represented by two organisations (French college students; and Earth Law Center, respectively) • The board is constituted of members who are experts in climate-change related issues. | <ul style="list-style-type: none"> • Application of permaculture philosophy to work in the interest of humans and biodiversity. • The endowment fund, created under French law, is mission-led to transmit resources for artistic creation to young and future generations. The fund is established as a trust separate from the organisation and allows donations to be taken and investments to be made, to create a sustainable flow of capital into Palais de Tokyo. |
| Basis: Legal | Reporting & accountability mechanisms |
| <p>In the Articles of Association of Palais de Tokyo Re-generation, the president of the endowment fund board appoints:</p> <ul style="list-style-type: none"> • 2 qualified natural or legal persons, to represent the young and future generations • For a 2-year renewable mandate <p>With rights and responsibilities equal rights to all other directors on the board, they can serve as Nature proxies and are thus mandated to:</p> <ul style="list-style-type: none"> • Deliberate on which project to fund • Decide on investment criteria and approve the final investment strategy • Approve yearly accounts • Decide on which wills and gifts are accepted • Take part in staff recruitment processes relating to the endowment fund | <ul style="list-style-type: none"> • Annual activity report • Mission-lock based on principle of trust that the fund was created for the interest of future generations (so no mechanism for decisions made against the interests of future generations) |

⁵ société par actions simplifiée unipersonnelle.

⁶ At the time of the interview and the release of this toolkit, Palais de Tokyo's endowment fund is undergoing legal review, and awaiting confirmation for its establishment, from the Ministry of Culture.

→ **Positive impact analysis:** Palais de Tokyo's artistic approach in recognizing the natural symbiosis between ecology and art plays into their governance model. The voice of future generations in an endowment fund uniquely updates the way in which supporting the youth in perpetuity is viewed. Tom Rowell of Palais de Tokyo states that, within this governance model it is important "to have a very clear picture in mind of what an alternative future might look like." Thus, the onus and decision making as a Nature proxy lands on intentionality and long-term thinking with investments, wills, and future recruitment. This powerful approach gives standing to the voices that are adversely impacted by present and future decisions. This direction integrates the organisation's integrated definition of Nature that there are no boundaries between Nature and culture, between future generations and climate. The idea is that, when we make a decision for the future, we are making a proactive decision for Nature as well.

NATURE AS SHAREHOLDER

CASE STUDY 8

Patagonia

Patagonia is an outdoor apparel private benefit corporation and B Corp headquartered in California, USA. It operates globally, with stores in more than 10 countries worldwide. It is a private company, previously family owned, and founded by Yvon Chouinard in 1973. The company is now entirely owned by the Patagonia Purpose Trust and the Holdfast Collective.⁷ Limited information is available on the charter, structure, and governance of the Patagonia Purpose Trust and the Holdfast Collective, what is contained in this toolkit is what was found through publicly available sources.



| Definition of Nature | Motivation |
|--|---|
| For Patagonia, Nature can be summed up as the Earth as our home planet; encompassing climate change, land preservation, and defending Nature as a whole. | <p>Founder Yvon Chouinard expressed that Patagonia is “focused on longevity, not expansion”. The model they created and adopted “ensures the company stays true for another 50 years or more and uses the wealth the company generates to protect our home.”⁸</p> <p>Including <i>Nature as Stakeholder</i> through an alternative ownership model aligns with Patagonia’s core values of: employee well-being, community, quality, integrity, environmentalism, justice, and independence.</p> <p>As articulated by Yvon Chouinard: “While we’re doing our best to address the environmental crisis, it’s not enough. We needed to find a way to put more money into fighting the crisis while keeping the company’s values intact.”⁹</p> |
| How is Nature represented? | What was implemented? |
| <p>Patagonia gives a voice and a vote to Nature as the sole purpose of two separate entities that own all of the company’s voting and nonvoting shares.</p> <ul style="list-style-type: none"> • Patagonia Purpose Trust represents the voting right of Nature • Holdfast Collective represents the non-voting rights of Nature <p>This approach overlaps with the <i>Nature as Inspiration</i> model, given its entrenched mission-lock to protect Nature and focus on fighting the environmental crisis.</p> | <p>Founder Yvon Chouinard transferred (rather than sold) voting control to Patagonia Purpose Trust, and ownership to Holdfast Collective, a non-profit organisation.</p> <p>This structure serves two purposes:</p> <ul style="list-style-type: none"> a) it enables the company to continue operating as a for-profit enterprise, with profits invested both in the business, and environmental causes; b) it secures the independence of the organisation, and its purpose-led commitment to address the environmental crisis and defend Nature, in perpetuity. <p>The Chouinard family continues to sit on Patagonia’s board. They also guide both the Trust (electing and overseeing its leadership), and the Collective’s philanthropic work.¹⁰</p> |

⁷ Chouinard, Y. ‘Earth is now our only shareholder’.

⁸ McKinsey & Company (2023) Interview with Yvon Chouinard Patagonia shows how turning a profit doesn’t have to cost the Earth.

⁹ Chouinard, Y. ‘Earth is now our only shareholder’.

¹⁰ Patagonia (2022). ‘Patagonia’s next chapter: Earth is now our only shareholder’. PatagoniaWorks.

| Basis: Legal | Reporting & accountability mechanisms |
|--|--|
| <p>The adoption of a Business Perpetual Purpose Trust is an innovation under the US jurisdiction, and made possible under section 409 of the Uniform Trust Act.¹¹</p> <p>Whilst conventional private trusts tend to benefit individuals, the particularity of a purpose trust is that the beneficiary is a purpose – in the case of Patagonia: using business to protect the Earth (planet, Nature, undeveloped land¹², environmental health) and solve the environmental crisis,¹³ by ensuring that profits benefit the Planet.</p> <ul style="list-style-type: none"> • Patagonia Purpose Trust has decision-making control via the ownership of 100% of Patagonia's voting stock, which represents 2% of the holding company's shares. <p>The governance structure under a purpose trust includes a Board of Trustees responsible for managing the trust, and appointing a Trust Protector, who will enforce the purpose of the trust.¹⁴ The specifics of the Patagonia Purpose Trust governance structure are not currently available.</p> <ul style="list-style-type: none"> • The Holdfast Collective is a 501(c)(4) non-profit social welfare organisation (charitable entity) dedicated to environmental causes, including: climate change, wildlands preservation, nature-based climate solutions, funding grassroots environmental organisations, and supporting politicians working to fight the climate crisis.¹⁵ <p>Holdfast has ownership of 100% of the non-voting stock, which represents 98% of the holding company's shares.¹⁶</p> | <p>Reporting</p> <p>Patagonia is governed by six key principles, on which it reports yearly in an Annual Benefit Corporation Report:¹⁷</p> <ul style="list-style-type: none"> • 1% for the Planet • Build the best product with unnecessary harm • Conduct operations with no unnecessary harm • Sharing best practices with other companies • Transparency • Providing a supportive working environment <p>Independent verification</p> <p>As a B certified company, it also chooses to measure its environmental and social performance independently, via a third-party B Lab.</p> <p>Profit and dividends distribution</p> <p>Patagonia, and subsidiaries, ensure that dividends are issued to the Holdfast Collective to be administered to environmental organisations in alignment with its purpose to tackle the environmental crisis, protect nature and biodiversity, and support communities.¹⁸</p> <p>For the toolkit, no public information on the transparency and reporting mechanisms of the Patagonia Purpose Trust or the Holdfast Collective were found.</p> |

- 11 Erskine, M. (2022). 'Yvon Chouinard and The Patagonia Purpose Trust - What Is It And Will It Work?' Forbes
- 12 Groff, B. (2023). Patagonia, Purpose Trusts, and Stewardship Trusts – Business with a Purpose. American Bar Association Probate & Property Volume 37, Number 1.
- 13 Clayton, J. (2013). 'Patagonia launches "\$20 million change & change" and Patagonia Works – a holding company for the environment'. Patagonia works.
- 14 ibid.
- 15 Toussaint, K. (2023) 'Patagonia uses capitalism to save the planet with the Holdfast Collective'. Fast Company.
- 16 Trelstad, B.; Hsieh, N-H; Michael, N.; and Pinckney, S. (2023). 'Patagonia: 'Earth Is Now Our Only Shareholder'. Harvard Business School Case Study 323-057.
- 17 Patagonia Works (2021). Annual Benefit Corporation report.
- 18 Trelstad, Brian, Nien-hé Hsieh, Michael Norris, and Susan Pinckney. 'Patagonia: 'Earth Is Now Our Only Shareholder'. Harvard Business School Case 323-057, March 2023. (Revised September 2023.)

→ **Positive impact analysis:** The Patagonia Purpose Trust for the benefit of the planet is an ingenious and bold innovation that has already generated much media attention.¹⁹ Patagonia's shareholder model demonstrates a deep commitment to Nature and its well-being. Besides the direct benefits to the Planet, this model provides a basis for others to be inspired and learn from its implementation, with the idea that transferring ownership for the benefit of Nature is possible. The direct flow of funds into Nature restoration creates a high and efficient benefit directly for the planet and communities.

19 See for instance: Erskine, M. (2022). 'How Will the Patagonia Perpetual Purpose Trust Terms Be Enforced?'. Forbes; and 'Groff, B. and Gary, S.N. (2023). 'Patagonia, Purpose Trusts, and Stewardship Trusts—Business with a Purpose'. Probate & Property Vol. 37, No. 1.

CASE STUDY 8

Golden Shareholder

Tony's Chocolonely is a private confectionary company headquartered in the Netherlands. The organisation focuses on the inequality within the chocolate industry, and sets an example by having a 100% slave free supply chain for their chocolate production.

| Definition of Nature | Motivation |
|--|--|
| <p>In light of Tony's Chocolonely's mission, Nature can be described as a socio-ecological understanding, with a focus on the nature of the relationship between cacao (and the whole ecosystem related to cacao), human beings, and business.</p> <p>Tony's Chocolonely's notion of Nature expands on their fifth 'Sourcing Principles'²⁰ (better quality & productivity) to encompass deforestation, waste, and carbon footprints (net zero). While currently,²¹ the company's concern centres on shade trees (due to the nature of the way cocoa grows), this will develop to include biodiversity and nature more broadly, as the organisation matures.</p> | <p>Tony's Chocolonely's mission is to make 100% slave free chocolate and the production of this chocolate is guided by their five sourcing principles.²²</p> <p>The fifth principle, of better quality and productivity, incorporates Nature and is motivated by Tony's understanding of the relationship between farming, Nature, biodiversity, and the existential challenge of climate change.</p> |
| How is Nature represented? | What was implemented? |
| <p>Nature as Stakeholder is represented through Tony's Mission Lock, i.e. a Golden Shareholder that is an independent entity (foundation), with a non-economic stake in the company.²³</p> <p>The Mission Lock is, in turn, represented by three Mission Guardians selected to protect Tony's mission and sourcing principles based on their:</p> <ul style="list-style-type: none"> • Skills and competences • Proven track record in social impact and sustainability <p>Mission Guardians have the following rights:²⁴</p> <ul style="list-style-type: none"> • Full transparency • Access to stakeholders • Investigate and discuss concerns • Hold the leadership team to account in case of mission-drift, • Right of veto for any proposed changes to the Mission Lock | <p>The company implemented the following steps:</p> <ul style="list-style-type: none"> • A Mission Lock mechanism for the protection of Tony's Chocolonely's '5 Sourcing Principles,' to avoid mission-drift and compromising amendments • Golden Share issued to a foundation led by three Mission Guardians. <ul style="list-style-type: none"> - A Golden Share can never be traded and is given to stewards.²⁵ • Appointment of 3 Mission Guardians as the 'Golden Shareholders.' • Enhanced control rights for the Mission Guardians to ensure decisions drifting from the mission cannot be made without the Guardians' consent |

²⁰ Tony's Five Sourcing Principles; traceable cocoa beans; higher price; investment in strong farmers; long-term relationships; and better quality and productivity.

²¹ At the time of writing.

²² Tony's Mission Lock.

²³ Tony's Mission Lock.

²⁴ Holland, P., Park, S.H. and Harman, L. (2023). 'Tony's Chocolonely's Golden Share Model'. Bates Wells.

²⁵ We are Stewards (last accessed March 2024). 'Steward-Ownership models'.

| Basis: Legal | Reporting & accountability mechanisms |
|---|---|
| <p>Tony's Chocolonely adopts a double legal entrenchment mechanism for the (indirect) representation of Nature:</p> <p>Golden Shareholder The creation of an independent separate entity Shares granted to that foundation (Mission Lock) Whose main duty is to uphold and protect the company's mission.</p> <p>Articles of Associations These contain the 5 'Sourcing Principles' that complete the mission of Tony's Chocolonely Legally binding on the company's executive (director's duties) The mission cannot be amended, altered or watered down without the approval of the Mission Guardians</p> | <p>Reporting</p> <ul style="list-style-type: none"> • The annual FAIR report provides information on • Tony's Chcolonely's projects and goals relating to the fifth sourcing principle. • Tony's has transparent commitments to science-based targets, which are updated in the FAIR report. • The mission guardians can publish in the FAIR report, if a solution to a stakeholder problem isn't found. <p>Accountability mechanisms There are various accountability mechanisms in place, in case of mission-drift:</p> <ul style="list-style-type: none"> • Any stakeholder can raise concerns with the Mission Guardians directly • Mission Guardian can start an internal process of collaborative engagement to resolve issues ("break glass in emergency") • Mission Guardians can escalate matters in extreme cases through public means through a double-page spread in the company's annual FAIR report and through international full-page newspaper advertisements • Mission Guardians can file a petition on the grounds of mission-drift, and submit the matter for legal investigation and arbitration at the Enterprise Chamber of the Court of Appeal in Amsterdam |

→ **Positive impact analysis:** The Mission Guardian's broad duty to protect the mission seems open to an evolving interpretation of the mission, in light of social and economic developments. For instance, whilst Nature is not explicitly mentioned in the constitutional documents or Mission Lock, the reference to sustainability as one of the core prerequisites for a Mission Guardian appointment, alludes to an implicit voice of Nature mandate. Nature is represented *indirectly* within the company's mission lock, through interpretation of its Sourcing Principles.

Creating a golden share and mission guardianship might present a certain level of complexity, considering the rigorous and detailed implementation process involved. Yet, this complexity is rewarded with strong levels of accountability embedded across many levels - including constitutional, corporate, governance, and community dimensions. The Mission Guardians' rights to transparency, investigation and litigation allow a deeper level of accountability that solidifies Tony's Chocolonely's commitment to future-proofing its mission.

Conclusion

The diversity of the models presented throughout this chapter introduce many pathways for the integration of Nature in organisations. The case studies offer a window into the motivations (why), design frameworks (how), and processes (what) that have inspired these companies to facilitate Nature as a Stakeholder in their vision, strategy, and decision-making process.

In an attempt to provide a structured overview of the various models, to identify key steps for replicability, and to provide a range of choices for companies wishing to follow suit, this toolkit has categorised the approaches into 4 main models (Nature as Inspiration, Nature as Advisor, Nature as Director, and Nature as Shareholder). Within these models, Nature as a Stakeholder is implemented in unique ways by each company.

What emerges from these case studies are 3 key components to consider on the journey to onboarding Nature as Stakeholder:

- A shared/common organisational grasp of the meaning of Nature; and the motivation for cultural and organisational change, through integrating Nature in the governance of the company
- The adoption of requirements on how Nature will be represented within the organisation
- A clear outline for implementation, that can underpin the practice of governance and accountability with Nature as Stakeholder

These aspects are addressed in the next chapter, covering the *conceptualisation*, *contextualisation*, and *implementation* phases to support the alignment between vision, design and action for organisation's which wish to implement a model.

Chapter 3

JOINING THE MOVEMENT - WHAT STEPS TO TAKE

Introduction

In chapter 1, we covered **why** the formalisation of Nature as a Stakeholder is significant for the advancement of corporate sustainability. In chapter 2, we reviewed **how** Nature as Stakeholder can be articulated across different models, pioneered by various companies. Chapter 3 focuses on **what** steps to take for implementing these or similar models, by offering a roadmap to facilitate the creative and transformational process of onboarding Nature.

It is important to remember that the aim is to positively impact the state of Nature. The strategy for this is to practise Nature-conscious governance. Therefore, the objective for Nature as Stakeholder is to support the evolution of a regenerative business culture within your company. Consequently, the following section highlights the significance of purpose, frame of mind, culture and imagination in the process; before laying the tangible foundations for action.

The Purpose of Onboarding Nature

For a company, onboarding Nature is neither a destination nor a project with a predetermined end. Rather, it is the first concrete step in integrating Nature into a company's governance and thinking. The aim is to enable companies to contribute to a more sustainable and regenerative future for the whole of the community of life. Therefore, onboarding Nature forms part of a wider strategy for regenerative business practice.

The Mindframe for Onboarding Nature

Einstein once said that we cannot solve problems with the same mindset that created them. Similarly, the environmental problems we face today cannot be effectively solved by current business practices. Onboarding Nature will assist companies with transforming their decision-making, responsibility and accountability; equipping them with the ability to address pressing environmental crises. This requires a shift in the mindset of the people that form the company as well as the collective mindset of the company as a whole. It entails a shift in the collective consciousness¹. For example, companies should aim to talk with Nature, rather than about Nature, and intend to contribute positive impact rather than minimise harm. The onboarding process is not merely a technical, legal or structural development. It is an effort to evolve this new mindframe, premised on three ideas:

We (humans) are Nature, so Nature is not outside of us. We are a part of Nature. and Nature is within us. *As human creations, businesses can be deemed to be an extended expression of Nature.*

Nature is life, and companies are brought to life through the dreams, ambitions and actions of human beings, to create value for society. *As an expression of human aspirations and intentions, businesses are powered by a desire to serve the common good.*²

¹ Collective consciousness here refers to the shared set of beliefs, ideas and moral attitudes of the group, especially as they pertain to Nature, and natural ways of thinking and being.

² The common good is the notion that actions and benefits are in the interest of all, i.e. everyone, including human beings, beyond-human and other-than human beings, ecosystems, the planet, and so Nature as a whole.

Nature is culture, and culture means 'way of life'. The values we cultivate inform the way we behave. *As reflections of the values cultivated by the humans in charge, businesses can be a force of and for Nature.*

To avoid accusations of misleading performative action, such as tokenism and greenwashing, the transformation of corporate governance must be cultural as well as legal, structural and enforceable over time. This encompasses changing ways of thinking, relating, and doing business; and must be based on conscious ethical decisions that can be underpinned by tangible legal and structural changes. Therefore, the power of imagination, coupled with resourcefulness and determination, will help businesses succeed with this onboarding process.

Steps to onboard Nature

The beauty of Nature as Stakeholder is that it starts with Nature at the heart of the design process, as the muse and partner of the companies that choose to bring it on board. For business leaders that answer the call to onboard Nature, this toolkit aims to be a companion guide on their journey towards a regenerative and Nature-inclusive business model.

The next section offers suggestions (rather than prescriptions) of steps that can be taken by companies to onboard Nature. The form of Nature as Stakeholder will differ for each company, thus making the journey a unique experience. It is important to note that the process is not linear. Rather, it is a circular, dynamic, lived experience that is based on imagination, creativity, design thinking, agile learning, and systemic principles.

Three landmarks must be considered, to ensure an aligned strategy on the road to onboarding Nature:

1

Conceptualisation

Clarify your understanding of and relationship with Nature, and ascertain why you want to bring it on board;

2

Contextualisation

Choose a Nature as Stakeholder model, and adjust its design to your vision and specific organisational needs;

3

Implementation

Amend and adjust relevant constitutional documents, corporate structure, and organisational governance culture as required.

#1 - CONCEPTUALISATION

Determining the core motivation for onboarding Nature is a crucial step since this is the seed that will grow into the practice of Nature-conscious governance. This requires establishing a conceptual compass and includes an understanding of these four elements: the nature of Nature, the organisational vision of the future, the desired change, and the purpose of appointing/formalising Nature as Stakeholder. This initial alignment is essential to guarantee the conscious, authentic, and cultural nature of the onboarding process.

Define a common understanding of Nature within the company

Nature as a concept is contextual, it will mean different things to different people, across different sectors, regions and cultures. Understandings of Nature range from the natural environment, flora and fauna, biodiversity, ecosystems and their services, non-human species, Earth, the planet, the community of life, and much more. For instance, for House of Hackney it is Mother Nature and Future Generations; for Palais de Tokyo, it is Generations Z and Alpha (including all species, not just human future generations); for Hub Culture, it is the Atlantic Ocean; and for the Zoöconomic Institute, it is other-than-human living entities. Therefore, companies should be sure to develop an organisational definition for Nature.

There is no right or wrong answer here. However, a common understanding of Nature helps support decisions such as: choosing the appropriate model to recognize Nature as Stakeholder deciding who might speak for that expression of Nature, clarifying what would constitute Nature related matters, and agreeing on strategies to ensure a Nature-positive impact.

Clarify the vision of the future with Nature on board

"Making Peace with Nature is the Defining Task of the 21st century. It must be the top priority for everyone, everywhere."³ Our present circumstances are unsustainable, and if nothing changes, the future is projected to be bleak.

This is where your power of imagination is activated: imagine a future in which all life thrives, and where Humanity lives in harmony with Nature. Imagine a sustainable and regenerative future, and what that would look, be and feel like. Envision the part your company will play in manifesting this, guided by Nature as Stakeholder: this is your overall, holistic vision for the future.

Describe the change desired with Nature as Stakeholder

For a vision of the future to be different from the present, something has to change. Therefore, onboarding Nature is an acknowledgement that the current *status quo* of a business needs to evolve. It is useful to identify what must be different, and the changes that need to occur

³ UN Secretary-General António Guterres (2020). 'UN Secretary-General António Guterres'. United Nations Climate Change.

for the desired future.

Parameters and areas of change that may need to be considered might include: business direction and model; corporate governance; customers, products and services; operations and value chains; consumer and community relations; and local environmental impacts.

Determine the purpose of formalising Nature as Stakeholder

Both the vision of the desired outcome, and the changes required to achieve it, inform the purpose of formalising Nature as Stakeholder in the company governance structure. That way, businesses identify their individual reasons for onboarding Nature.

This initial alignment is essential to guarantee the conscious, authentic, and cultural nature of the onboarding process. Companies should be sure to clearly outline their organisational definitions of Nature-positive governance, employeeship, investments, and success.

Examples of questions to create your personal compass

Below are questions that companies may consider in developing the compass to guide their onboarding Nature journey:

| | |
|---|---|
| Meaning of Nature <ul style="list-style-type: none">• How do you define/perceive Nature?• What does Nature mean to your organisation? | Vision of future <ul style="list-style-type: none">• Why does it matter to bring Nature on board?• What is the future you imagine once Nature has joined your organisation? |
| Change with Nature as Stakeholder <ul style="list-style-type: none">• What change do you wish to bring to your organisation?• What do you hope to achieve or do differently with Nature on board? | Purpose of Nature as Stakeholder <ul style="list-style-type: none">• What is the purpose of the voice of Nature?• What impact do you want to have with Nature's guidance? |

The answer to these (non-exhaustive) questions will help you articulate a long-term vision for Nature as Stakeholder and the logic of your next steps. Your purpose-led vision for Nature as stakeholder can then become your North star for the implementation, integration and practice of Nature-inclusive governance.

#2-CONTEXTUALISATION

As shown in chapter 2, there are several models available that have each emerged according to jurisdictional, organisational, structural, cultural, and purpose-led circumstances. Nature as Stakeholder models reflect biodiversity, as their inherent diversity lends them the strength and capacity to support healthy and sustainable systems. Therefore, the models offered in this toolkit are blueprints, or inspirational starter kits, that can be customised, developed and adjusted to suit unique visions, purposes, formats and requirements. Provided here are a series of contextual aspects to consider in designing your own model.

Review & select preferred model for Nature as Stakeholder

Chapter 2 provides an overview of emerging models in the field of Nature as Stakeholder. By the very emergent nature of this field of study and practice, it is by no means an exhaustive list of Nature as Stakeholder. Nevertheless, this toolkit offers a solid review of tried and tested innovative models. In addition to this resource, it is also possible to commission a discrete or wider review, based on the company's specific criteria, from a specialised consultant or legal counsel.

To ensure alignment, the selection process needs to be guided by the compass that results from the conceptualisation phase. Selection is particularly influenced by the purpose of Nature as Stakeholder and the desired changes. For instance, if a business has no board of directors, then the Nature as Director model would not be a viable option, whereas Nature as Inspiration or Nature as Advisor might be relevant.

Therefore it may be useful to review one or more possible models and explore which might be the best fit through a scenario-based comparison exercise. Engaging internal and external stakeholders in this exploration is strongly recommended.

Design the Representation of Nature as Stakeholder

In alignment with the conceptual compass, a company must decide how Nature's voice and rights will be represented within the organisation. Here is table of proxy representational characteristics to consider:

| | |
|---------------------------------|--|
| Policy or Legal basis | Nature as Stakeholder can be entrenched either through a policy-based or legally-based approach. |
| | For instance, Nature as Director is legally embedded through private/company law, with Nature formally represented by a proxy. Whereas Nature as Inspiration is integrated as a policy, via a declaration of intent. In the inspirational model, where proxy representation is optional Nature is represented throughout the organisational culture. |
| Human or AI | The current majority of proxies are human beings. However, at Hub Culture, the eight human proxies for Nature as Director are supported by a ninth director, an AI (Zeke) trained to address Nature-related issues. ⁴ |
| Individual or collective | Nature as Stakeholder can be represented by an individual, a pair, or through a collective. |
| | For instance, the Zoönomie Institute provides an individual Speaker for the Living under Nature as Advisor. Faith in Nature integrates Nature as one voice with a single vote for Nature, that is nevertheless represented by two co-proxies. The board of Hub Culture is a collective proxy of the Atlantic Ocean. |
| Internal or external | Nature as Stakeholder can be represented by an internal member of the company, or by an external entity (under contract or agreement). |
| | For instance, Nature as Inspiration tends to rely on internal representation whereby Nature's interests are in the minds of all the company's members. Nature as Director can be either internal (e.g. Hub Culture's board) or external (e.g. commissioned Nature representatives from two Nature NGOs at Faith in Nature). Nature as Advisor can also be an external proxy contracted in (Zoönomie Institute) or an external satellite board (e.g. in Belgium companies such as Danone, Radio Nostalgie, Care 4 Water in Belgium, follow this model developed by Corporate ReGeneration). |
| A guardian or an agent | Both approaches are anchored in an ethics of care and respect with Nature in mind. The guardianship perspective is anchored in the Rights of Nature movement, and takes a rights-based approach. The stance of a guardian proxy can be described as a defender and protector, safeguarding the interests and rights of Nature. For instance, the guardian proxy stands for the Rights of Nature as a singular voice, amongst other directors on the board (e.g. Faith in Nature explicitly refers to a Nature guardian in its documents). The agential perspective stems from the Voice of Nature movement, and takes a responsibility-based approach. The stance of an agential proxy can be described as a representative, advocate and facilitator of the agency of Nature's diverse voices. On a board, for instance, the agential proxy facilitates a space for a consciousness shift, from separation to unity with Nature, so that the board can learn to stand with and speak as Nature in their decision-making (e.g. Hub Culture, Palais de Tokyo). The preference for either or both of these approaches should be researched (seeking advice from relevant sources); discussed (grounded on vision and purpose of the conceptual compass); and agreed upon with the prospective representative/proxy of Nature. |

⁴ Additional details can be found on HubCulture's website.

It is also essential to determine the mandate of Nature as Stakeholder. For instance, compensation and terms of reference, voting rights (e.g. nature-related matters, right of veto), supervisory powers, portfolio of responsibilities (e.g. as executive director), Nature-related matters, and duration of the proxy term (fixed, renewable?).

Each company will also determine how to recruit for Nature as Stakeholder, as well as the kind of expertise, training, skills, competences, experience, and knowledge they would seek the proxy might demonstrate. Nature as Stakeholder requires more than technical know-how. The role may call on a wide array of worldviews, expertise and wisdom needed to transform and support the thinking behind a better Nature-informed decision (including scientific, economic, financial, socio-cultural, and Traditional Indigenous Knowledge).

Customise fit-for-purpose model

Nature as Stakeholder is not a one-size-fits-all. Following the conceptual compass, and the feasibility assessments, a final model selection can be made with the relevant adjustments, and expert assistance.

For instance, if a company wishes to set an internal advisory board; then it may need to combine aspects of Nature as Director and Nature as Advisor (e.g. legal and contractual embedment, with consultative right only). Other elements to consider include accountability policies and mechanisms (a significant element that requires thorough planning beyond the current scope of the toolkit). In relation to the proxy role, where relevant, organisations have discretion to determine the following: recruitment and removal protocol, induction, training, committee of experts, budget, competences, and so on.

Customising a model to a business' particular needs contributes to empowering business leadership to infuse Nature as Stakeholder with an authentic and genuine function, role and governance culture.

Evaluate and analyse the feasibility of the preferred model

The first level of evaluation can be done internally. Once a model has been selected, it is useful to proceed with a SWOT analysis to assess the model against the context of the company's requirements.

Depending on the choice of Nature as Stakeholder model, it is advised that the second level of analysis is performed by a specialist consultant or (internal/external) legal counsel. Their goal would be to examine the substance and component of the model within the relevant legal context (e.g. national, contract and company law); the structural adjustments required; and the necessary corporate governance amendments - where relevant.

Examples of questions to ask in defining your tailor-made model of Nature as Stakeholder

Below are questions that companies may consider in reviewing, evaluating, selecting and customising the best version of Nature as Stakeholder for their organisation.

| | |
|---|---|
| Review & Select a model <ul style="list-style-type: none"> • What tried and tested models are out there? • What theoretical models are proposed? | Design Nature Representation <ul style="list-style-type: none"> • Is a proxy required? If so, what expertise and credentials do they need? • What would be Nature's mandate, rights, and role? • Should Nature representation be formally and legally embedded? |
| Evaluate and analyse feasibility <ul style="list-style-type: none"> • What are the challenges and opportunities of onboarding Nature? • What legal, structural, organisational components need addressing? | Customise Nature as Stakeholder model <ul style="list-style-type: none"> • In what spaces would the voice of Nature be heard? • How do you want to work with Nature? |

The answer to these (non-exhaustive) questions will help you identify which model might work best for the vision and purpose of Nature in your company. Both challenging and inspiring, these questions might invite you to venture into unknown territory, and lead with creativity. This means that you may amend, transform and develop the existing models to better suit your organisational identity and culture.

#3 - IMPLEMENTATION

This is the execution phase for onboarding Nature, and is by no means the end of the road. Indeed, once Nature is onboarded, then begins the real work of making decisions with Nature. Therefore, it is imperative that the implementation process maintains alignment with the conceptual compass.

The following elements will need to be amended, (re)designed, adjusted, or created for the chosen Nature as Stakeholder model:

- Constitutional documents (e.g. memorandum and articles of association)
- Internal documents (e.g. bylaws, policies)
- Contracts and agreements (e.g. proxy, the board)
- Position creation; mandate and terms of reference framework
- Recruitment (e.g. engagement with relevant Nature NGOs)
- Remuneration and financial package (e.g. Nature proxy's fees, proxy internal budget)
- Budgeting (legal expertise and consultancy fees)
- Proxy induction and development program
- Board training and coaching

These elements are indicative of what steps may be necessary during execution. However, the details will vary greatly depending on the chosen model, the planned adjustments, the existing business model and structure, and the national jurisdiction and legal context (what is permitted or not under the law).

Whilst the deadline for onboarding Nature can be set by the company's strategic planning, the timeline for implementation will depend on a range of factors, which might include legal and administrative procedure, approval from the board (e.g. shareholders), organisational restructuring (e.g. evolving into a steward ownership model), recruitment process, financial matters, senior leadership support and reactivity, training requirements, agreement negotiations, etc. Ensuring a skilful plan for implementation helps support a seamless internal transition, as employees and stakeholders get onboard with an organisation's vision and the subsequent tangible steps.

Examples of questions to support implementation

| | |
|--|---|
| Jurisdictional dimension What Nature as Stakeholder might be permissible under national law? What legal provisions would be relevant/pertinent/apply? | Governance dimension What constitutional documents need amending? What protocols and policies should be (re) designed? |
| Corporate dimension What model adjustments are required for the company's size, shape and capabilities? What contracts need to be drafted? | Stakeholder dimension How to select, induct, and support the representative for the voice of Nature? Which partners/collaborations would help cultivate the representation of Nature |

The answer to these (non-exhaustive) questions will help you plot the strategic course for implementing and integrating Nature as Stakeholder in pragmatic and practical ways.

For further supportive materials on implementation of the Director, Advisor and Purpose models refer to Appendix C.

Who To Engage With

In working through the three stages of contextualisation, conceptualisation, and implementation, a diverse number of conversations will be sparked. In order to help guide you in this process and to ensure a smooth implementation, the following are a list of actors to consider engaging in your process. Incorporating multiple perspectives, both within and without your organisation, will ensure a seamless internal transition, as employees and stakeholders get on board with an organisation's vision and the subsequent tangible steps.

Internally

The conversation tends to first occur internally, as a self-reflective exercise that may involve all or some of the following:

- Shareholders/Directors board
- Senior leadership and/or the management team (including finance, HR, where applicable)
- Capital investors
- Organisational Grassroots (team leaders, portfolio officers, employee initiative/consultation)

Externally

Where pertinent and feasible, it is helpful to seek assistance from a wider range of actors, including:

- Nature-based ambassadors, NGOs, experts
- Companies that have already onboarded Nature as Stakeholder
- Organisations and consulting agencies specialising in bringing Nature on board (e.g. B Lab Benelux, Earth Law Center-NGA, Lawyers for Nature, Corporate ReGeneration, Zoëconomic Institute)
- Legal counsel
- Regenerative business and Nature-based coaching facilitators
- Change management consultants
- Regenerative business design consultants

Naturally

"What would Nature say?" That is what Faith in Nature asked before bringing Nature on their board. This has become a key question in their governance and operational decision making processes. So, if you are going to bring in Nature as Stakeholder and engage with Nature in its many forms - listen for the wisdom of:

- You, as an expression of Nature; and your relationship with Nature
- The natural environment and ecosystems
- Beyond human lives and communities
- Local/regional/global indigenous communities
- Conservation organisations
- Rights and Voice of Nature advocates

- And any entities that stand out as a natural representation that resonates with you

Conclusion

Thoughtfully and intentionally following the stages of conceptualisation, contextualization, and implementation will help guide your organisation in answering its personal call to action. The clarifying questions discussed here will support the journey by providing an authentic and informed approach. Reimagining your business's relationship to Nature as one of its key stakeholders, provides an exciting opportunity to innovate and adapt its organisational structure to one that better supports a thriving and sustainable future.

This journey will result in significant changes that provide positive impact and benefits for all:

For Nature, by enhancing the authenticity of your care and impact of your sustainability strategy.

For business, by making better, Nature-informed decisions, fulfilling ESG obligations and directors' duties, signalling to consumers and competitors, and protecting financial investments.

For the community of stakeholders, by taking better care of their interests and voices.

For the world, by contributing to better governance practices and outcomes for a Nature-positive world of action and regeneration and inspiring and empowering other actors.

Because we know by now, the Nature of business is Nature's business.

Chapter 4.1

LEGAL TEMPLATE: GUIDELINES FOR IMPLEMENTATION IN THE NETHERLANDS



The findings from the case studies concerning progressive companies have onboarded Nature in their organisation (Chapter 2) show us various ways of how to involve Nature as a stakeholder. Based on these different options, we developed a taxonomy comprising the following 4 main models:

1. **Nature as Inspiration;**
2. **Nature as Advisor;**
3. **Nature as Director; and**
4. **Nature as Shareholder.**

Our research aimed to provide us with insights to develop the 'Onboarding Nature Toolkit'. The Toolkit aims to inspire a company or organisation to take Nature on board as a stakeholder. It can also help in choosing a model that fits the company or organisation best. As part of the Toolkit, we developed legal templates that can assist companies and other organisations and its legal advisors to implement the models. To that end, we also conducted theoretical legal research in addition to the case study research. As company law slightly differs across jurisdictions, we developed jurisdiction-specific legal templates for the 4 models. The legal templates per country are under development and will be included in the course of 2024 (for the UK, US, Belgium, Denmark and France).

For the Netherlands, the legal template has been developed: Table 1 presents an overview of the options under Dutch law per each of the four main models (in the English language). The information in this Table aligns with the information in Chapter 2 of this Onboarding Nature Toolkit, and also exposing the case studies which were part of our research. Table 2 provides additional explanatory, detailed legal information about the possible steps to take under Dutch law. This is in the Dutch language to assist companies and organisations, and their Dutch legal advisors.

Options under Dutch law to embed Nature as Stakeholder

| Models | Subcategories | Explanation | Case Studies |
|--|--|---|--|
| Nature as Inspiration Nature as Inspiration can be expressed in a light form as a declaration of intent or in a strong form in which the interests of Nature are the main purpose of the organisation. | Option 1: Nature as Inspiration is a policy-based commitment to consider the voice and interests of Nature within the governance of the company. (non-legal) | This approach is a light touch, cultural entrenchment of Nature in the organisation, focusing on the voice rather than creating a legal position for Nature as a stakeholder in the company's governance. It is a purpose- and mission-driven declaration of intent that is a first step onto the journey of bringing Nature as Stakeholder. | The most notable example of Nature as Inspiration includes the campaign for 'Mother Nature as CEO' (see Chapter 2). This campaign has been initiated by the B Corps companies <i>Willicroft</i> and <i>Blyde</i> , and this model has now been adopted by over 10 companies. ¹ |
| | Option 2: Nature as purpose. (legal) | Stated in the organisation's purpose statement as included in the Constitutional documents/Articles of Incorporation/Articles of Association/Bylaws. | Examples include: The foundation <i>Commonland Foundation</i> , ² incorporated under Dutch law, states as its purpose to restore ecosystems. ³ The foundation <i>IUCN NL</i> , incorporated under Dutch law, and a part of the IUCN International network. The purpose of <i>IUCN NL</i> is: "Our vision is a just world in which nature is valued and protected. Our goal? To safeguard nature as the foundation for all life on earth. In this endeavour we devote special attention to areas that have a high natural value and special biodiversity, which are under pressure, and to the people who depend on that nature." ⁴ The foundation <i>WWF-NL</i> , incorporated under Dutch law, states in its purpose clause in the Articles of Association that its purpose is to preserve Nature. ⁵ The Land Life Company states on its website: "We have one mission: to restore. We deliver high-integrity, nature-based solutions to restore degraded land that would not recover without human intervention. Our focus is nature-first". ⁶ The foundation <i>Pluto Naturfonden</i> , incorporated under Danish law, states in its purpose: 'to ensure the preservation of a good and safe climate, endangered animal species and nature in general'. ⁷ |
| Nature as Advisor Nature as Advisor can be either a legal or a policy commitment, to entrench Nature as a stakeholder in the governance of a company, via the creation of an advisory board, or advisory board seat. | Option 1: Nature as stakeholder embodied in an Advisory Council or Advisory Committee. (legal) | The Advisory Council or Advisory Committee has a legal mandate to advise the board concerning decisions that matter to Nature. This mandate is included in the organisation's Constitutional documents/Articles of Incorporation/Articles of Association/Bylaws. | In our research we have not identified any specific examples of this model. |

¹ See: Mother Nature as CEO movement and members.

² See: Commonland Foundation website and Commonland Annual Report.

³ "Commonland is a not-for-profit organisation that brings people together to restore degraded landscapes and regenerate the Earth: our common land. With our holistic approach to landscape restoration - the 4 Returns framework - anyone can work with nature and their local community to restore a landscape." - Annual Report

⁴ See: Who we are | IUCN NL.

⁵ See: www.wwf.nl/ and wwf-nl-statuten-23-06-2021.pdf.

⁶ See: <https://landlifecompany.com/>.

⁷ See: www.northdata.com/Pluto+Naturfonden, København/CVR+41052473.

| Models | Subcategories | Explanation | Case Studies |
|--|---|---|---|
| | Option 2: Nature represented by an Advisor to the board via a contractual arrangement or certification method. (non-legal or legal) | Where Nature as Advisor is a policy-based entrenchment, the room created for the Advisor is a conversational space where key topics are discussed, and recommendations submitted to the Board of Directors. Via contractual arrangement or certification method. | <p>The most notable example of Nature as Advisor as a policy-based, non-legal, external/satellite committee framework was developed by Corporate ReGeneration (see Chapter 2). Companies that have adopted this alternative model of governance include: <i>Copain</i> (Impact board); <i>Realco</i> (Vision Board); <i>NGroup</i> (Impact Board), <i>Danone BeLux</i> (Stakeholder meeting).⁸</p> <p>The most notable example of Nature as Stakeholder, via an individual advisory role, embedded in a contract, was developed by the <i>Zoöconomic Institute</i> model. The ‘Speaker for the Living’ has an ‘Observer to the Board’ role in organisations certified as Zoöps. The Observer is advise the board concerning the implementation of the Zoöconomic Annual Cycle and the Zoöp Model. This mandate is included in the contractual arrangements and certification instructions (see Chapter 2).⁹</p> |
| Nature as Director Nature as Director is a legal commitment to entrench the voice, the vote, and the interests of Nature in the constitutional, strategic and operational governance of the company. Nature is given protection and a voice (rights), through both a revision of the articles of association, including an upgrade of the objects clause of a company, and an amendment to the organisational governance policy framework. | Option 1: Nature represented by a Managing Director in a 2-tier board or as an Executive Director in a 1-tier board. (legal). | The creation of a directorship role entrenches Nature’s input in the decision-making of the company, through a range of rights: voting, access to information, reporting review, etc. A specific Nature Board Member has equal rights and duties as the other company directors. As boards have collective responsibility for the day-to-day management in the interest of the company and its stakeholders, a specific Nature Board Member can bring the perspective of Nature to the table. | Example: <i>N.V. PWN Waterleidingbedrijf Noord-Holland</i> (PWN). PWN is the drinking water company of the Dutch Province of Noord Holland and manager of the natural area of the dunes in this area. The shareholders are the local municipalities. One member of the executive board (<i>directie</i>) has the mandate to guard Nature. ¹⁰ The board regulation also prescribes this position in articles 2.2 and 4.1. ¹¹ However, PWN’s Articles of Association do not provide for this in an explicit way. ¹² |
| | Option 2: Nature represented by a Supervisory Director in a 2 tier board or as a Non-Executive Director in a 1-tier board. (legal) | <p>The creation of a supervisory or non-executive directorship role entrenches Nature’s input in the decision-making of the company, through a range of rights: voting, access to information, reporting review, etc. Nature as Supervisory Director or Non-Executive Director also has equal rights and duties as the other supervisory and non-executive directors.</p> <p>As supervisory and non-executive boards have a collective responsibility for advising and supervising in the interest of the company and its stakeholders, a specific Nature Supervisory or Non-Executive Board Member can bring the perspective of Nature to the table.</p> | <p><i>Faith in Nature</i> (see Chapter 2).¹³</p> <p>The company’s website states: “The objects of the Company are to promote the success of the Company, a. for the benefit of its members; and b. while delivering, through its business and operations, using its best endeavours to: i. have a positive impact on Nature as a whole and to ii. minimise the prospect of any harmful impact of the business and operations on Nature, in a manner commensurate with the size and resources of the Company, taken as a whole.”</p> <p>And: “We appointed Nature as a Non Executive Director on our board of directors and created the ability to delegate the powers to a wider committee. We did this by amending our Articles of Association to entrench the position and used a terms of reference document to outline the duties and responsibilities of the human who acts as the voice of Nature.”</p> |

⁸ See: Copain, Realco, NGroup, and Danone Belux.

⁹ See: Zoöp Institute

¹⁰ As per 1 April 2024, PWN’s website refers to mrs. Sjakel van Wesemael.

¹¹ See: Onderwerp (pwn.nl).

¹² See: statuten_nv_pwn_waterleidingbedrijf_noord-holland_1.pdf.

¹³ See: https://ecojurisprudence.org/wp-content/uploads/2022/11/Faith-In-Nature_NOTB_GUIDE.pdf.

| Models | Subcategories | Explanation | Case Studies |
|---|--|---|--|
| Nature as Shareholder Nature as Shareholder is generally based on the steward-ownership model, which is a legal structure that puts an emphasis on purpose over profits; self-governance, and long-term goals (legacy). As a guardian of the company's Nature-driven mission, Nature as Shareholder can be integrated through different forms: shareholder foundation; perpetual purpose trust; impact shares; golden shareholder; neutralised capital. | Option 1 (steward ownership): Nature is represented by the shareholder (e.g. via a foundation). (legal) Steward ownership refers to the situation in which the purpose or mission of the company has been translated into its ownership model. ¹⁴ | Nature as Shareholder is a legal commitment to entrench the voice, the vote, and the interests of Nature, through the ownership structure and governance of the company. The shareholder acts on behalf of Nature when exercising its right to vote and receiving dividends. This approach is an embedment of Nature through an alternative ownership model that shifts or expands the scope of decision-making and economic value to a wider pool of stakeholders. | Example: <i>Patagonia</i> is a certified B Corp and a California benefit corporation. The incorporator established 2 foundations (see Chapter 2): 100% of the company's voting stock was transferred to the Patagonia Purpose Trust, created to protect the company's values (equal to 2% of outstanding stock of the company); and 100% of the nonvoting stock had been given to the Holdfast Collective, a nonprofit dedicated to fighting the environmental crisis and defending nature (equals to 98% of outstanding stock of the company). ¹⁵ The funding for the activities comes from Patagonia: Each year, after reinvesting profits in the business, the remainder of the profits will be distributed as a dividend. |
| | Option 2 (golden share): Nature is represented by a golden shareholder that holds a percentage of the shares (can be a foundation). (legal) | A golden share is a type of share with special voting rights. Often, its holder can exercise a veto power over changes to the company's charter (e.g. its mission as stated in the constitutional purpose clause) and regarding other important decisions such as the appointment and discharge of directors. Guarding Nature can be included as (part of) its mandate. | Example: <i>Tony's Chocolonely Mission Foundation</i> holds special legal rights (including specific voting rights) and must exercise them to uphold and protect <i>Tony's Chocolonely B.V.'s</i> (detailed) mission and the 5 Sourcing Principles (which include that the company considers the interest of Nature in its decision-making (see Chapter 2)). ¹⁶ |
| | Option 3 (impact shares): Creation of 2 or more categories of shares (i.e. common shares and impact shares). The impact shares are held by shareholders committed to guard the interest of Nature. (legal) | The impact shareholders must use their voting rights to guard Nature. The common shares can vote in their own way. Alternatively, the common shares are entitled to dividend, whereas only the impact shares have voting rights which they must use to guard the interests of Nature. | In our research we have not identified any specific examples of this model. An interesting form could be the Luxembourg legal model for social enterprises: the Societal Impact Company (SIS)) which has impact shares and common shares. ¹⁷ |

¹⁴ See: <https://gijsbertkoren.nl/steward-ownership/>; Home - We Are Stewards en <https://purpose-economy.org/en/whats-steward-ownership/>.

¹⁵ See: Yvon Chouinard Donates Patagonia to Fight Climate Crisis.

¹⁶ See: <https://www.chocolonelyfoundation.org/>.

¹⁷ For more information about the SIS, see: <https://economie-sociale-solidaire.public.lu/en/entreprendre-autrement/la-societe-d-impact-societal-bis1.html>. The SIS capital comprises 50% impact shares and 50% common shares. The constitutional purpose must include: "to contribute to social good". SIS can profit from tax and other advantages under Luxembourg law.

| Models | Subcategories | Explanation | Case Studies |
|--------|--|--|--|
| | Option 4 (neutralised capital): Nature is represented by a foundation that holds the legal title to the shares, including voting rights, and which has issued 'certificates of shares' (comparable with administrative depository rights in the US legal system) to 'certificate holders' who are entitled to the economic rights of the shares. Any dividends will be paid out to them by the foundation.(legal) | <p>A foundation (under Dutch law: <i>Stichting Administratiekantoor</i>, abbreviated as <i>Stak</i>) includes in its Constitutional documents/Articles of Incorporation/Articles of Association/Bylaws that (one of its) tasks is to ensure guardianship of Nature. In exercising its rights as a shareholder, the Stak must fulfil that task.</p> <p>The holders of the certificates of shares are entitled to the dividends.</p> | <p>In our research we have not identified any specific examples of this model.</p> |

**Additional explanatory information about the possible steps -
The Netherlands**

In the Netherlands, the four legal approaches for incorporating Nature into organisational governance structures are elaborated on below. Each model and the various options can be altered to better tailor the desired governance change to the organisation’s needs and preferences. This addendum outlines the basic steps that need to be taken within the Dutch jurisdiction to implement each of the four models.

Nature as Inspiration

Option 1 (Nature as inspiration - policy form): opstellen van een beleidsdocument.

Option 2 (Nature as purpose): opnemen in doelomschrijving in de statuten/akte van oprichting.

Nature as Advisor

Option 1 (Nature represented by an advisory council or advisory committee):

In de statuten kan een nieuw adviesorgaan binnen de juridische organisatie van de vennootschap worden gecreëerd.¹⁸ Bijv. met een van de volgende namen:

- Raad van Advies of Natuurraad – raad van ervaren en deskundige adviseurs inzake Natuur.
- Maatschappelijke Raad met – naast Natuur – meerdere belanghebbenden.

Basis: boek 2 BW bevat geen expliciet artikel over het instellen van een extra orgaan (naast bestuur, algemene vergadering of raad van commissarissen), maar indirect blijkt dat dit kan. In de artikelen 2:189a/art 2:78a BW is een opsomming opgenomen van bevoegdheden die uitsluitend aan de wettelijke organen (bestuur, algemene vergadering en raad van commissarissen) toekomen. Het extra orgaan kan dus niet de rechten uitoefenen die de wet heeft toegewezen aan het bestuur (bepalen van het beleid van de organisatie, de algemene vergadering (o.a. wijzigen van de statuten) en de raad van commissarissen (toezicht). Voorts kan het extra orgaan niet de bevoegdheid krijgen om bestuursbesluiten vooraf goed te keuren of het orgaan kan zijn wiens aanwijzingen door bestuurders opgevolgd dienen te worden.¹⁹ Wel kan worden bepaald dat het bestuur eerst advies dient in te winnen van het nieuwe orgaan voor bepaalde besluiten.

De statuten moeten bepalen wat de naam en functie zijn van het nieuwe orgaan en welke rechten toekomen aan dit nieuwe orgaan. Bijv. het recht om informatie op te vragen; om gehoord te worden ten aanzien van bepaalde besluiten; het geven van een niet-bindend advies aan het bestuur of het doen van initiatiefvoorstellen. De taak is niet om toezicht te houden.

Opties:

- Het bestuur dient aan het nieuwe orgaan verantwoording afleggen over de invloed die de organisatie heeft op de natuur en dient uitleg te geven als het bestuur afwijkt van adviezen van dit orgaan.
- In het jaarverslag kan een verslag worden opgenomen van het orgaan, met daarin een toelichting van de samenstelling van het orgaan, de onderwerpen die gedurende het jaar aan de orde zijn geweest, en de aard van de adviezen die het orgaan aan het bestuur heeft uitgebracht.

Intern in de vennootschap dient voorts te worden geregeld: het opstellen van een reglement voor het nieuwe orgaan over de functie/het mandaat en de bevoegdheden, alsook het profiel van de leden. Het nieuwe orgaan bepaalt zelf het profiel van de leden en opvolgers (zoals bij coöptatie).

Option 2 (Nature represented by an advisor to the board via a contractual arrangement and/or certification method):

Zie bijvoorbeeld het model van de Zoöp (hoofdstuk 2 van de Onboarding Nature Toolkit). Natuur is hierbij de 'Observer to the board'.²⁰

Nature as observer, dit model is niet verankerd in statuten. Het is wel vormgegeven door het

sluiten van een contract tussen de organisatie die een zoöp wil worden en het Zoönomisch Instituut om gecertificeerd te worden als zoöp. Een voorwaarde daarbij is dat een 'Observer to the Board' wordt aangewezen, die in gesprek kan gaan met het bestuur over onderwerpen en beslissingen die de natuur aangaan.

Andere opties zijn:

- Instellen van een niet in de statuten verankerde commissie, waarvoor de organisatie een reglement opstelt met de taken, het mandaat, de bevoegdheden en het profiel van de leden. De commissie bepaalt zelf het profiel van de leden en de opvolgers (zoals bij coöptatie).
- Instellen van een niet in de statuten verankerde ombudspersoon voor natuur – een al dan niet in de statuten verankerde positie, met de taken, het mandaat, de bevoegdheden en het profiel van de ombudspersoon. Deze persoon heeft een ander mandaat. Bijvoorbeeld: het opvangen en behandelen van klachten werknemers over de activiteiten van de onderneming ten aanzien van de natuur; of het uitzetten of doen van onderzoek; en/of advies aan het bestuur. Bepaal hoe ver het mandaat en de bevoegdheid van de klachtbehandeling gaat. De ombudspersoon kan iemand zijn van binnen of buiten de onderneming.

Nature as Director

Option 1 (Nature represented by a Managing Director in a 2-tier board or an Executive Director in a 1-tier board)

Bestuurder in een 2- tier bestuur:

Statutaire doelomschrijving: aanvullen met de belangen van de Natuur, afgestemd op de activiteiten van de onderneming.. De statutaire doelomschrijving is leidend voor de taakuitvoering van bestuurders.

Benoeming: In statuten kan worden opgenomen dat er 1 bestuurder is die (mede) optreedt als vertegenwoordiger van de natuur (kwaliteitseis) – de Natuurbestuurder. De Natuurbestuurder kan een natuurlijke persoon zijn of een rechtspersoon (bijv. een natuurorganisatie, waarbij een bestuurslid van de natuurorganisatie dan optreedt als (indirect) bestuurder). De algemene vergadering heeft wel het recht om met een versterkte meerderheid van deze kwaliteitseis af te wijken. Dit is op te vangen door een aandeelhoudersovereenkomst hierover te sluiten of een verklaring op te stellen (als er maar 1 aandeelhouder is). Bestuurders worden in principe benoemd door de algemene vergadering en die is ook bevoegd bestuurders te ontslaan. De raad van commissarissen kan bestuurders alleen ontslaan, indien deze bevoegdheid aan de raad is toegekend in de statuten.

Basis: art.2:132 lid 2 BW voor de NV en 2:242 lid 2 BW voor de BV.

Bestuursstaak: Ingevolge het systeem van collegiaal bestuur is de bestuursstaak in beginsel een taak van de bestuurders gezamenlijk, waarbij iedere bestuurder verantwoordelijkheid draagt voor het geheel. Met andere woorden: een bestuurder dient (en heeft het recht) om over alle bestuursbesluiten wat te kunnen zeggen. Een bestuurder is ook medeverantwoordelijk voor alle bestuursbesluiten. Daarom lijkt een natuurlijk persoon als Natuurbestuurder meer voor de hand te liggen dan rechtspersoon.

Bestuurders hebben allemaal hetzelfde doel te dienen: handelen in het belang van de rechtspersoon en de onderneming, waarbij de belangen van stakeholders worden meegewogen. De Natuurbestuurder kan daarbij de belangen van de stakeholder natuur verwoorden. Het is niet mogelijk dat een bestuurder primair het belang van – bijvoorbeeld – de natuur dient. Maar het wordt steeds geaccepteerder dat een bestuurder naast het belang van de rechtspersoon en de onderneming ook een specifiek belang dient.

Quorum en stemrecht:

De statuten kunnen bepalen:

- Quorum: bij besluiten die de natuur raken ('Natuur-gerelateerde besluiten'), dient de Natuurbestuurder aanwezig te zijn.
- Besluitvorming: welke rechten de Natuurbestuurder heeft bij besluitvorming.

Is een vetorecht of instemmingsrecht voor de Natuurbestuurder mogelijk gezien het principe van collegiaal bestuur? Daarover bestaat in de literatuur discussie. Wat wel kan:

- Een doorslaggevende stem geven aan de Natuurbestuurder, maar deze Natuurbestuurder is wel gebonden aan het belang van de vennootschap en onderneming. Als het in het belang is van de onderneming om een bepaald voorstel te verwerpen of door te laten gaan, gaat dit

18 Zie: Aalt Colenbrander en Tineke Lambooy in Juridisch Up To Date, 2017/115 d.d. 3 oktober 2017, Nieuwsoverzicht; T. Lambooy, 'Verankering van de belangen van toekomstige generaties en de natuur in de governance' in: Rutger Claassen en Dirk Schoenmaker, Preadvies Corporate Governance en het Maatschappelijk Belang, KVS Preadviezen 2022; <https://kvsweb.nl/wp-content/uploads/2022/11/PREADVIEZEN-2022.pdf>.

19 Andere bevoegdheidsbeperkingen zien voor de BV op: inwerkingtreding/onthefing statutaire eis of verplichting voor aandeelhouders (192); goedkeuring stemrecht voor vruchtgebruikers en pandhouders (197/198); uitgifte aandelen na oprichting (206); bepalen winstreservering of verlies verwerking (210); bestemming winst (216); vergaderrecht certificaathouders (227); ontslag bestuurders (244), naast algemene vergadering. Voor de NV: goedkeuring overdracht aandelen (87); uitgeven aandelen na oprichting (96); uitsluiten of beperken voorkeursrecht (96a); bepalen winstreservering of verliesverwerking (101).

20 Zie: <https://nieuwinstituut.nl/projects/zoop/zoop-model>.

belang vóór het belang van de Natuurbestuurder.

- Aan de Natuurbestuurder kan ook meervoudig stemrecht worden toegekend en voor besluitvorming een gekwalificeerde meerderheid worden voorgeschreven. Daarbij kan een Natuurbestuurder niet méér stemmen uitbrengen dan alle andere bestuurders gezamenlijk.
- Tevens kan unanimiteit worden vereist voor besluiten, hetgeen feitelijk ook neerkomt op een vetorecht.

Delegatie: de Natuurbestuurder mag zich laten bijstaan door experts. Dit recht heeft echter iedere bestuurder en het bestuur als zodanig. De expert(s) kunnen bijvoorbeeld besluitvorming voorbereiden en advies geven. De (eind) verantwoordelijkheid en bevoegdheden van de bestuurder worden daarbij niet gedelegeerd aan niet-bestuurders. De Natuurbestuurder kan hiermee een brede kring experts betrekken.

Verder te bepalen:

Opstellen van een benoemingsprotocol voor de Natuurbestuurder. Hoe kan de kwaliteitseis worden ingevuld voor wat betreft geschiktheid en kwaliteit van de Natuurbestuurder (specifieke opleiding nodig? Gecertificeerd? En welke instantie houdt daarop toezicht?).

Opstellen van een (bestuurs)reglement waarin de precieze invulling van de taak van de Natuurbestuurder wordt vastgelegd.

Monitoren functioneren van de Natuurbestuurder: Wat zijn redenen voor ontslag/schorsing? Klachten van werknemers over activiteiten van onderneming ten aanzien van de impact op Natuur of ten aanzien van het adequaat functioneren van de Natuurbestuurder. Hoe kan de Natuurbestuurder daarmee om gaan?

Wat voor soort monitoring en rapportage moet daarover worden uitgevoerd, en publiekelijk of niet?

Transparantie:

Statuten kunnen transparantie vereisen (op website en in jaarverslag) voor bijvoorbeeld:

- Vereiste van afleggen publiekelijke verantwoording door het bestuur indien besluiten worden genomen die afwijken van de mening van de Natuurbestuurder.
- Bij ontslag van de Natuurbestuurder uitleg verstrekken van de reden voor het ontslag.
- Definitie van Natuur (voorbeeld bij Faith in Nature: "Nature means the natural world and all non-human species that inhabit it").
- Jaarlijks 'Natuurverslag' op te nemen in het jaarverslag. De Natuurbestuurder moet met de inhoud instemmen.

Aansprakelijkheidsverzekering: Het is altijd verstandig om een bestuurdersaansprakelijkheidsverzekering af te sluiten.

Arbeidsrecht: Het benoemen en het eventuele ontslag van een bestuurder heeft zowel een ondernemingsrechtelijke als arbeidsrechtelijke kant. De bestuurder is immers op deze twee manieren verbonden aan de onderneming. Voor een (aankomende) Natuurbestuurder is het in dit kader ook goed om te weten dat diens ontslagbescherming zal veranderen als deze benoemd wordt tot bestuurder.

Uitvoerend Bestuurder in een 1-tier bestuur:

Bestuurstaak: Ook bij 1-tier is er sprake van een collegiale verantwoordelijkheid, echter is delegatie van day-to-day management/besluiten aan uitvoerende bestuurders mogelijk.

Basis: art. 2: 129a BW voor de NV en art. 2:239a BW voor de BV.

Verder te bepalen: Dezelfde acties, statutaire inbedding en uitwerking middels benoemingsprotocol en bestuursreglement als bij een Natuurbestuurder in een 2-tier bestuur. Ook hierbij is een bestuursaansprakelijkheidsverzekering aan te raden.

Option 2 (Nature represented by a Supervisory Director in a 2-tier board or as a Non-Executive Director in a 1-tier board)

Commissaris in een 2- tier bestuur:

Statutaire doelomschrijving: aanvullen met de belangen van de Natuur, afgestemd op de activiteiten van de onderneming.. De statutaire doelomschrijving is leidend voor de taakuitvoering van bestuurders en dus ook voor het toezicht door de RvC en niet-uitvoerende bestuurders.

Benoeming: In de statuten kan worden opgenomen dat er in de raad van commissarissen (RvC) 1 commissaris is die (mede) optreedt als vertegenwoordiger van de natuur of namens

een specifieke natuurbelangenorganisatie (kwaliteitseis): de Natuurcommissaris. Een Natuurcommissaris kan een persoon zijn die de Natuur in het algemeen of namens een specifieke, natuurbelangenorganisatie vertegenwoordigt. De algemene vergadering heeft wel het recht om met een versterkte meerderheid van deze kwaliteitseis af te wijken. Dit is op te vangen door een aandeelhoudersovereenkomst hierover te sluiten of een verklaring op te stellen (als er maar 1 aandeelhouder is). Commissarissen worden in principe benoemd door de algemene vergadering en deze is ook bevoegd commissarissen te ontslaan.

Basis: art. 2:142 lid 1 BW voor de NV en art. 2:252 lid 1 BW voor de BV.

Een commissaris is altijd een natuurlijke persoon.

Basis: art. 2:140 lid 1 BW voor de NV en art. 2:250 lid 1 BW voor de BV.

Taak: In zijn algemeenheid heeft de commissaris de wettelijke taak om toezicht te houden op het functioneren van het bestuur. Daarnaast staat de RvC het bestuur met raad terzijde. Net als eerder opgemerkt ten aanzien van bestuurders heeft de RvC ook de verplichting om te handelen in het belang van de rechtspersoon en de daarmee verbonden onderneming met inachtneming van de stakeholders. Hierbij dient de RvC ook het belang van de natuur mee te wegen omdat de natuur ook een stakeholder is. Echter, dat is niet het enige of altijd prevalerende belang.

Ook voor de RvC geldt een collegiale verantwoordelijkheid maar het is mogelijk om taken te formuleren in een reglement en deze aan specifieke commissarissen toe te delen.

Verder te bepalen: Dezelfde acties, statutaire inbedding en uitwerking middels benoemingsprotocol en een RvC-reglement zijn van toepassing als onder optie 1. Ook hierbij is een commissaris aansprakelijkheidsverzekering aan te raden.

Niet-Uitvoerende Directeur in een 1- tier bestuur:

Een niet- uitvoerend bestuurder is altijd een natuurlijke persoon.

Bestuurstaak: Ook bij 1-tier is er sprake van een collegiale verantwoordelijkheid, echter is delegatie van day-to-day management/besluiten aan uitvoerende bestuurders mogelijk. Niet-uitvoerende bestuurders blijven wel altijd verantwoordelijk voor de aan hen toegewezen wettelijke taken (deze kunnen niet gedelegeerd worden), zoals toezicht op de uitvoerende bestuurders, het voorstellen voor benoemingen van uitvoerende bestuurders en het bepalen wat de vergoeding is van uitvoerende bestuurders. De voorzitter van het bestuur is altijd een niet-uitvoerend bestuurslid.

Basis: art. 2:129a lid 1 BW voor de NV en art. 2:239a lid 1 BW voor de BV.

De precieze invulling van de taak van de Niet-Uitvoerende Natuurbestuurder kan nader worden vastgelegd in een reglement. Ook voor deze persoon is een bestuursaansprakelijkheidsverzekering aan te raden.

Verder te bepalen: Dezelfde acties en statutaire inbedding als bij de Natuurcommissaris.

Nature as Shareholder

Option 1 (Nature as purpose in a stewardship model): zie de mogelijkheden uitgewerkt door G. Koren en Nina de Korte in Toekomstbedrijven (Home - We Are Stewards).

Option 2 (Nature represented by a golden share):

Een bepaald percentage van de aandelen kunnen prioriteitsaandelen zijn. Dit zijn aandelen die stemrecht hebben in de vergadering van prioriteitsaandeelhouders. Aan deze vergadering komt de beslisbevoegdheid toe ten aanzien van één of meer onderwerpen die in de statuten worden vermeld. Prioriteitsaandeelhouders hebben daarnaast ook vergaderrecht en stemrecht in de algemene vergadering van aandeelhouders.

Basis: art 2:92 lid 3 BW voor de NV en art 2:201 lid 3 BW voor de BV. Invoeren bij oprichting of middels statutenwijziging.

In de statuten moet worden opgenomen om welke onderwerpen het gaat. Vaak voorkomende bijzondere zeggenschapsrechten: instemmingsrecht (de facto een vetorecht) voor belangrijke besluiten die de kern van de organisatie raken, statutenwijzigingen of het doen van (bindende) voordrachten voor bestuurders of commissarissen. I.c. zou het voor de belangrijke besluiten kunnen gaan om een bindende voordracht van een of meer bestuurders; vetorechten voor besluiten die de natuur raken. Neem relevante definities op (bijv. 'Nature Related Matters').

Prioriteitsaandelen kunnen (rechtstreeks) worden gehouden door een bestaande natuurbelangenorganisatie of een nieuwe stichting die als doel heeft de belangen van de natuur te behartigen. Het bestuur van de stichting kan weer bestaan uit een natuurbelangenorganisatie en/of bestuurders die tot taak hebben de natuur te vertegenwoordigen. Het voordeel van een specifieke stichting als prioriteitsaandeelhouder is dat het statutaire doel en dus de taakopdracht van het bestuur daarvan kan worden beperkt tot hetgeen in de doelomschrijving is opgenomen. Tevens kan in de statuten worden voorzien in (opvolgende) bestuursbenoeming om ook in de toekomst de continuïteit te waarborgen.

In de case study van Tony's Chocology zijn de statuten van de B.V. ook gewijzigd en is daarin vermeld dat er een prioriteitsstichting is die het doel en de missie van de B.V. moet bewaken, waaronder zorg voor de natuur. Deze aanpak versterkt de kracht van de golden share aandeelhouder, omdat op deze manier ook het bestuur van de B.V. daaraan gebonden is.

Option 3 (Nature represented by impact shares):

Verschillende klassen aandelen zijn zowel bij een BV als een NV mogelijk. Dit dient in de statuten uitgewerkt te worden.

Bij een BV is het bijvoorbeeld mogelijk om winstrechtloze of stemrechtloze aandelen of aandelen met meervoudig stemrecht te creëren.

Basis voor de BV:

- winstrechtloze aandelen: art 2:216 lid 7 BW;
- stemrechtloze aandelen: art 2:228 leden 4 en 5 BW;
- meervoudig stemrecht: art 2:228 lid 3 BW (aandelen met verschillende waarde/hogere waarde heeft dan meer stemrecht).

Basis voor de NV:

Bij de NV zijn winstrechtloze en stemrechtloze aandelen niet mogelijk, wel kan meervoudig stemrecht worden gecreëerd: art 2:118 lid 3 BW (aandelen met verschillende nominale waarde/hogere nominale waarde heeft dan meer stemrecht).

Aanpak: Door een combinatie te maken van verschillende soorten aandelen (passend bij de eigen organisatie) kan ervoor worden gezorgd dat de natuur zeggenschap krijgt in de organisatie (Klasse A), terwijl de kapitaalverschaffers de winstrechten behouden (Klasse B).

Option 4 (neutralised capital: Nature represented by the STAK):

Een Stichting Administratie Kantoor (STAK) houdt alle of een bepaald percentage van de aandelen in de BV of NV en de STAK geeft certificaten uit aan certificaathouders. Het bestuur van de STAK heeft zeggenschap als aandeelhouder in het bedrijf/de bedrijven waar de STAK de aandelen van houdt. Dividenduitkeringen op de aandelen vloeien naar de certificaathouders. Op deze wijze zijn de juridische en economische eigendom van de aandelen die de STAK houdt, gesplitst.

Aanpak: partijen hebben hier veel inrichtingsvrijheid. Zo kunnen de statuten en/of de administratievoorwaarden bepalen dat het bestuur van STAK bij het uitoefenen van de zeggenschapsrechten bepaalde belangen zwaarwegend dient mee te nemen. In de statuten van de STAK kan het 'Natuurdoel' worden beschreven. Het STAK bestuur moet daarnaar handelen bij het uitoefenen van stemrecht. De STAK statuten kunnen kwaliteitsinstructies inhouden voor het benoemen van bestuursleden; het beoordelingskader van de bestuurders; schorsing; uit functie ontsetten; en wie nieuwe bestuurders benoemt.

Authors: Tineke Lambooy, Jacobien Viets, Daan van Apeldoorn en Ebba Hooft Toomey.
Thanks for reviewing: Saskia Laseur, Maarten Appels and Tessa Pieksma of the Dutch law firm Van Doorne.

Chapter 4.2

LEGAL TEMPLATE: GUIDELINES FOR IMPLEMENTATION IN THE UK



The “Onboarding Nature Toolkit” aims to inspire English companies and organisations to adopt and implement the four Nature as a Stakeholder models outlined in the previous chapters. It also serves as a guide for selecting the model that best fits the company’s commitment level and needs. The Toolkit is divided into two sections. The first section is a table summarizing the implementation of the four Nature as a Stakeholder models, with examples of UK case studies. The second section explains in more detail the concept, implementation options and the required documentation involved for each of the four Nature as a Stakeholder models.

1. **Nature as Inspiration;**
2. **Nature as Advisor;**
3. **Nature as Director; and**
4. **Nature as Shareholder.**

To implement these models effectively, it’s important to recognize that every company has distinct circumstances and aspirations. We encourage companies to consult with their legal advisers to confirm the necessary steps and any tailored changes required for the company documentation. If a company or organization is interested in exploring any of these models further or has any questions regarding this Chapter, please feel free to contact any of the authors of this Chapter for discussion.

Overview of Four models of the Integration of Nature as a Company Stakeholder

| Models | Summary | Case Studies |
|------------------------------|--|--|
| Nature as Inspiration | Option 1: Nature as inspiration is a policy-based commitment to consider the voice and interests of Nature within the governance of the company. This approach is implemented through non-legal documentation, such as policy, or other internal company documents. | While we have not come across any UK examples, we found various UK companies adopting environment or nature related mission statements and environment policy. The most notable international example of Nature as Inspiration is the campaign for 'Mother Nature as CEO' (see Chapter 2). This campaign has been initiated by the B Corps companies <i>Willcroft</i> and <i>Blyde</i> in the Netherlands, and this model has now been adopted by over 10 companies. |
| | Option 2: Nature as purpose involves introducing a Nature-positive object clause in the company's Articles of Association. This can empower the directors to explicitly take into account and proactively promote the interests of Nature. | Examples from for-profit UK companies including Faith in Nature (Chapter 2) and House of Hackney (Chapter 2). Non-profit examples include community interest companies and industry associations with climate/nature positive object clause, such as Friends of the Earth Limited and UK Business and Biodiversity Forum CIC. |
| Nature as Advisor | Option 1: Nature as observer: is the appointment of an observer to the Board by amending the Articles of Association, allowing it to participate in board discussions and provide inputs to the Board without having a direct vote. | We have not come across any specific UK examples. A notable international example is the Zoop model (Chapter 2) in the Dutch context. |
| | Option 2: Nature as advisory committee is the creation of an advisory committee to support the work of the Board in nature-related matters. It can consist of experts and company's other stakeholders representing different interests of nature. The purpose, functions, nomination and removal procedures, as well as the powers and responsibilities of the Nature Advisory Committee, should be clearly defined in the company's Articles of Association or details of which can be supplemented by a separate terms of reference. | We have not come across any UK examples. However, there are international examples of Nature as advisory committees created through contractual arrangement, and the most notable example of Nature as Advisor as a policy-based, satellite committee framework developed by Corporate ReGeneration (see Chapter 2). |

| Models | Summary | Case Studies |
|---------------------------|--|---|
| Nature as Director | <p>Option 1: This model involves granting Nature a formal seat on the Board of Directors by entrenching the role through amendments to the Articles of Association. Variations of this model can be taken regarding the following aspects, depending on the specific needs and nature commitment level of the company:</p> <p>(a) Role and Appointment: This includes the method of representation, whether via a proxy arrangement or a company incorporated to act as the Nature director, as well as the procedures for removal, and the specific duties and responsibilities assigned to the Nature director.</p> <p>(b) Impact on Board Proceedings and Decision-Making: Considerations include how Nature's representation affects quorum requirements, veto rights, and the overall decision-making process.</p> <p>(c) Nature-Impact Reporting and Accountability: This involves establishing mechanisms for reporting on nature-related impacts and ensuring accountability for nature related decisions.</p> | The notable examples are Faith in Nature (Chapter 2) and House of Hackney (Chapter 2) which adopted different variations of the Nature as Director model. |

| Models | Summary | Case Studies |
|------------------------------|---|--|
| Nature as Shareholder | This model involves amending the Articles of Association to promote nature's interest within the company's ownership structure, thereby granting Nature shareholder rights. These rights could include veto power, the ability to appoint observers, and the right to access information. | In our research we have not identified any specific UK examples of this model. However, there are other international examples of Nature as Shareholder, including: Tony's Chocolonely Mission Foundation holds special legal rights (including specific voting rights) and must exercise them to uphold and protect Tony's Chocolonely B.V.'s (detailed) mission and the 5 Sourcing Principles (which include that the company considers the interest of Nature in its decision-making (see Chapter 2)). Patagonia is a certified B Corp and a California benefit corporation. The incorporator established 2 foundations (see Chapter 2): 100% of the company's voting stock was transferred to the Patagonia Purpose Trust, created to protect the company's values (equal to 2% of outstanding stock of the company); and 100% of the nonvoting stock had been given to the Holdfast Collective, a nonprofit dedicated to fighting the environmental crisis and defending nature (equals to 98% of outstanding stock of the company). ¹⁵ The funding for the activities comes from Patagonia: Each year, after reinvesting profits in the business, the remainder of the profits will be distributed as a dividend. |

Additional explanatory information about the possible steps – England & Wales

Additional explanatory information about the possible steps – England & Wales

Authors: Kate Chan¹, Alexandra Pimor, Lucy Ward, Pooja Sharma

For the UK, we further elaborate the basis and implementation model of the four approaches for incorporating Nature as a stakeholder into the legal and/or corporate governance structures of English companies.² Each model can be customized to align with an organisation's specific needs and preferences.

English corporate legal parameter for Nature as a Stakeholder English corporate law is dynamic and it fosters a progressive legal environment for English companies due to its common law foundation, which evolves through judicial decisions, allowing it to adapt to new business innovations and initiatives.

The four Nature as Stakeholder models and the respective implementation approaches are developed within the legal parameters of the UK Companies Act and the English court decisions on corporate law. The directors of UK companies are subject to statutory director duties under Chapter 2 of Part 10 of the UK Companies Act 2006 (the "**CA 2006**"). In particular, directors have the following statutory duties:

- Duty to exercise powers for the purpose for which they are conferred (section 171, CA 2006);
- Duty to exercise reasonable care, skill and diligence (section 174, CA 2006); and
- Duty to promote the success of the company (section 172 (1), CA 2006) by acting in the way, in good faith, that would be most likely to promote the success of the company (a) for the benefit of its members as a whole, and (b) in doing so, have regard (amongst other matters) to the following non-exhaustive list of wider factors, including "impact of the company's operations on the community and the environment":
 - the likely consequences of any decision in the long term,
 - the interests of the company's employees,
 - the need to foster the company's business relationships with suppliers, customers and others,
 - the impact of the company's operations on the community and the environment,
 - the desirability of the company maintaining a reputation for high standards of business conduct, and
 - the need to act fairly as between members of the company.

It has been commonly believed that to fulfill the duty to promote the success of the company for the benefit of its members as a whole, directors are "legally" required to make decisions aimed at maximizing financial returns for shareholders only. However, English law does not explicitly mandate this as the sole method for directors to fulfill their duty to promote the success of the company. As we will further explain, this is particularly the case for companies that have explicitly committed in their constitutional documents to integrate Nature into the directors' decision-making process and the company's corporate governance structure.

Under the current English legal parameters, the directors can consider Nature in their business decision-making and make Nature-conscious decisions that would bring value to the company (which is not limited to financial value). In addition, with the proper implementation of the integration of Nature as a Stakeholder in the corporate governance structure, the directors can be empowered by the constitutional documents of the company (i.e. the Articles of Association) to focus on the impact on Nature in their decision making, without concerns of potential breaches of their duty to promote success of the company.

¹ Biography: Kate is a tri-qualified lawyer in US, UK and Hong Kong, specializing in ESG / sustainability law and corporate governance and sustainable investments. She serves as the pro-bono counsel to Earth Law Centre and has advised Earth Law Center and Lawyers for Nature on the Faith in Nature project, as well as the development of a UK framework for Nature as Director. She is the co-lead of the ESG international practice at Pillsbury Winthrop Shaw Pittman LLP.

² This section considers the companies incorporated in England & Wales. While companies in both jurisdictions must adhere to the UK Companies Act 2006, the interpretation and implementation can vary between the two legal systems. If you are a company incorporated in Scotland and would like to onboard Nature as a stakeholder, please consult a Scottish legal adviser.

Under the current English legal parameters, the directors can consider Nature in their business decision-making and make Nature-conscious decisions that would bring value to the company (which is not limited to financial value). In addition, with the proper implementation of the integration of Nature as a Stakeholder in the corporate governance structure, the directors can be empowered by the constitutional documents of the company (i.e. the Articles of Association) to focus on the impact on Nature in their decision making, without concerns of potential breaches of their duty to promote success of the company.

We recognize that the statutory duty to promote the interest of the company does not explicitly mention “nature”. However, our purposeful interpretation suggests that this does not prevent directors from making decisions that preserve and promote the interests of Nature. A purposeful interpretation would also support that the apparent conflict between (a) the “ultimate goal” of companies to deliver maximized financial value for shareholders and (b) the companies’ commitment to preserve and promote interests of nature or the environment should not deter companies from giving Nature a voice in the directors’ decision-making process for fear of breaching the statutory duty to promote the company’s interests. As Lord Sales, Justice of the UK Supreme Court made the following remarks in his lecture;

“... a failure to act sustainably is more and more likely to have adverse financial impacts on companies who are, or are perceived to be, behind the curve on environmental issues...the old dichotomy between a company’s financial success and its environmental profile is collapsing”

We have conducted legal research into English case law regarding judicial discussions on directors’ fulfillment of their duty to promote the success of the company, and under what circumstances a court might find a breach of this duty. A high-level overview of our research supporting this conclusion is set out below:

- There is no legal definition on the meaning of “success” or legal standard for the English courts to evaluate what “success” should entail for the company. English courts recognise that the interest of the company is not a matter of law but a simple question of fact. Therefore, the notion of success can be tailored to adopt nature-positive approaches, allowing companies to integrate sustainability and nature preservation into their corporate structures, business objectives and operations.
- The obligation to have regard to broader, long-term considerations (such as the impact on community and environment) provides statutory basis for directors to consider and make decisions because of the long-term impacts on environment and nature as this would promote the success of the company for the benefits of the members as a whole.
- The assessment of whether a section 172(1) duty to promote the success of the company has been satisfied is not an outcome driven exercise. In other words, the English court does not, with the benefit of hindsight, look at the Board’s decision and decide whether it was prudent or correct in light of what happened thereafter. Instead, the assessment is whether the director honestly believed, acting in good faith, that their decision was taken in the interests of the company.
- Based on our survey of English case law, the judicial sentiment is that, for a financially solvent company, it is not easy to establish a breach of duty if the director can demonstrate that they genuinely considered the various best interests of the company. Therefore, if the director opts not to pursue a financially maximizing decision but instead chooses a nature-positive approach that aims to create long-term value for the company, the courts are generally reluctant to interfere in the decision making of the directors in the absence of clear wrongdoing or disregard for their responsibilities. This is because they recognize the broader and long-term benefits to the company and its shareholders.

- Furthermore, it would be more challenging to establish a breach of duty if shareholders have empowered the directors with a broader or specific mandate to consider and prioritize the interests of Nature in their decision-making. We will explore this in greater detail in the sub-section “Nature as Director” below.

Meaning of Nature.

In order to onboard Nature as a Stakeholder, it is important the company or organisation is clear what they mean when they refer to Nature. As discussed in detail in Chapter 1, the Toolkit explores the meaning of Nature and for this Chapter: Nature is regarded as a living entity or organism, that should be a subject of rights (Rights of Nature) rather than an object. The concept of Nature is open to diverse meanings, and the word itself is subject to contextual and subjective interpretations [though it is possible to identify 4 thematic understandings of the word, as demonstrated by L.W. Nielson (2004) in her paper: *The ‘Nature’ of ‘Nature’: The concept of nature and its complexity in a western cultural and ethical context (Global Bioethics 17 (1):31-38).*]

For the purpose of incorporating Nature into legal and corporate structures, Nature could be given its ordinary meaning to align the understanding among the company’s members, board, employees, and other wider stakeholders. For example, Faith in Nature (Chapter 2) defines nature as “the natural world and all non-human species that inhabit it.” House of Hackney adopts a more granular approach, defining Nature as “all the animals, plants, ecosystems, and other things in the world that are not made by humans, and all the events and processes that are not caused by humans. Nature includes humans themselves.” This approach can also enable companies to focus on particular areas of Nature relevant to the specific exposure of their operations and business, such as forestry or marine life. Additionally, to ensure flexibility for the Board to decide whether something falls within the scope of Nature, the definition can also include language allowing the Board to interpret and determine what constitutes Nature as needed.

Nature as Inspiration

Option 1: Nature as inspiration

Nature as Inspiration represents a policy-based approach that can be implemented through options such as adopting a policy, establishing a terms of reference, or creating an internal decision-making matrix for Nature-related matters. These tools provide guidance on identifying, evaluating, and reviewing corporate decisions with potential impacts on Nature. Such measures can be crucial for fostering Nature-positive values within a company and among its employees and stakeholders. This approach can be implemented by a directors’ decision. For purpose of good corporate governance and stakeholder engagement, the board may keep shareholders updated about this initiative and invite them to confirm their support.

Option 2: Nature as purpose

It is not a legal requirement for UK for-profit companies incorporated after 2006 to have an object clause, i.e., the object of an English company is deemed to be unrestricted unless any restrictions are specifically set out in the company’s Articles of Association.³

For community interest companies (“CIC”) and companies limited by guarantee, it is a statutory requirement to include an object clause in the Articles of Association. An example is the object clause of The UK Business and Biodiversity Forum CIC, a CIC incorporated under English law. It has a detailed objects clause in its Articles of Association to “*carry on activities which benefit the community and in particular to help UK businesses mainstream biodiversity into their decision making and activities with the aim to reverse biodiversity loss, achieve net gain and promote the sustainable use of nature...*” Friends of the Earth Limited, a company limited by guarantee incorporated under English law, has an object clause to promote “our vision of a peaceful and sustainable world based on societies living in harmony with nature.”

³ For companies incorporated under the UK Companies Act 1985, the objects clause in the memorandum of association was deemed to be incorporated in the Articles of Association after the enactment of the UK Companies Act 2006.

Focusing on for-profit companies, the implication of a Nature-positive object clause is twofold.

The drafting of a Nature-positive object clause can broaden the scope of the director's statutory duty to promote the success of the company for its members and empower the directors to explicitly take into account and proactively promote the interests of Nature. This ensures that directors can balance the traditional objective to bring financial value to shareholders with Nature preservation in their decision-making process.

The scope of the director duties will be framed by a Nature positive object clause, including the duty to exercise powers for the purpose for which they are conferred (section 171 of the CA 2006) and the duty to exercise reasonable care, skill and diligence (section 174 of the CA 2006). In other words, the Nature positive object clause will integrate Nature in *why* and *how* the directors satisfy their duties.

Examples of Nature-positive object clauses adopted in English for-profit companies:

Faith in Nature (Chapter 2):

"The objects of the Company are to promote the success of the Company,

(a) for the benefit of its members; and

(b) while delivering, through its business and operations, using its best endeavours to have a positive impact on Nature as a whole and to minimise the prospect of any harmful impact of the business and operations on Nature, in a manner commensurate with the size and resources of the Company, taken as a whole."

House of Hackney (Chapter 2):

"The objects of the Company are to promote the success of the Company,

(a) for the benefit of its members; and

(b) while delivering, through its business and operations,

(i) positive impact on Nature; and

(ii) minimising the prospect of any harmful impact of business and operations on Nature and

(iii) having due regard for the interests of Future Generations, in a manner commensurate with the size and resources of the Company, taken as a whole."

The above examples incorporate a long term duty to Nature, meaning that while the object of the company is to promote the success of the company, the directors should act to deliver positive impacts for Nature and to minimise any harmful impacts on Nature and future generations.⁴ Additional drafting can be included to ensure flexibility in the company's objects considering the specific circumstances of a company. For instance, the Nature-positive objective could be interpreted in light of the company's size, resources, industry and any specific focus on Nature preservation, such as various ecosystem solutions.

Nature as Advisor

Option 1: Nature as observer:

An observer in the context of a UK company under English law is a person entitled to attend and speak at Board meetings but who does not have voting rights. This role can be entrenched in the company's Articles of Association.⁵ A company can appoint Nature as an Observer to the Board, allowing it to participate in discussions and provide input without having a direct vote. The appointment and removal of Nature as an observer can follow a similar approach to the Nature as Director model, ensuring that the process is formalized and transparent (e.g. following internal policy-based protocols, and supported by a reasoned written notice). For

- 4 The wording resonates with the proposed legislative amendments to the section 172 duty to promote the success of companies under the CA 2006 advocated by the Better Business Act Campaign, led by a coalition of more than 2,500 businesses. Its mission is to encourage companies to advance interests of wider society and the environment alongside the shareholders and to empower the directors to exercise their judgment in weighing up and advancing the interests of all stakeholders.
- 5 Entrenchment of a specific article in the Articles of Association of a UK company means incorporating specific provisions in a way that makes them more resistant to change. This typically involves setting higher approval thresholds or specific procedures for altering or removing these provisions, ensuring their permanence and protection. An example is that variation or removal of an article requires passing of a special resolution by the shareholders (i.e., requiring at least 75% of shareholder votes).

example, any removal of Nature as Observer by the company could require it providing clear reasons for the decision, published as part of the nature impact report. For more information on the nature impact report, please refer to the sub-section "Nature as Director Model".

The Nature as Observer model can be combined with the Nature as Shareholder model, whereby Nature would have the right to attend board meetings as an observer and also possess certain rights as a shareholder of the company. For more information on granting shareholder veto rights to Nature, please refer to the sub-section "Nature as Shareholder Model". Zoop model (Chapter 2) is an example of appointing Nature as an Observer to the Board in the Dutch context.

Option 2: Nature as advisory committee

An advisory committee focusing on Nature can be created to support the work of the board. This can be made possible in two ways:

- Incorporating only the general terms of the Nature advisory committee in the Articles of Association, including the nomination and appointment right of the board, with details to be separately set out in a terms of reference. The terms of reference typically outlines Nature advisory committee's purpose, structure, and operating procedures.
- Incorporating the details of the Nature advisory committee directly into the Articles of Association. The board would have to comply with what the Articles contained in respect of the advisory committee unless and until they were changed by a shareholder decision to amend the Articles. This provides greater certainty that the Nature advisory committee would be put in place and play a role in informing the relevant board decisions. There is also public visibility of the arrangement through the UK Companies House register which enhance accountability of the company to the Nature as Advisor initiative.

An advisory committee can consist of a group of professionals and experts that can represent Nature's interests. It can also be an advisory committee representing multiple stakeholders including Nature, such as employees, local communities, future generations.

The Articles of Association should stipulate the name, function, powers, composition, appointment and removal procedure of the advisory committee. Powers of the advisory committee could include the right to request information, to be consulted on certain Nature reserved or related decisions, to provide non-binding opinions to the Board, or make proposals to the Board for consideration.

In addition, to increase the accountability of the Board with respect to the advice and recommendation of the advisory committee and to ensure the independence of the advisory committee, the Articles of Association can provide that:

- In case the Board does not follow the opinions of the advisory committee, the Board should provide clear explanations substantiated with evidence to the extent possible.
- The company's annual report and disclosure may include a report from the advisory committee containing details of its composition, profiles of various committee members, Nature related matters addressed during the year and the nature of the advice provided to the Board.
- The nomination of committee members, including qualifications and the nomination procedure, should be detailed in a nomination policy (preferably incorporated by reference into the Articles of Association). This policy would outline the criteria for selecting members, the process for their nomination and appointment, and any relevant qualifications, expertise or characteristics required. This ensures a transparent and structured approach to nominating the members of the advisory committee.
- The company can also establish a rotation policy to ensure fresh perspectives and reduce the risk of entrenched interests.

Nature as Director

We recognize that every company has its own governance priorities and needs; therefore, the Nature as Director model is designed to be adaptable rather than a one-size-fits-all solution. The goal of this Toolkit is to offer a wide range of ideas and options on how to implement Nature as Director, inspiring companies to develop tailored approaches that suit their specific needs. These ideas can be grouped into three categories and we will discuss various options for each category in turn:

(1) Role of Nature as Director & Onboarding Implementation

(2) Board Meetings & Decision Making

(3) Reporting and Accountability

(a) Role of Nature as Director & Onboarding Implementation

Entrenchment of Nature as Director. The Nature as Director model involves granting Nature a seat on the Board of directors. Companies committed to this model can entrench the role and appointment of Nature as Director in their Articles of Association. For example, any changes to the construct would require a very high level of approval from shareholders (e.g. with 75% or more shareholders' votes) or special consent by certain shareholders

Appointment. The Articles of Association will stipulate that at least one director must be a "Nature Director," which can either be:

- (a) A natural person with the requisite expertise (as desired, needed, understood and determined by the company/organization) to ensure the Board considers the impact on Nature and Nature's interests in its decision-making, or
- (b) A separate legal entity acting through its authorized agent (i.e. a legal entity appointing various relevant experts and professionals as authorized agents to represent Nature).

Option (b) is permissible under English law, as a director can either be a natural person or a corporation. An advantage of option (b) is that the company can benefit from a wide range of perspectives on Nature-related matters and have a diversity of views.

In both examples of Faith in Nature and House of Hackney, each of their Articles of Association provide that at least one of the directors (as a natural person) is required to be a "Nature Guardian" to ensure that the Board of directors is advised upon, and gives due consideration to, the company's decision making and its impact on Nature.

Additional options to enhance the voice of Nature as Director include the following:

- Power of Nature as Director to call on a committee of experts to assist with decision making (which can be a separate Nature Board sub-committee led by Nature as Director/s, consisting of a wide range of pertinent experts and professionals, to provide specialized input on relevant Nature reserved matters, as agreed upon, e.g. Faith in Nature).
- Power of Nature as Director to delegate responsibility for decision making to a committee of experts. For example, similar to the House of Hackney model, where the Nature Guardian can seek expert recommendations for Nature-reserved matters, Nature as Director could rely on expert committees to inform and guide decisions.
- An independent nomination committee consisting of experts and/or representatives tasked with approving candidates for the position of Nature as Director. This committee would ensure that the selection process for Nature as Director is conducted with a high level of expertise and impartiality.

Option of Nature as non-executive director. For private English companies, it is possible for the Articles to designate directors as a non-executive director ("NED"). NEDs do not engage in the day-to-day operations or management of the company. Instead, they provide independent

oversight, strategic guidance, and expertise to support the executive team and ensure effective governance. English law does not require companies to differentiate between executive and non-executive directors; it allows flexibility to the company to specify such roles if it chooses.

If the company prefers to designate the role of Nature as Director as providing support and oversight to the other directors, it is an option for the company to amend the Articles of Association to designate Natures Director as a "non-executive director" on the Board, with specific duties and responsibilities outlined in the Articles. The "Nature Guardian" in the Faith in Nature example is a non-executive director. The "Nature Guardian" would be entitled to attend meetings concerning, and vote on, Nature reserved matters only as it is removed from the day-to-day running of the company. Therefore, the designation of Nature Director as a NED would impose limitations on its involvement and hence, the nature-positive impact of the Nature as Director model.

As a note, under English law, even if a director is considered to be a non-executive director, such director remains collectively responsible for all decisions made by the Board of directors, i.e. even for board decisions that are not Nature-related (see below sub-section on "Some notes on Nature as Director").

Removal. To ensure integrity and accountability of the company to the Nature as Director model, the Articles of Association can include a removal clause imposing an obligation of the Board to provide comprehensive and clear reasons in case of any resolution to remove the Nature Director from office, including any information relating to any disagreement between the Nature as Director and other directors on the Board. To ensure transparency and to demonstrate that the Board has fulfilled its directors' duties by giving due regard to the opinion of the Nature Director and other considerations, it is recommended that these statements should be made public and included in the Nature impact report.

In addition, the Articles of Association can stipulate that the removal of Nature as a Director must follow specific procedures, such as requiring the approval of independent directors or an independent nomination committee. Moreover, the removal of Nature as a Director can be enhanced in the Articles of Association through setting a higher shareholder approval threshold. These provisions serve as important protections for Nature as a Director and help defend against allegations of greenwashing.

Duties and responsibilities. The additional overarching duties and responsibilities of Nature as Director are likely to be included in the Articles of Association, which would be made public on the UK Companies House register. For example, this might cover the duty to take into account Nature's interests in the decision making, the duty to determine whether a decision amounts to a Nature-reserved matter, the duty to consult on specific Nature reserved matters, etc. Any amendments to these duties and responsibilities could require at least 75% approval from shareholders, reinforcing the commitment to Nature in the Board's decision making process.

Details on implementing these additional duties in practice could be outlined in a policy document. For instance, the policy documents can include a decision-making matrix for the board and management team to use when addressing Nature-reserved matters. The document could encompass specific considerations and metrics for evaluating the decisions and their impact on Nature, ensuring that Nature's interests are appropriately integrated into the board's decision-making process.

(b) Board Meetings & Decision Making

Meeting quorum.

Meeting quorum means the minimum number of directors required to be present at a meeting for the decisions made to be considered valid and legally binding pursuant to the Articles of Association. The Articles of Association can either provide that (a) Nature as Director must form part of the quorum so that the representation of Nature on Board meetings is ensured, or that (b) Nature as Director must form part of the quorum with respect to matters that concern Nature (i.e., Nature-reserved matters). The examples of Faith in Nature and House of Hackney adopt option (b) in their Articles of Association.

Voting right and Nature-reserved Matters. The Articles of Association can specify that certain Board decisions are classified as Nature-reserved matters. They can also outline the criteria

for the Board (or an advisory committee) to determine whether particular matters qualify as Nature-reserved matters. Nature-Reserved matters do not necessarily mean environment-related matters. Nature-reserved matters are not limited to environment-related concerns. As discussed in the subsection on the “Meaning of Nature,” our recommended definition of Nature is broad, allowing Nature-reserved matters to encompass areas beyond direct environmental impact, such as company operational decisions that would affect indigenous or local communities.

Nature-reserved matters can be defined in detail in the Articles of Association considering the Company’s likely impact on Nature, for example, termination or variation of any material agreement associated with a substantial impact on Nature. Specific business and operation topics can also be included, such as:

- Decisions on supply chain management;
- Corporate waste disposal;
- Environmental impact assessments.

Additionally, specific focus areas of Nature preservation to the Company can be included as Nature reserved matters too, such as biodiversity preservation, land stewardship, and water quality.

To further ensure that the voice of Nature is respected at the Board meeting where a Nature-reserved matter is discussed, additional powers of Nature as Director can include the following:

- (a) Nature as Director can provide the Board with written materials to consider in advance of the Board meeting.
- (b) Wherever the Board disagrees with the advice of Nature as Director, there is a duty of the Board to provide balanced and comprehensive reasons for its decision.
- (c) Nature as Director will have a veto right over Nature reserved matters, which can only be overridden by shareholders’ consent.
- (d) Nature as Director can also be given a casting vote at Board meetings in cases of a tiebreak at the Board meeting with respect to Nature reserved matters.

(c) Reporting and Accountability

Nature impact report. The Articles of Association may provide that the Board must circulate to the shareholders and publish a Nature impact report publicly. A Nature impact report can be a report or a section of an annual report of a company describing the steps the Board has taken to achieve its objects, the discussions of the Nature reserved matters and the outcomes, and assessment of the Company’s impact on Nature. Nature as Director should approve the contents of the Nature impact report. Both examples of Faith in Nature and House of Hackney introduce the requirement of a Nature impact report in their Articles of Association.⁶

The Nature impact report can be aligned and integrated with the voluntary and/or mandatory sustainability, ESG and other corporate reporting requirements applicable to the company, including:

- the strategic report required under the CA 2006 containing information about the development, performance or position of the company’s business, and specifically including information about environmental matters material to the company;
- the directors’ report on engagement with the employees, suppliers, customers as required under the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008;
- voluntary disclosures pursuant to the UK Corporate Governance Code or the QCA Corporate Governance Code;
- to the extent applicable because of the company’s European presence or as a voluntary initiative of the company, the corporate disclosure requirements under the EU Corporate Sustainability Reporting Directive; and

- voluntary disclosure requirements under Global Reporting Initiative and guidance set out in the Taskforce on Nature-related Financial Disclosures.

Some notes on Nature as Director

- (a) *Directors’ collective responsibility under English law.* It is important to bear in mind that directors’ powers are conferred collectively to the Board and must generally be exercised by the Board as a whole. Therefore, even if Nature as Director is given a non-executive role without involvement in the day-to-day operations of the company, they are still subject to the collective responsibility of the Board under English law. This means that, by virtue of being a director, Nature as Director shares in the Board’s overall accountability and must adhere to the collective decisions and responsibilities of the Board.
- (b) *Duty owed to the creditors.* When a company is in situations of financial difficulty, section 172(3) of CA 2006 will displace the directors’ duties owed to the company to promote the success, with a duty imposed on all directors, including Nature as Director, to act in the best interests of the creditors of the company. In other words, repaying creditors may take precedence over Nature’s interests, and the Board, including Nature as Director, must carefully consider creditor interests in their decision-making process.
- (c) *Nature-related risks and directors’ duties.* According to the CCLI Legal Opinion on Nature-related risks and directors’ duties under the law of England and Wales (11.03.2024 Shivji, Stubbs et al.), it is argued that directors who fail to take into consideration (relevant and non-trivial) nature-related risks, may be in breach of their duties to (i) promote the success of the company under section 172 CA 2006; and (ii) act with reasonable care, skill and diligence under s.174 CA 2006. Equally, the legal opinion states that “a director will be judged by a higher standard if their own general knowledge, skill and experience is higher than that of a reasonable director in their position” - this means that it is important to articulate the meaning of Nature for a company/organisation, and that all directors need to be mindful of their duty to take account of the impact of nature related risks on the company and not assume they can rely on any Nature Director to do this for them.

For further information on the Nature as Director model, please refer to the “Nature as Director Legal Handbook and Templates” developed by Earth Law Centre’s Nature Governance Agency (NGA), which can be accessed on the NGA website here. This resource provides a broader roadmap on the Nature as Director model, including further practical details and examples on how this model can be implemented. Particularly useful is the Commitment Level to Implementation Matrix (CLIM), a template that outlines three general implementation approaches: integral, mature, and learning approaches. CLIM also serves as a roadmap, guiding companies in their journey of integration of Nature as Director from a learning level approach to an integral level approach, reflecting gradual increase of nature-positive commitment and recognizing that adopting the Nature as Director model is a continuous learning process for companies.

Nature as Shareholder

Arrangements for Holding Shares and Financial Rights for Nature. Nature can hold shares through various arrangements, such as a company, charity, Community Interest Company (CIC), partnership, a trust arrangement, or through natural persons acting under a defined power of attorney. Each arrangement requires separate legal documents to outline the specific details. For instance, if financial rights are attached to the shares held by Nature to acknowledge the contribution of a healthy environment to the business’s success and to allocate a proportion of profits to support that ongoing healthy environment, then the purpose and use of these financial rights will be a key consideration in choosing the appropriate arrangement.

Nature Shares. A special class of non-voting shares can be created in the Articles of Association, similar to preference shares that have specific rights distinct from ordinary shares. However, rather than focusing on financial preference rights, the special rights for Nature as Shareholder can include the following to ensure that a meaningful voice is given to Nature:

- *Veto right.* While Nature as Shareholder does not have voting rights, a company can consider granting special veto rights to Nature as Shareholder over specific Nature-reserved matters, or more generally, environmental impact matters. This can be provided for in the Articles of Associations or in the shareholder agreement between the shareholders of the company (which is commonly in place). The advantage is that it creates a legally binding arrangement enforceable by Nature as Shareholder, thereby enhancing accountability and ensuring that Nature-related interests are effectively safeguarded in certain corporate decision-making. For other shareholder decisions that are not Nature-related, Nature as Shareholder can either abstain from voting or will vote per Board's recommendation.
- *Observer appointment.* Nature as Shareholder can also have the right to nominate an observer to the Board meetings to ensure that, when discussing Nature reserved matters, the Board would be advised properly by environmental experts.
- *Information right.* Usually, shareholders are given certain information and inspection rights in the shareholder agreements and/or Articles of Association. Nature as Shareholder can be granted additional information rights specifically related to Nature-reserved matters, including, for example, detailed reports on environmental impact assessments, data reports on carbon emission and impact on biodiversity. This ensures that Nature as Shareholder remains informed and can actively monitor and influence the company's environmental performance and sustainability efforts. Additionally, it would encourage the company to consider the impact of Nature on their business and operations.

A shareholder holding more than 5% of the shares enjoys certain statutory rights under the Companies Act 2006. These can be additionally included as rights of Nature as Shareholder in the Articles of Association. These rights include:

- The right to require circulation of a written resolution (with the 5% threshold calculated as a percentage of total voting rights of members with a right to vote on the relevant resolution) (Section 292, CA 2006);
- The right to require a general meeting to be held (Section 303, CA 2006); and
- The right to require the company to circulate a statement relating to a matter to be raised at a general meeting (Section 314, CA 2006).

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Collaborative partnership

The Onboarding Nature Toolkit (the Toolkit) is the fruit of shared research, enthusiasm and a partnership between **B Lab Benelux (BLB)**, **Earth Law Center's Nature Governance Agency (ELC-NGA)**, and **Nyenrode Business Universiteit (NBU)**.

The idea to create a Toolkit for use by B Corporations (B Corps) and other organisations was born in early 2023, when Tessa van Soest and Daan van Apeldoorn (BLB) started to work on an inspirational roadmap of the Nature inclusive governance practices emerging in the global B Corp community.

To inspire more companies to take on the paradigm shift from human-centred to nature-inclusive governance models, BLB invited experts from ELC-NGA (Alexandra Pimor, ELC-NGA Director & Former Nature proxy at Faith in Nature); We Are Stewards (Gijsbert Koren, Founder), Patagonia (Nina Hajikhanian, General Manager EMEA) and Undercover Activist (Tessa Wer-nink, Co-founder Fairphone & Undercover Activist) to co-host a workshop on alternative governance models, ranging from symbolic to formal formats, including 'Mother Nature as symbolic CEO', Nature On The Board, and Steward Ownership. Inspired by this conversation, BLB and ELC-NGA connected with NBU (Tineke Lambooy, Ebba Hooft Toomey), and Liance Legal (Jacobien Viets), to bring in their expertise in this field, to develop the research design, and to contribute to the study and the Toolkit.

Research team & methodology

The academic research project was led by Tineke Lambooy (NBU), with the research assistance of Ebba Hooft Toomey.

The research was supported by Alexandra Pimor (ELC-NGA); Tessa van Soest (BLB), Daan van Apeldoorn (BLB) ; Jacobien Viets (*Liance Legal*) ; Pooja Sharma (ELC-NGA); and Lucy Ward (ELC-NGA).

The project was designed as an explorative empirical research; in which the team conducted interviews in English and in Dutch, with approximately 10 identified best practice companies' representatives, who responded to an invitation to participate.

The research followed an ethics protocol approved by NBU ensuring mitigation of potential conflicts of interest; and guaranteeing that informed consent was provided by participant companies; subject to data protection obligations, privacy and confidentiality rights.

The Toolkit content is developed through a combination of desk research (legal theoretical and literature review), empirical research (interviews) and professional and practical experience. It draws on the narrative analysis of the qualitative data gathered from the interviews (e.g. transcript and fact sheet analysis, thematic interpretation, emergent pattern identification). The inspirational, practical, and legal elements identified through the research are reflected in the vision, tools and legal templates shared in the Onboarding Nature Toolkit.

Acknowledgement of Contributions

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She is also one of the founders of the Dutch NGOs Lab Future Generations (2017) and Stand Up For Your Rights (2008), promoting human rights to a clean and healthy environment, Rights of Nature and rights of future generations.



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APPENDIX

Appendix A - Further resources on the case studies

Appendix B - NGA Nature-to-Business Sodality Program

Appendix C - Templates for Nature as Director

Appendix A

Further Resources

Below are resources and repositories of information on the practice of including Nature as a stakeholder in organisations. These resources should be consulted for additional advice, guidance and details.

| Resource | Model | Creator | Reference |
|--|--------------------|----------------------|--|
| Nature on the Board 1 Year Report | Nature as Director | Faith in Nature | <p>A yearly report where the directors at Faith in Nature publish a report back to the non-human director, Nature.</p> <p>An open source document detailing the NOTB process. https://www.faithinnature.co.uk/pages/avotefornature</p> |
| Nature on the Board an Open Source Guide | Nature as Director | Faith in Nature | <p>An open source guide on the appointment of the Nature Director at Faith in Nature.</p> <p>Details of legal changes made at the company to appoint Nature as a director. https://www.faithinnature.co.uk/pages/avotefornature</p> |
| Zoöp Model Information | Nature as Advisor | Zoöconomic Institute | <p>The website of the Zoöconomic Institute.</p> <p>The site houses descriptions of the Zoöp model, examples of Proto-Zoöps, details on the Zoöconomic Year Cycle and more. https://nieuweinstituut.nl/en/projects/zoop</p> |
| Mother Nature as CEO CV | Nature as Purpose | Willicroft | <p>The webpage detailing how to implement Mother Nature as CEO.</p> <p>Details on the process, a chance to sign up, and Mother Nature's CV in pdf format for open use. https://willicroft.com/mother-nature-ceo</p> |

Appendix B - NGA Nature-to-Business Sodality

Along with Nature proxy training and strategic Feasibility Studies, the Nature Governance Agency's Nature-based consulting services also include a Nature-to-Business Sodality program. In this immersive program, NGA guides organisations ready to represent and execute on behalf of Nature, or those commencing their adventure in defining their Vision. NGA utilises their custom frameworks in securing an organisation's Vision, curating Nature On The Board models for the entity's structural design, and aligning the organisation's progression strategy with legacy-based implementation.

Appendix C - Frameworks for Nature as Director

In March 2024, NGA proudly published its first legal handbook with Nature forward templates, including a resource guide for nominating a Nature director in an organisation and a guide on implementing specific legal changes within governing documents. The legal handbook can be accessed here, on the Nature Governance Agency website.
(e.g. Faith in Nature's FAQ; NGA Nature Director templates)



FOR MORE INFO VISIT WWW.ONBOARDINGNATURE.COM