

SUSTAINABILITY: RECENT ESG DEVELOPMENTS.

December 2020

Sustainability is a key theme for 2020 and businesses worldwide are putting environmental, social and governance (ESG) considerations at the heart of their operations. Governments, regulators, business and advocacy groups are developing policy measures, rules, guidelines and other initiatives to promote sustainability and responsible business practices, in particular to ensure that the financial sector supports and manages the impact of climate transition. Courts and other dispute resolution bodies are also beginning to grapple with these developments.

This newsletter is intended to assist banks, financial investors and corporates in keeping up to date with ESG developments. Further details of these and previous developments can also be found on our <u>Green and Sustainable Finance Topic Guide</u> on the Clifford Chance Financial Markets Toolkit.

LEGAL AND REGULATORY REQUIREMENTS

European Union

(20 November 2020) The EU Commission issued for consultation the first two sets of technical screening criteria for determining which economic activities can qualify as environmentally sustainable under the EU's Taxonomy Regulation. The criteria, which have been published in a draft delegated act, concern activities that substantially contribute to climate change mitigation or climate change adaptation. | Text of draft delegated act | Annex I | Annex II | Environment Social Governance | Market-wide

(5 November 2020) The European Securities and Markets Authority (ESMA) published for consultation its draft advice to the EU Commission under Article 8 of the Taxonomy Regulation. ESMA's draft advice is intended to ensure a consistent application of the disclosure obligations required under the Taxonomy Regulation by non-financial undertakings and asset managers that fall within the scope of the Non-Financial Reporting Directive (NFRD). | Press release | Consultation paper

Environment Social | Asset managers Financial investors

This regular newsletter is a digest of key developments on Sustainability and ESG from around the Clifford Chance network, including:

- Legal and Regulatory Requirements
- Industry Best Practice, Guidance and Voluntary Codes
- Official Publications
- Industry Publications
- Rating Agency, Index Provider and Data Services
- Advocacy Group Publications
- ESG Trends Emerging from COVID-19
- Clifford Chance Briefings and Blogs
- Clifford Chance Events

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(3 November 2020) The European Banking Authority (EBA) launched a consultation on the incorporation of ESG risks into the governance, risk management and supervision of credit institutions and investment firms. Comments are due by 3 February 2021 and the EBA intends to deliver its final report in June 2021. Press release | Discussion paper Environment Social Governance | Asset managers Banks

France

(19 November 2020) The French administrative Supreme Court (Conseil d'Etat) is being called upon to rule on a case regarding compliance with commitments to cut greenhouse gas emissions. In 2019, the city of Grande-Synthe (North of France) referred the matter to the Conseil d'Etat, following the Government's silence to answer its request for additional measures to curb the curve of emissions produced and meet the objectives set out in the Paris Agreement. Before rendering a final decision, the Conseil d'Etat requires the Government to justify, within three months, that its implicit refusal complies with the reduction path chosen to achieve the objectives set for 2030, i.e. a cut in greenhouse gas emissions of at least 40% compared to 1990 levels. In the event of failure to provide sound justifications, the Conseil d'Etat may compel the Government to act. | Press release (in French) |

Environment | Market-wide

The Netherlands

(4 November 2020) A legislative proposal has been submitted to the Dutch House of Representatives introducing a statutory diversity quota for supervisory boards (two-tier boards) of companies with a stock listing in The Netherlands. New appointments that do not contribute to a gender-balanced supervisory board will be void. Additionally, 'large' companies, whereby 'large' is in line with the definition used in the accounting law (jaarrekeningenrecht) must set ambitious and appropriate goals in the form of a target number to promote gender diversity in the management board, supervisory board and for categories of senior management to be determined by the company itself. These goals should be supported by a plan and relevant companies will have to report to the Dutch Social and Economic Council (SER) on actual numbers and progression made annually. Legislative proposal webpage

Spain

(4 November 2020) Royal Decree 960/2020, establishing the new remuneration framework for 'clean energy' generated from renewable sources, which will be awarded by auction, was published in the Spanish Official Gazette. | Royal Decree 960/2020 (in Spanish)

Environment | Market-wide

Social Governance | Corporates

United States

(27 October 2020) The Climate Disclosure Act, which would amend reporting rules to require that public companies disclose various climate risks and their strategies to address them, was reported out of the US House of Representatives Committee on Financial Services. It would still need to pass the US House of Representatives and US Senate (where it is



also under consideration), and be signed by the US President, for it to become law. | H.R. 3623: Climate Risk Disclosure Act of 2019

Environment | Market-wide

INDUSTRY BEST PRACTICE, GUIDANCE AND VOLUNTARY CODES

International

(9 November 2020) The World Bank published a guide to help public debt managers improve their engagement with investors on ESG topics. | ESG Guide

Environment Social Governance | Public debt managers

(6 November 2020) ClimateAction stated that a coalition of nine financial institutions called on companies to take action to end deforestation in their supply chains and to enhance supply chain traceability. | ClimateAction press release

Environnent Social | Corporates

United Kingdom

(24 November 2020) The Asset Management Taskforce published a set of recommendations to integrate stewardship into the investment process. The Taskforce's proposals aim to assist investment managers, asset owners and other market participants in expanding their stewardship activity across different asset classes and to create a Council of UK Pension Schemes to support higher standards of pension stewardship. Led by HM Treasury and supported by The Investment Association, the Taskforce is comprised of UK regulators, investment managers and stakeholders. | ThelA press release | Recommendations

Governance | Asset managers Pension funds

(24 November 2020) Glass Lewis published its 2021 proxy voting policy guidelines for UK companies. Revisions to its guidelines include changes relating to board and workforce diversity, environmental and social risk oversight, environmental and social initiatives, and remuneration. | Glass Lewis homepage

Environnent Social Governance | Corporates

(16 November 2020) The Investment Association (IA) issued its Principles of Remuneration for 2021, which include guidance that Remuneration Committees consider the management of ESG risks in the company's variable remuneration, along with other non-financial performance metrics.

Principles of remuneration | Letter to Remco Chairs

Governance | Asset managers Pension funds

OFFICIAL PUBLICATIONS

International

(23 November 2020) The Financial Stability Board (FSB) published a report on how climate risks might impact or be amplified by the financial system. The report assesses the channels through which physical and transition risks could impact the financial system and how they might

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interact, with a particular focus on the potential amplification mechanisms and cross-border effects, and on the channels that could materialise in the short-to-medium term. | <u>Press release</u> | <u>Report</u>

Environment Social | Market wide

(17 November 2020) The Climate Disclosure Standards Board (CDSB) and the United Nations Sustainable Stock Exchanges (SSE) initiative formalised their long term collaboration with an official Exchange of Letters. The organisations plan to expand their joint effort to support capital market infrastructures and their regulators in emerging markets on environmental disclosure. | Press release

Environment Social | Market wide

(17 November 2020) The Investor Advisory Group (IAG) of the Sustainability Accounting Standards Board (SASB) issued an updated statement calling on companies to use SASB standards in their disclosures to investors. Initially published in 2016, the updated statement affirms that other reporting standards and frameworks are not replacements for SASB standards. | Press release | IAG Statement Environment Social Governance | Market-wide

(14 November 2020) The Green Climate Fund (GCF) approved USD 1 billion of funding for low-emission, climate-resilient developments in developing countries. | <u>Press release</u>

Environment | Market-wide

(8 November 2020) A report from the Organization for Economic Cooperation and Development critiques "current market practices" in connection with ESG investing for "present[ing] a fragmented and inconsistent view of ESG risks and performances." | Report

Environment Social Governance | Market-wide

(6 November 2020) The International Development Finance Club (IDFC), an international network of national and regional development banks, and the Green Climate Fund (GCF), have jointly published a paper examining how public development banks can finance low-carbon, climate-resilient development projects. | Press release | Paper

Environment | Banks

Australia

(29 October 2020) The Australian government's Department of Industry, Science, Energy and Resources (DISER) is consulting on the development of an Artificial Intelligence Action Plan. The Plan will specifically help to ensure the development and use of AI is safe, responsible and ethical, coordinate government policy and national capability under a clear, common vision for AI in Australia, and explore the actions needed for Australia's AI future. To support the consultation, DISER released a discussion paper which identifies the requirement for Australian businesses to access high quality, de-sensitised, ethically and legally sourced data sets, with particular consideration of issues like bias and accuracy, and raised the concerns of individuals and businesses regarding algorithmic decision-making, and the importance that AI systems respect human rights and diversity, are explainable, enable human oversight and have clear accountability. The consultation closes on 27 November 2020. | Discussion paper

Social | Market-wide

Canada

(13 November 2020) Canada's Office of the Privacy Commissioner (OPC) published key recommendations for regulating AI and reforming the Personal Information Protection and Electronic Documents Act (PIPEDA), following a public consultation launched earlier this year. The OPC is calling for legislation that will help to reap the benefits of Al while upholding individuals' fundamental right to privacy. | Press release | Recommendations

Social | Market-wide

China

(9 November 2020) China's National Information Security Standardisation Technical Committee (TC260) announced that it is requesting public comments on its 'Cybersecurity Standard Practice Guide - Guidelines for Artificial Intelligence Ethics'. The Guidelines highlight risks associated with All ethics and security, including discrimination and infringement of basic human rights, personal privacy, and Al property. The Guidelines make a number of recommendations, in areas such as research and development, design and manufacturing, and the deployment of applications, among others. Public comments can be submitted until 23 November 2020. Request for comments (in Chinese) | Guidelines (in Chinese)

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European Union

(27 November 2020) The European Central Bank (ECB) published its final guide on climate-related and environmental risks following its May 2020 public consultation. The guide, which is not legally binding to member institutions, describes how the ECB expects significant institutions to consider climate-related and environmental risks when formulating and implementing their business strategy and governance and risk management frameworks. The ECB will ask banks to perform a selfassessment based on its expectations in early 2021 and conduct a full supervisory review of banks' practices in 2022. The ECB also published a report on institutions' climate-related and environmental risk disclosures concluding that institutions need to make more significant efforts to support their disclosure statements. | Press release | Guide on climaterelated and environmental risks | Report on institutions' climate-related and environmental risk disclosures

Environment Social | Banks

(16 November 2020) The EU Commission published its New Consumer Agenda which puts forward priorities and key action points to be taken from 2020 to 2025 together with EU member states. The agenda aims to empower European consumers to play an active role in the green and digital transitions, and addresses how to increase consumer protection and resilience during and after the Covid-19 pandemic. Regarding digital transformation, the agenda aims to tackle online commercial practices that disregard consumers' right to make an informed choice, abuse their behavioural biases, or distort their decision-making processes. | Press

release | Agenda

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(26 October 2020) The Presidency of the Council of the European Union issued conclusions regarding the EU Charter of Fundamental Rights 2000 in the context of artificial intelligence and digital change, with 26 delegations supporting the conclusions. The conclusions are designed to anchor the EU's fundamental rights and values in the age of digitalisation, foster the EU's digital sovereignty, and actively contribute to the global debate on the use of AI with a view to shaping the international framework. | Presidency conclusions

Social | Market-wide

(23 October 2020) The European Securities and Markets Authority (ESMA) Securities and Markets Stakeholders Group (SMSG) issued its advice on the European Supervisory Authority's (ESAs) survey on templates for environmental and/or social finance products under the Sustainable Finance Disclosure Regulation (SFDR). Amongst other things, the SMSG proposes shortening the length of the templates, inserting a summary dashboard with key information at the top of the document and standardising the content, structure, and design of the format following the example of the PRIIPs KIDs. | SMSG advice

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France

(2 November 2020) The Autorité des Marchés Financiers (AMF) and the Autorité de contrôle prudentiel et de résolution (ACPR) have jointly published their first monitoring and evaluation report on the coal policies of the bank, insurers and funds in France. | Report (in French) | Annexes (in French)

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Germany

(25 November 2020) Dr Sabine Mauderer, a member of the Executive Board of the Deutsche Bundesbank, delivered a speech to the 4th German-Singaporean Financial Forum on how fintechs and banks can work together to boost the green finance market. | <u>Transcript</u> Environment Social | Banks

Hong Kong

(24 November 2020) The Hong Kong Institute for Monetary and Financial Research (HKIMR) published a report on the green bond market in Hong Kong. The report identifies the positive impacts and challenges faced in participating in green bond markets and makes recommendations to help develop Hong Kong as an international hub for green bonds. | Summary | Report

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(5 November 2020) The Hong Kong Financial Secretary delivered a speech outlining new developments related to green finance. The measures include the planned issuance of green bonds worth HKD 66 billion over five years beginning in 2020-21 and the launch of the Hong Kong Stock Exchange's new green and sustainable exchange in late 2020. | Transcript

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Singapore

(24 November 2020) The Monetary Authority of Singapore (MAS) launched the Green and Sustainability-Linked Loan Grant Scheme (GSLS). Effective from 1 January 2021, the scheme will support corporates in obtaining green and sustainable financing by defraying the expenses of engaging independent service providers to validate the green and sustainability credentials of the loan. The grant also encourages banks to develop green and sustainability-linked loan frameworks to make such financing more accessible to SMEs. | Press release | Infosheet | Brochure

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United Kingdom

(26 November 2020) The Financial Reporting Council (FRC) published a review of corporate governance reporting under its revised UK Corporate Governance Code. The report found that many companies strive to claim full compliance with the Code, leading to 'tick-box' practices. The FRC has set out expectations for improvement in good governance standards, engagement with stakeholders, culture assessment and monitoring and commitment to diversity. | Press release | Report

Social Governance | Corporates

(23 November 2020) FCA Dear CEO letter to Lloyd's and London market insurers inter alia identifies common themes in drivers of harm across firms against which it will prioritise its supervisory work. The FCA is concerned that a failure to confront poor culture leads to examples of bullying, discrimination and bias in all aspects of firms' activity. It expects firms' culture and governance to drive good behaviours and produce fair outcomes, and for individuals to be accountable for their actions. Firms are expected to assess and address the drivers of culture in their firm, considering leadership, purpose, governance and their approach to recruiting, managing and rewarding employees. | Dear CEO letter Social Governance | Insurers

(19 November 2020) Economic Secretary John Glen delivered a speech at TheCityUK's annual conference on the Government's vision for a more open, technologically advanced and greener UK financial services sector, including continued work on how central banks can issue their own digital currencies and an upcoming consultation on the UK's regulatory response to stablecoins. | Transcript

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(18 November 2020) The UK Government published a 10-point plan to launch its Green Industrial Revolution, a plan to help the country recover

from the impact of the COVID-19 pandemic by investing in projects that aim to position the UK as a global leader in green technologies. | <u>Ten point plan</u>

Environment | Market-wide

(16 November 2020) The Prudential Regulation Authority (PRA) published its response to industry feedback on its May 2019 framework for assessing physical climate change risk for the general insurance sector. | Response

Environment | Insurers

(12 November 2020) The Financial Reporting Council (FRC) published its annual end of year letter setting out its reporting expectations for the year ahead. The FRC makes a number of recommendations to companies concerning climate change, including encouraging companies to clearly describe their environmental policies, explain any terminology such as 'Paris-compliant' and describe the impact of their businesses, including their supply chains, on the environment. | Press release | Letter Environment Social | Corporates

(10 November 2020) The UK Government published its initial response to the September 2020 IFRS consultation on a global approach to sustainability reporting, expressing support for the approach set out in the paper and setting out current and planned future work by the UK government and financial regulators. | Initial response

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(10 November 2020) The Financial Reporting Council (FRC) published the findings from its thematic review of climate-related considerations by boards, companies, auditors, professional bodies and investors. | Headline findings | Summary | Specific reports on Governance | Reporting | Audit | Professional oversight | Investors

Environment Social Governance | Market-wide

(9 November 2020) Chancellor Rishi Sunak delivered a statement to the House of Commons on the future of financial services in the UK, including measures relating to green finance. The UK Government intends to make climate-related disclosures mandatory by 2025. An interim report on, and roadmap for, mandatory climate-related disclosures by the UK's Joint Government-Regulator Taskforce on Climate-related Financial Disclosures (TCFD) Taskforce has been published alongside the statement. The UK Government also intends to implement a green taxonomy and to issue the UK's first sovereign green bond in 2021. | Press release | Statement | Interim report | Roadmap

Environment Social | Market-wide

(9 November 2020) Bank of England (BoE) Governor Andrew Bailey announced the launch date of the Bank's climate stress test exercise during a speech at the Corporation of London Green Horizon Summit. Scheduled for June 2021, the exercise will explore three different climate scenarios, testing different combinations of physical and transition risks over a 30-year period. The Bank plans to use the exercise as a tool to size the risks faced in these scenarios, to understand how different bank and insurance business models will be affected and how they might respond, and to improve firms' risk management practices through the process of carrying out the exercise. | Transcript

Environment Social | Bank Insurers

(9 November 2020) Financial Conduct Authority (FCA) Chief executive Nikhil Rathi spoke at the Green Horizon Summit on the FCA's regulatory priorities relating to green finance. The FCA will introduce a new listing rule for reporting periods beginning 1 January 2021, requiring prominent listed companies to make disclosures about how climate change is affecting their business that are consistent with Taskforce on Climate-related Financial Disclosures (TCFD) recommendations. The FCA also intends to consult on proposed TCFD implementation measures for asset managers, life insurers and FCA-regulated pension providers in H1 2021. | Transcript

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United States

(18 November 2020) The White House released a memorandum for the heads of executive departments and agencies titled, 'Guidance for Regulation of Artificial Intelligence Applications'. The memorandum sets out policy considerations to guide regulatory and non-regulatory approaches to Al applications developed and deployed outside of the federal government. Specifically, the memorandum encourages innovation and growth in Al and outlines non-regulatory approaches to Al, including sector-specific policy guidance or frameworks, pilot programs and experiments, voluntary consensus standards for the private sector, and voluntary frameworks. | Memorandum

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(12 November 2020) US President-elect Joe Biden's transition team released a plan for how his administration will aim to aggressively use the executive branch of the US government to pursue its climate goals. | Climate 21 project

Environment Social Governance | Market-wide

(5 November 2020) SEC Commissioner Allison Lee gave a speech in which she stated that the SEC should address standardised reporting for climate change and consider a standard framework of policies and procedures for financial institutions that assist clients with ESG investing. | Transcript

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INDUSTRY PUBLICATIONS

International

(4 November 2020) The International Securities Lending Association (ISLA) announced its decision to dissolve the ISLA Council for Sustainable Finance (ICSF). In the future, relevant aspects of ESG impacting ISLA member firms will be covered by the main ESG working group or new or existing groups or subgroups as appropriate. | Press release

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investors

(November 2020) The Aviation Working Group (AWG), an industry group representing aircraft lessors and financiers, agreed to create a carbon calculator (scheduled for release by the end of Q1, 2021) which will use standardised manufacturer data and methodology to calculate emissions of aircraft and fleet portfolios. This is the latest initiative of a working group

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set up by the AWG to assess, provide information, and potentially take action on ESG initiatives related to aviation financing and leasing. | <u>AWGESG page</u>

Environment | Aviation financiers and lessors

United Kingdom

(11 November 2020) The Investment Association (IA) published a position paper on climate change. The paper sets out commitments from industry and three requests for the government on reporting, green gilts and facilitating sector-specific pathways to transition. | Press release | Position paper

Environment Social | Asset managers

(13 November 2020) UK Finance published a white paper aimed at credit institutions that sets out a framework for the measurement and reporting of multi-year commitments to sustainable finance. | Press release | White paper

Environment Social Governance | Banks

(3 November 2020) A group of UK business organisations, including the Aldersgate Group and the Prince of Wales' Corporate Leaders Group, have jointly written a letter urging the UK Prime Minister to set out a nationally determined contribution (NDC) by year's end that it is at least in line with the Paris Agreement, the UK's net zero emissions by 2050 target, and advice from the Climate Change Committee on the UK's 2030 target. | Press release | Letter

Environment | Market-wide

United States

(2 November 2020) US SIF Foundation's "Report on US Sustainable and Impact Investing Trends" found that ESG investing now accounts for one-third of total US assets under management. | Trends report executive summary

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RATING AGENCY, INDEX PROVIDER AND DATA SERVICES

International

(8 November 2020) Fitch Ratings launched a pilot report evaluating how ESG factors may affect credit risk in the longer-term under a realistic downside scenario for the corporate and infrastructure sectors. | Fitch Ratings homepage

Environment Social Governance | Corporates

ADVOCACY GROUP PUBLICATIONS

International

(16 November 2020) The Institutional Investors Group on Climate Change (IIGCC) published a letter, co-signed by leading global investors, to 36 energy, materials and transportation companies calling for material climate

risks to be fully incorporated into their financial statements. The letter accompanies a paper setting out steps that investors expect directors and auditors to take to deliver accounts that properly reflect the impact of getting to net zero emissions by 2050 on assets, liabilities, profits and losses. | IIGCC homepage

Environment Social | Asset managers Corporates Financial investors

(10 November 2020) A new review of disclosures made by more than 1000 companies in 2020 by charity CDP has found a 14% increase in disclosures relating to climate change, forests and water security, which the CDP attributes to requests for information from investors. | Press release

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ESG TRENDS EMERGING FROM COVID-19

Luxembourg

(20 October 2020) As an example of the trend towards permanent shift in social development towards home-working precipitated by Covid-19, the Chamber of Commerce Luxembourg reported the adoption of the Convention on the legal framework of remote working of 20/10/2020. This Convention will be of general application (i.e. post as well as during Covid) to all employment relationships across all **sectors** when the Grand-Ducal regulation to that effect will be published. The Convention includes and clarifies the definition of remote working, the distinction between occasional and regular remote working, several new provisions that bind the employer (e.g. obligation of prior information and consultation of the staff on delegation, prohibition of discrimination between remote workers and other employees). | Press release (in French) | Convention (in French) Social Governance | Market-wide

United Kingdom

(2 November 2020) The Confederation of British Industry (CBI) published the results of a poll on how UK businesses would operate following the COVID-19 pandemic. Amongst other things, respondents said they expected to increase activities that would support the net zero carbon emissions reduction target, make their businesses more diverse and inclusive, and support their local communities. | Press release Environment Social Governance | Corporates

CLIFFORD CHANCE BRIEFINGS AND BLOGS

(18 November 2020) LinkedIn: London Senior Associate Andreas Formosa published a <u>blog piece</u> on initial reactions to the UK Prime Minister's 10 Point Carbon Plan for a Green Industrial Revolution.

(18 November 2020) Clifford Chance Briefing: <u>The UK, sustainable</u> finance and climate regulation: the next steps

(13 November 2020) Clifford Chance Blog: <u>European Commission seeks</u> views on proposals for Mandatory Due Diligence and Responsible Governance

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(13 November 2020) Clifford Chance Blog: <u>Pressure increasing to disclose climate change risk for Australian Government bonds: what impact will the settlement in McVeigh v Rest have?</u>

(10 November 2020) Clifford Chance Blog: <u>The EU Taxonomy Regulation</u> – a market standard of human rights <u>due diligence?</u>

(10 November 2020) Clifford Chance Briefing: <u>The Taxonomy Regulation</u> – a practical guide for alternative investment managers

(6 November 2020) Clifford Chance Briefing: <u>Climate Change test case</u> <u>settles: \$57bn Australian super fund responds to pressure on climate change policy</u>

(4 November 2020) Clifford Chance Blog: <u>FinCEN Issues Additional</u> <u>Guidance for Financial Institutions on Identifying and Reporting Human</u> Trafficking

(16 October 2020) Clifford Chance Briefing: <u>The new regulations on equality</u>

CLIFFORD CHANCE EVENTS

Event: Perspectives Series – ESG: Staying ahead of the regulatory curve

in Europe

Date & Time: 19 November 2020

Venue: A recording of this call is available here (Registration may be

required)

CONTACTS



Alexandra Davidson Partner London (Funds & Investment Management)

T +44 207006 2581 E alexandra.davidson @cliffordchance.com



Caroline Dawson Partner London (Global Financial Markets)

T +44 20 7006 4355 E caroline.dawson @cliffordchance.com



Cheng Li Yow Partner London (Corporate)

T +44 207006 8940 E chengli.yow @cliffordchance.com



Christine Gärtner Partner Frankfurt (Litigation)

T +49 69 7199 1414 E christine.gaertner @cliffordchance.com



Clare Burgess Partner London (Capital

Markets)
T +44 20 7006 1727
E clare.burgess

@cliffordchance.com



Daud Khan

Partner London (Corporate)

T +44 207006 6069 E daud.khan @cliffordchance.com



Deborah Zandstra Partner London (Global Financial Markets)

T +44 207006 8234 E deborah.zandstra @cliffordchance.com



Gregor Evenkamp Partner Frankfurt (Funds & Investment

Management)

T +49 69 7199 3158 E gregor.evenkamp @cliffordchance.com



Jacqueline Jones Knowledge Director London (Editor)

T +44 20 7006 2457 E jacqueline.jones @cliffordchance.com



Jeroen OuwehandGlobal Senior Partner
Amsterdam

T +31 20 711 9130 E jeroen.ouwehand @cliffordchance.com



Kate Gibbons Partner London (Global Knowledge)

T +44 207006 2544 E kate.gibbons @cliffordchance.com



Nadia Kalic Partner Sydney (Corporate)

T +61 2 8922 8095 E nadia.kalic @cliffordchance.com



Natsuko Sugihara Partner Tokyo (Corporate)

T +81 3 6632 6681
E natsuko.sugihara
@cliffordchance.com



Nigel Howorth
Partner
London (Environment)

T +44 207006 4076 E nigel.howorth @cliffordchance.com



Rae Lindsay Partner

London (Litigation & Dispute Resolution)

T +44 207006 8622 E rae.lindsay @cliffordchance.com



Roger Leese Partner London (Litigation & Dispute Resolution)

T +44 207006 8710 E roger.leese @cliffordchance.com



Sonya Pauls Partner Munich (Corporate)

T +49 89 21632 8550 E sonya.pauls @cliffordchance.com



Steve Nickelsburg Partner

Washington (Litigation)

T +1 202 912 5108 E steve.nickelsburg @cliffordchance.com



Thais Garcia
Partner
New York (Corporate)
T +1 212 878 8497
E thais.garcia
@ cliffordchance.com



Thomas Voland
Partner
Dusseldorf (Corporate)
T +49 211 4355 5642
E thomas.voland
@cliffordchance.com



Viola Lui Partner Hong Kong (Funds & Investment Management)

T +85 22825 8842 E viola.lui @cliffordchance.com This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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