GIBSON DUNN

Gibson Dunn Environmental, Social and Governance Update (February 2024)

Client Alert | March 13, 2024

We are pleased to provide you with Gibson Dunn's ESG update covering the following key developments during February 2024. Please click on the links below for further details.

I. GLOBAL

1. **Global Reporting Initiative revises biodiversity standards**

On January 25, 2024, the Global Reporting Initiative (GRI) published a revised biodiversity standard, GRI 101: Biodiversity 2024, which updates and replaces GRI 304: Biodiversity 2016. The standard aims to deliver transparency throughout the supply chain, location-specific reporting on impacts, new disclosures on direct drivers of biodiversity loss and requirements for reporting impacts on society. The standard will come into force on January 1, 2026.

2. **International Swaps and Derivatives Association Climate Risk Scenario Analysis for the Trading Book – Phase 2**

On February 12, 2024, the International Swaps and Derivatives Association (ISDA) published Phase 2 of its "Climate Risk Scenario Analysis for the Trading Book". This Phase 2 publication follows the development of the conceptual framework published in 2023, which was used to develop three short-term climate scenarios for the trading book – physical, transition and combined. The scenarios are intended to support banks in their climate scenario analysis capabilities and now cover a range of market risk factors, including country and sector specific parameters.

3. **Loan Market Association issues guidance on external review process for Sustainability-Linked Loans**

On January 25, 2024, the Loan Market Association (LMA) issued an updated version of its external review guidance for green, social, and sustainability-linked loans, superseding its 2022 edition. The guidance aims to streamline the process of external reviews in sustainable finance by establishing common terminology and standard review procedures. The guidance also sets out ethical and professional principles for external reviewers, including integrity, objectivity, and professional competence and addresses the organization requirements for review providers. Detailed content guidelines are also provided to promote consistency in terminology usage.

4. **International Ethics Standards Board for Accountants launches public consultation on new ethical benchmark for sustainability reporting and assurance**

The International Ethics Standards Board (IESBA), the independent global standards-setting board, has initiated a consultation on two Exposure Drafts, outlining a suite of global standards on ethical considerations in sustainability reporting and assurance. The first Exposure Draft, International Ethics Standards for Sustainability Assurance (IESSA), revises the existing Code Relating to Sustainability Assurance and Reporting. The second Exposure Draft, Using the Work of an External Expert, proposes an ethical framework for assessing external experts in sustainability matters. These standards aim to establish

Related People

Lauren M. Assaf-Holmes

Mitasha Chandok

Natalie Harris

Elizabeth A. Ising

Cynthia M. Mabry

guidelines for sustainability assurance practitioners and professional accountants involved in reporting, aiming to combat greenwashing and enhance trust in sustainability information.

5. **ISSB to assess jurisdictions' level of alignment with standards**

The International Sustainability Standards Board (ISSB) plans to assess the degree of alignment between jurisdictions choosing to implement its disclosure standards on both sustainability (IFRS S1) and the climate (IFRS S2). These measures were announced in the ISSB's preview document of its Inaugural Jurisdictions Guide. The Guide will aid jurisdictions in their adoption of IFRS S1 and IFRS S2 and also intends to reduce the fragmentation and variation in the adoption of ISSB standards between jurisdictions. ISSB expects the alignment assessment to be part of its future jurisdictional profiles tool, which will describe the broad approach of each jurisdiction and any deviations from ISSB standards. As at December 2023, nearly 400 organizations from 64 different jurisdictions had committed to advancing the adoption or use of the ISSB standards, in addition to 25 stock exchanges and over 40 professional accounting organizations and audit firms. **II. UNITED KINGDOM**

1. **UK departs International Energy Charter Treaty**

On February 22, 2024, the United Kingdom Government announced that it would leave the Energy Charter Treaty (ECT) after failed efforts to update the Energy Charter Treaty and align it with net zero ambitions. With European Parliament elections in 2024, the modernization of the treaty may be delayed indefinitely. A number of European Union member states, including France, Spain and the Netherlands, have already withdrawn or announced their withdrawal from the treaty.[1]

2. **UK Financial Conduct Authority launches webpage for sustainability disclosure and labelling regime**

As reported in our Winter Edition, the Financial Conduct Authority (FCA) recently published its policy statement containing rules and guidance on sustainability disclosure requirements and investment labels. On February 2, 2024, the FCA launched a new webpage setting out how firms should consider the regime and the steps to take ahead of the rules coming into effect. The FCA has highlighted that from May 31, 2024, firms are required to ensure that sustainability references are fair, clear and not misleading and proportionate to the sustainability profile of the product and service. Firms subject to the naming and marketing rules for asset managers are not required to meet the additional requirements until December 2, 2024. From July 31, 2024, firms may begin to use a label – though there is no deadline to use labels, firms must ensure that they meet the naming and marketing requirements for products using sustainability-related terms without labels by December 2, 2024.

3. **Chartered Governance Institute publishes model terms of reference and guidance for ESG committees**

The Chartered Governance Institute (CGI, formerly ICSA) published its model terms of reference and guidance for board-level ESG and sustainability committees. Although the new UK Corporate Governance Code (also referred to above) does not require companies to have an ESG committee at board level, the sample terms are designed to assist companies in setting out the scope, roles and responsibilities of board-level ESG and sustainability committees, which can be tailored to the needs of each company. The model terms will also assist companies in highlighting areas which may overlap with the remits of other committees and define the remit of the ESG committee to avoid such overlap.

4. **Pensions and Lifetime Savings Association updates the Stewardship and Voting Guidelines**

The Pensions and Lifetime Savings Association published its updated 2024 Stewardship and Voting Guidelines. The Guidelines have been updated to reflect the 2024 version of the UK Corporate Governance Code published by the Financial Reporting Council (FRC) and related guidance and they provide a framework for pension scheme trustees and investors to hold companies accountable during annual general meetings. The 2024 edition identifies five key themes: social factors, cybersecurity, artificial intelligence, biodiversity, and dual-class asset structures.

5. **Financial Reporting Council launches review of the UK Stewardship Code 2020**

On February 27, 2024, the FRC announced that it would commence a fundamental review of the UK Stewardship Code in accordance with a policy statement it issued on November 7, 2023. The Code's stated purpose is to set high stewardship standards for asset owners and managers and also includes six principles for service providers. There are currently 273 signatories representing £43.3 trillion assets under management. Given the potential for a fundamental revision of the Code in 2024, the FRC are launching the review process in three phases: a targeted outreach to issuers, asset managers, asset owners and service providers; a public consultation in summer 2024; and the publication of a revised Code in early 2025. The Code will operate as usual throughout the review process. The Stewardship Code was last revised in 2019, taking effect from January 1, 2020. The significant revisions introduced at that time included signatories to integrate stewardship and investment including ESG matters and also required disclosure of important issues for assessing investments including ESG issues. **III. EUROPE**

1. **New EU regulation on ESG ratings activities**

On February 5, 2024, the European Parliament and the European Council announced a provisional agreement on new rules for regulating ESG rating activities by improving transparency and integrity of operations of rating providers and preventing potential conflicts of interest. The provisional agreement provides that EU ratings providers will be authorized and supervised by the European Securities and Markets Authority (ESMA), and third-country ratings providers will need to be registered in the EU's registry, be recognized on quantitative criteria or obtain an endorsement of their ESG ratings by an EU-authorized ratings provider. A temporary lighter-touch regime would apply for three years for small ESG ratings providers. The provisional agreement remains subject to the European Council and European Parliament's formal adoption procedure. Once adopted and published in the Official Journal, the regulation will apply 18 months after its entry into force.

2. **Vote on Corporate Sustainability Due Diligence Directive fails**

As reported in our Winter Edition, there was a provisional agreement on the Corporate Sustainability Due Diligence Directive (CSDDD) in December 2023. The final text of the CSDDD was published on January 30, 2024. On February 28, 2024, the CSDDD failed to secure a qualified majority among EU member states. The CSDDD will need to be renegotiated and voted on by the European Council before it can be voted on by the European Parliament by the March 15, 2024 deadline.

3. **Internal Market and Environment committees adopt position on how EU firms can validate their green claims**

On February 14, 2024, the European Parliament announced that the Internal Market and Environment committees adopted their position on the rules relating to how firms can validate their environmental marketing claims. The rules require companies to seek approval before using environmental marketing claims, which claims are to be assessed by accredited verifiers within 30 days. Companies may be excluded from procurements for non-compliance, or could lose their revenues or face fines of at least 4% of their annual turnover. Confirming the EU ban on greenwashing, the rules specify that companies could still mention offsetting schemes if they have reduced emissions to the extent possible and use these schemes only for residual emissions. The rules are due to be voted on at the next plenary session of the European Parliament.

4. **European Council and European Parliament strike deal to strengthen EU air quality standards**

On February 20, 2024, the European Council announced that the presidency and the European Parliament's representatives had reached a provisional political agreement on EU air quality standards, with the aim of a zero-pollution objective and net zero by 2050. The provisional agreement will next be submitted to the member states' representatives in the European Council and to the European Parliament's environment committee for endorsement. Once approved, it will need to be formally adopted by the European Council and the European Parliament, following which it will be published in the EU's Official Journal and will enter into force. Following publication, each member state will have two years to transpose the directive into national law.

5. **Provisional agreement on postponing sustainability reporting standards for listed SMEs and specific sectors**

On February 8, 2024, the European Council and the European Parliament announced a provisional agreement to delay by two years the adoption of the European Sustainability Reporting Standards (ESRS) for certain sectors, small and medium sized enterprises and certain thirty-country companies, under the Corporate Sustainability Reporting Directive (CSRD) – which will now be adopted in June 2026. Application to third-country companies remains unchanged otherwise, i.e. reporting obligations under the CSRD and linked ESRS will apply for financial years commencing on or after January 1, 2028. The provisional agreement remains subject to endorsement and formal adoption by both the European Council and European Parliament and publication.

6. **European Commission recommends 90% net GHG emissions reduction target by 2040**

On February 6, 2024, the European Commission published a detailed impact assessment and based on its assessment and under the EU Climate Law framework, it recommended a reduction of 90% net greenhouse gas emissions by 2040 compared to 1990 levels. The EU Climate Law entered into force in July 2021 and enshrined in legislation the EU's commitment to reach climate neutrality by 2050. The EU Climate Law also requires the European Commission to propose a climate target for 2040 within six months of the first Global Stocktake of the Paris Agreement (which took place in December 2023). Following adoption of the 2040 target, under the next Commission, the target will form the basis for the EU's new Nationally Determined Contribution under the Paris Agreement.

7. **European Council and European Parliament reach deal on Net-Zero Industry Act**

On February 6, 2024, the European Council and the European Parliament announced a provisional agreement on the Net-Zero Industry Act (NZIA), a regulation aimed at boosting clean technology industries across Europe. Proposed in March 2023 as part of the Green Deal Industrial Plan, the NZIA targets scaling up manufacturing of key technologies for climate neutrality, including solar, wind, batteries, and carbon capture. The NZIA includes streamlined permit procedures for large projects, setting maximum timeframes of 18 months for projects exceeding one gigawatt and 12 months for smaller ventures. It promotes the establishment of net-zero acceleration "valleys" with the aim to create clusters of net-zero industrial activity. The NZIA also contains incentives for green technology purchases and defines sustainability and resilience criteria for public procurement. The provisional agreement remains subject to endorsement and formal adoption by both the European Council and European Parliament and publication.

8. **Sweden proposes delays to Corporate Sustainability Reporting Directive reporting start date**

Even as the European Union's Corporate Sustainability Reporting Directive (CSRD) has been finalized at the EU level, its transposition into national law faces delays in many member states. In Sweden, the government has proposed legislation on February 15, 2024, to postpone CSRD reporting for Swedish companies by one year. The draft proposes applying reporting rules to listed firms with over 500 employees for the fiscal year starting after June 2024, with reporting commencing from the 2025 financial year. This is a deviation from the EU directive, which mandates reporting on data from the 2024 financial year. This proposal remains subject to approval by the Swedish Parliament.

9. **European Parliament adopts Nature Restoration Law**

By a close vote of 329 votes in favour, 275 against and 24 abstentions, on February 27, 2024, the European Parliament adopted a new nature restoration law which sets a target for the European Union (EU) to restore at least 20% of the EU's land and sea areas by 2030 and all ecosystems which are in need of restoration by 2050. To reach these targets member states will need to restore by 2030 at least 30% of habitats covered by the proposed new law which includes wetlands, grasslands, rivers, lakes, coral beds and forests. The habitat restoration targets increase to 60% by 2040 and 90% by 2050. Member states will also be required to adopt national restoration plans detailing how they intend to achieve these targets. The proposed new law is subject to and conditional upon the European Council adopting the new text which will then be published in the EU Official Journal and enter into force 20 calendar days thereafter. **IV. NORTH AMERICA**

1. **Securities and Exchange Commission adopts sweeping new climate disclosure requirements for public companies**

On March 6, 2024, the Securities and Exchange Commission (SEC or Commission), in a divided 3-2 vote along party lines, adopted final rules establishing climate-related disclosure requirements for U.S. public companies and foreign private issuers in their annual reports on Form 10-K and Form 20-F, as well as for companies looking to go public in their Securities Act registration statements. The Commission issued the Proposing Release in March 2022, which we previously summarized here, and received more than 22,500 comments (including more than 4,500 unique letters) from a wide range of individuals and organizations. The Adopting Release is available here and a fact sheet from the SEC is available here. Further details on these new requirements can be found in our recent Client Alert published on March 8, 2024.

2. **Canadian Sustainability Standards Board launches public consultation on sustainability standards**

On February 6, 2024, the Canadian Sustainability Standards Board (CSSB) announced that it will initiate a public consultation to progress the adoption of sustainability disclosure standards in Canada. Public consultation will be open through March 2024, on three documents shaping the inaugural sustainability standards: drafts of proposed Canadian standards for disclosing sustainability-related financial information and climate-related disclosures, along with a paper outlining proposed changes to align with the International Sustainability Standards Board (ISSB)'s standards for use in Canada. The CSSB's proposed Canadian Sustainability Disclosure Standards 1 and 2, set for release in March 2024, will align with ISSB's standards with Canadian-specific modifications. These modifications, including a Canadian-specific effective date and transition relief proposals, will be open for consultation until June 2024.

3. **Canada implements anti-forced labor supply chain law**

As of January 1, 2024, Canada's Forced and Child Labour in Supply Chains Act mandates in-scope companies to publish board-approved reports outlining efforts to prevent and address forced labour and child labour in their supply chains. The Act applies to entities listed on Canadian stock exchanges or meeting specific criteria regarding assets, revenue, or employees. Covered entities must file annual reports by May 31, 2024, detailing policies, due diligence processes, risk mitigation measures, and remediation efforts related to forced and child labour. Foreign companies with Canadian subsidiaries subject to reporting requirements must also comply. Failure to publish accurate reports may result in fines of up to CAD 250,000 for companies and their officers. **V. APAC**

1. **China relaunches the China Certified Emission Reduction program**

On January 22, 2024, China re-launched its voluntary carbon market: the China Certified Emission Reduction Scheme (CCER). The CCER had originally first launched in June 2012 but was suspended in March 2017 as a result of low trading volumes and an insufficient standardization in carbon audits. In its initial phase, the CCER will cover four sectors: (1) afforestation, (2) solar thermal power, (3) offshore wind power, and (4) mangrove creation. This reintroduction of the CCER seeks to complement China's existing mandatory carbon market, the National Emission Trading Scheme which has been in operation since 2021.

2. **Singapore launches the Singapore Sustainable Finance Association**

On January 24, 2024, the Monetary Authority of Singapore (MAS) launched the Singapore Sustainable Finance Association (SSFA). It is the first cross-sectoral industry body in Singapore and has been established to support Singapore's growth as a leading global centre for sustainable finance. SSFA members will include those from financial services, non-financial services, non-financial sector corporates, academia, non-governmental organisations, and other industry bodies. The SSFA is seeking to establish itself as a key platform for setting new standards in areas such as carbon credits trading and transition finance for best sustainable finance practices, driving innovative solutions by bringing together financial institutions and industry sectors to address barriers in scaling financing, and supporting upskilling initiatives through sustainable finance courses.

3. **China announces Carbon Allowance Trading Regulations with effect from May 2024**

On January 25, 2024, China announced its Regulations on the Administration of Carbon Allowance Trading which are due to come in force on May 1, 2024, and seek to regulate carbon emissions trading and related activities as well as strengthen the control of greenhouse gas emissions. The Regulations will govern China's National Emissions Trading Scheme and will be enforced by the Ministry of Environment and Ecology (MEE), appointed responsible for supervising carbon allowance trading and related activities. Amongst other responsibilities, the MEE will set annual carbon emission quotas based on national greenhouse gas emission targets, consideration of economic and social development, industrial structure adjustment, industry development stage, historical emission conditions, market adjustment needs and other factors. The Regulations also prescribe stricter financial penalties of up to RMB 2 million (approximately USD 277,809) and/or a reduction of free allowances for violations, as China seeks to crack-down on entities falsifying carbon emissions data.

4. **Three major Chinese Stock Exchanges announce proposals for mandatory sustainability reporting**

On February 8, 2024, the three major stock markets in China (Shanghai Stock Exchange ("**SSE**"), Shenzhen Stock Exchange ("**SZSE**") and Beijing Stock Exchange ("**BSE**")) released their first guidelines on mandatory corporate sustainability reporting requirements for public consultation which ended on February 29, 2024. The guidelines seek to standardize sustainability reporting by listed companies in China, improve the quality of disclosures by listed companies, and build a comprehensive governance mechanism for sustainable development by focusing on four core pillars: (1) governance, (2) strategy, (3) impact, risk and opportunity management, and (4) indicators and objectives. The SSE and SZSE proposed guidelines require listed companies with either a large market capitalization or with dual listings to provide disclosure on a wide range of sustainability topics from 2026. The proposed guidelines for the BSE, which largely lists small and medium-sized innovative enterprises, encourages listed companies to make voluntary sustainability or ESG disclosures. No deadline has been set for the BSE guidelines due to their voluntary nature.

5. **Australia finance sector warns Australian government against deviating from International Sustainability Standards Board baseline**

Between February and March 2024, key members of the Australian finance sector (the Australian Sustainable Finance Institute, Principles for Responsible Investment, and the Investor Group on Climate Change) have each warned the Australian Government not to deviate from the global baseline of the International Sustainability Standards Board (ISSB) with respect to its policy for climate-related financial disclosures, flagging their serious concerns with interoperability should the proposed changes be enforced. The current draft legislation announced in January 2024 (the Treasury Laws Amendment Bill 2024) fails to adopt the ISSB Standards in full. Instead, the suggested changes include replacing all references to the term “sustainability” in the Australian International Financial Reporting Standards S1 (IFRS S1) with the term “climate”, reducing the scope of the Australian IFRS S1 to climate-related financial disclosures only, and diluting the Australian IFRS S2 for financial institutions by only requiring them to consider the applicability of disclosures related to their financed emissions. The proposals are open to feedback until March 1, 2024.

6. **Malaysia consults on adopting mandatory International Sustainability Standards Board sustainability disclosure standards**

On February 15, 2024, Malaysia’s Advisory Committee on Sustainability Reporting (ACSR) began its consultation period for feedback from stakeholders on the adoption of the mandatory sustainability disclosure standards issued by ISSB in a new National Sustainability Reporting Framework for Malaysia (NSRF). The consultation is focused on the scope and timing of the implementation of the ISSB Standards (which consist of IFRS S1 (General Requirements for Disclosure of Sustainability-related Financial Information) and IFRS S2 (Climate-related Disclosure)), the transition reliefs required, and any issues related to assurance for sustainability disclosures. The ACSR propose that established companies that meet the quality, size and operations requirements (known as Main Market issuers) would be required to fully adopt the ISSB climate disclosure standards by FYE December 31, 2027. Companies assessed by sponsors to have growth prospects (known as Access, Certainty, Efficiency (ACE) Market listed issuers), and large non-listed companies with an annual revenue of RM 2 billion (approximately USD 427 million) would adopt similar standards by FYE December 31, 2029. The consultation period will end on March 21, 2024.

7. **China to expand national carbon market “as soon as possible”**

On February 27, 2024, China’s Ministry of Ecology and Environment (MEE) announced that China will expand its carbon trading market as soon as possible to include a further seven major carbon emitting industries. At present, the current market only contains the power generation sector. The MEE has already drafted a series of documents for the inclusion of the new industries, allocation of carbon emission allowances, and reports on carbon accounting verification. The new industries are expected to include petrochemicals, papermaking, chemicals, building materials, non-ferrous metals, steel, and aviation. The proposed expansion would result in approximately 75% of China’s total emissions being accounted for in the carbon trading market.

8. **Indian Central Bank introduces mandatory climate disclosure rules for banks from FY 2025-2026**

On February 28, 2024, in recognition of the need for a better, consistent and comparable disclosure framework for regulated entities, the Reserve Bank of India released a draft disclosure framework on climate-related financial risks for regulated entities. The disclosures cover four main themes: (1) governance, (2) strategy, (3) risk management, and (4) metrics and targets. Large non-banking financial companies, all scheduled commercial banks, and financial institutions will need to disclose their governance, strategy, and risk management findings from FY 2025-2026 onwards, with their metrics and targets to be disclosed from FY 2027-2028 onwards. Smaller co-operative banks will have one additional year (FY 2026-2027 and FY 2028-2029 respectively) before they must also report the equivalent information. Regulated entities will need to include these disclosures in their financial results or financial statements published on their website. The framework is open for comment until April 30, 2024.

9. **Singapore introduces mandatory climate reporting to begin in FY 2025**

On February 28, 2024, the Singapore Accounting and Corporate Regulatory Authority (ACRA) and Singapore Exchange Regulation (SGX RegCo) announced a new requirement for all listed companies in Singapore to make mandatory climate-related disclosures based on local reporting standards aligned with the ISSB. The announcement follows the conclusion of a public consultation by the Singapore Sustainability Reporting Advisory Committee. The disclosure requirements will be introduced in a phased manner, commencing with listed issuers in FY 2025, followed by large non-listed companies (defined as having annual revenues of at least SGD 1 billion (approximately USD 0.75 billion) and total assets of at least SGD 500 million (approximately USD 375 million)) in FY 2027. The measures form part of Singapore's efforts to help companies strengthen their sustainability capabilities. Please let us know if there are other topics that you would be interested in seeing covered in future editions of the monthly update. Warmest regards, Susy Bullock Elizabeth Ising Perlette M. Jura Ronald Kirk Michael K. Murphy Selina S. Sagayam Chairs, Environmental, Social and Governance Practice Group, Gibson Dunn & Crutcher LLP [1] Events since February 29, 2024: On March 7, 2024, the European Council resolved to exit the ECT thus marking a key step in the formal withdrawal of the EU from the ECT.

The following Gibson Dunn lawyers prepared this update: Ash Aulak*, Mitasha Chandok, Grace Chong, Natalie Harris, Elizabeth Ising, Cynthia Mabry, Selina S. Sagayam, and Daniel Szabo*. Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's Environmental, Social and Governance practice group: **Environmental, Social and Governance (ESG):** Susy Bullock – London (+44 20 7071 4283, sbullock@gibsondunn.com) Elizabeth Ising – Washington, D.C. (+1 202.955.8287, eising@gibsondunn.com) Perlette M. Jura – Los Angeles (+1 213.229.7121, pjura@gibsondunn.com) Ronald Kirk – Dallas (+1 214.698.3295, rkirk@gibsondunn.com) Michael K. Murphy – Washington, D.C. (+1 202.955.8238, mmurphy@gibsondunn.com) Patricia Tan Openshaw – Hong Kong (+852 2214-3868, popenshaw@gibsondunn.com) Selina S. Sagayam – London (+44 20 7071 4263, ssagayam@gibsondunn.com) *Ash Aulak and Daniel Szabo, trainee solicitors in the London office, are not admitted to practice law.

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