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Environmental, Social and Governance Update July 10, 2024

Gibson Dunn Environmental, Social and Governance (ESG) Update

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

I. GLOBAL

1. **Integrity Council for the Voluntary Carbon Markets (ICVCM) announces it has approved its first ever set of carbon-crediting methodologies**

On June 6, 2024, the ICVCM announced its first ever set of carbon-crediting methodologies that meet its high-integrity Core Carbon Principles (CCP). The CCPs set a global benchmark for high-integrity carbon credits, enabling the market to maximize its potential to tackle rising greenhouse gas emissions.

The CCP label is designed to help buyers identify carbon credits that meet rigorous standards and can now be used on an estimated 27 million carbon credits. The CCPs are designed to build trust in the ICVCM and enable the market to maximize its potential to tackle rising greenhouse gas emissions, unlocking private finance for climate solutions. However, carbon credits generated using CCP-approved methodologies must ensure projects make a genuine impact on emissions.

2. **World Business Council for Sustainable Development (WBCSD) launches initiative to bridge the gap between corporate sustainability commitments and policy engagement**

On June 19, 2024, the WBCSD launched the Positive Policy Engagement (PPE) workstream. The PPE workstream was created with the intention of bridging the gap between corporate sustainability commitments and policy engagement. It is estimated that around 58% of the world's largest corporations have climate commitments that are undermined by their policy influence strategies. The need to narrow this gap is highlighted by investor expectations on corporate climate lobbying statements.

The PPE aims to provide tools to ensure that corporate policy and advocacy engagement positively and proactively support climate, nature and equity goals, facilitating greater transparency in corporate policy engagement to achieve net-zero ambitions.

3. **Network for Greening the Financial System (NGFS) issues the second edition of its Guide on climate-related disclosure for central banks**

On June 19, 2024, the NGFS published the second edition of its Guide on climate-related disclosure for central banks (Guide). The Guide expands upon the first edition published in December 2021 and calls for central banks to lead by example by disclosing their climate-related risks and opportunities. NGFS believes that this will enable greater transparency and facilitate the transition to a climate and nature friendly economy. The Guide presents a range of disclosure options organized around four areas: governance, strategy, risk management and metrics, and targets.

The NGFS acknowledges that there is no 'one-size-fits-all' solution in respect to disclosure, instead distinguishing between foundational ('baseline') and complementary ('building block') recommendations relating to more detailed information that central banks could disclose. By not applying a one-size-fits-all approach, central banks are given greater flexibility on the scope and depth of their climate related disclosures.

Although nature-related implications for central banks have not been considered in this Guide, the NGFS will be exploring the possibility of later publication of a supplementary addendum on nature-related disclosures.

4. **The Taskforce on Nature-related Financial Disclosures (TNFD) and the European Financial Reporting Advisory Group (EFRAG) have jointly published a mapping of the correspondence between the European Sustainability Reporting Standards (ESRS) and recommended disclosures and metrics**

The TNFD and EFRAG have released a map that assembles the ESRS with the TNFD's recommended disclosures. The mapping effectively demonstrates that all 14 TNFD disclosures are integrated into the ESRS, facilitating rates at which companies can meet the Corporate Sustainability Reporting Directive requirements. The rationale is to establish some consistency and uniformity between the ESG standards set by the ESRS and recommendations by the TNFD. Notable considerations are the alignment of concepts, definitions, and approaches to materiality, as these center on nature-related consequences and risks. Furthermore, the TNFD's LEAP mechanism for assessing nature-related hazards aligns with the ESRS materiality assessments. The correspondence works to increase transparency and provide comprehensive data for sustainable development.

5. **The International Sustainability Standards Board (ISSB) delivers further harmonization of the sustainability disclosure landscape as it embarks on new work plan**

The ISSB has boosted the sustainability disclosure landscape through the strategic implementation of new collaborations with the Global Reporting Initiative, Greenhouse Gas Protocol, Carbon Disclosure Project, Transition Plan Taskforce, and the Taskforce on Nature-related Financial Disclosure. This was facilitated with the aim of enhancing and consolidating global sustainability reporting. More than 20 jurisdictions are currently in the process of adopting ISSB standards. The latest publications demonstrate the ISSB's objectives of implementing transition plan disclosures and augmenting greenhouse gas emissions reporting in conjunction with the Greenhouse Gas Protocol.

II. UNITED KINGDOM

1. **UK Supreme Court rules that local authorities must consider downstream gas emissions when weighing planning approval**

On June 20, 2024, the UK Supreme Court ruled that authorities must examine the climatic consequences arising from the combustion of oil from new wells. Despite the ruling not prohibiting proposals of new oil well constructions, a key consideration for the future is in relation to downstream emissions. These are not direct by-products of on-site procedures but are formed due to oil extraction activities. This judgment determined that it will be critical for companies to assess the potential consequences for Scope 3 emissions when burning oil from planned construction projects.

In case you missed it…

2. **English High Court rules that the process by which the government's climate change plans were adopted was unlawful**

On May 3, 2024, the High Court ruled that the UK government had fallen through with its plans for the implementation of a net-zero strategy, subsequently leading to a breach of the UK Climate Change Act. The plaintiffs (Friends of the Earth, ClientEarth, and Good Law Project), argued that the revised plan published in March 2023, and titled the 'Carbon Budget Delivery Plan', had unjustifiably attributed the success of the project to the implementation of uncertain technologies. It was submitted that the UK government must produce an updated plan within 12 months to ensure that carbon budgets and emission targets are adequately set and met. This is in line with the government's pledge to cut greenhouse gas emissions within five years and by over 68% by 2030.

III. EUROPE

1. European Supervisory Authorities (ESAs) publish final reports on greenwashing

On June 4, 2024, three ESAs (European Banking Authority, European Insurance and Occupational Pensions Authority, and European Securities and Markets Authority (**ESMA**)) published final reports on greenwashing within the financial sector. The ESMA's Final Report (**Final Report**) follows its Progress Report on May 31, 2023 and comes after the European Commission requested involvement from ESAs on greenwashing supervision and risks of sustainable financial policies in May 2022.

The Final Report finds that National Competent Authorities (**NCAs**) have taken steps to prioritize the supervision of sustainability-related claims and that only a limited number of actual or potential occurrences of greenwashing have been detected. The Final Report also states that existing EU rules are sufficient in capturing greenwashing as a form of miscommunication or misconduct, but that greenwashing can be further addressed through acting on infringements of a range of specific sustainability-related requirements recently introduced in the EU.

The Final Report notes that ESMA will publish an opinion setting out how the EU regulatory framework may be improved for the 'investors' journey' and will continue to monitor its supervisory progress on greenwashing risks.

2. EU Council adopts its position on the "Green Claims Directive", which aims to address greenwashing

On June 17, 2024, the EU Council adopted its position on the proposed Directive on Substantiation and Communication of Explicit Environmental Claims, commonly referred to as the 'Green Claims Directive' aimed at combatting greenwashing and ensuring consumers have reliable information when making environmental choices. The directive aims to set minimum requirements for the substantiation, communication and verification of explicit environmental claims made by companies about their products and services. The new proposal targets explicit environmental claims and environmental labels that companies use voluntarily when marketing their greenness. It also applies to existing and future environmental labelling schemes, both public and private. Companies should use clear criteria and the latest scientific evidence to substantiate their claims and labels, with a focus on clarity and ease of understanding. Acknowledging the importance of existing national and regional public labelling schemes, ministers agreed on the possibility of establishing new schemes and exempting those regulated by EU or national law from third-party verification, provided the latter meet EU standards. The Council's position will serve as the foundation for negotiations with the European Parliament, aiming to finalize the directive in line with the European Green Deal's goal of achieving climate neutrality by 2050.

3. EU Council approves new Nature Restoration Law

On June 17, 2024, the European Environmental Council approved the Nature Restoration Law, a regulation setting a legally binding target to preserve 20% of the EU's land and seas by 2030. The regulation is a key part of the EU Biodiversity Strategy which is geared towards restoring degraded ecosystems, particularly prioritizing Natura 2000 protected areas. The regulation is particularly targeted towards supporting (i) pollinator populations, (ii) forest, agricultural, marine and urban ecosystems, and (iii) river connectivity. The aim is to ensure at least 90% of ecosystems are restored by 2050. Member states will be required to submit their National Restoration Plans within two years and will be required to monitor and report on their progress.

In case you missed it…

4. **French Agency for Ecological Transition (ADEME) publishes an updated version of its Anti-Greenwashing Guide**

In April 2024, the French Agency for Ecological Transition published an updated version of its Anti-Greenwashing Guide (**Guide**). The Guide sets out (i) how to identify greenwashing, (ii) the main anti-greenwashing methods, and (iii) how important it is for brands to avoid greenwashing, particularly when promoting their services, products and/or sustainable development approaches.

The Guide advises that to safeguard against greenwashing, companies should establish that they have adequate knowledge of the ecological advantages of their products prior to advertisement. ADEME also provides concrete guidelines for companies to follow and highlights limited scenarios where certain ecological and sustainable development arguments may apply.

5. **EU Council approves Net-Zero Industry Act (NZIA)**

On May 27, 2024 the EU Council adopted the NZIA, a regulation which, by focusing on developing the EU's manufacturing capacity for clean technologies, aims to (i) speed up progress to the EU's 2030 energy and climate targets and create high-quality jobs, (ii) strengthen the competitiveness and resilience of net-zero technologies manufacturing, reducing the reliance on highly concentrated imports, and (iii) improve the conditions for setting up net-zero projects in Europe and in so doing attract foreign direct investments into the EU.

The NZIA supports strategic net zero technologies, including solar technologies, onshore wind, geothermal energy and biogas, with the aim of the EU's manufacturing capacity of such technologies meeting at least 40% of the EU's annual requirements by 2030.

IV. NORTH AMERICA

1. **Federal District Court dismisses ExxonMobil's (Exxon) lawsuit against activist investors**

On June 17, 2024, the U.S. District Court for the Northern District of Texas dismissed Exxon's lawsuit against Arjuna Capital concerning a shareholder proposal that was submitted for Exxon's 2024 annual proxy statement and withdrawn, finding that Arjuna Capital's covenant not to submit any other climate or greenhouse gas shareholder proposals to Exxon mooted any actual and ongoing controversy between the parties and removed the court's power to adjudicate the dispute. More detail regarding the litigation is available in our January and May ESG alerts.

2. **More than 20 U.S. regulatory agencies publish updated climate adaptation plans**

On June 20, 2024, the White House announced that nearly two-dozen U.S. regulatory agencies had published updated Climate Adaptation Plans, designed to enhance the resiliency of each agency's resources, operations, employees, and facilities against the impacts of climate change. Some key actions outlined in the various plans include retrofitting and upgrading federal buildings, establishing procedures to support continuous operations, and encouraging climate-smart supply-chain sourcing.

3. **City of Baltimore sues PepsiCo, Coca-Cola, and others for plastic pollution**

On June 20, 2024, the Mayor of Baltimore announced that the city was bringing a landmark lawsuit against plastic manufacturing companies as well as Frito Lay, PepsiCo, and Coca-Cola. In its complaint, the city describes health and environmental harms from single-use plastics and related costs and includes allegations of false claims, failure to warn, defective design, deceptive practices, and other violations of various state and local laws, including the Maryland Illegal Dumping and Litter Control Law. The city seeks criminal penalties and compensatory damages, among other relief.

4. **Canada amends Competition Act to target corporate "greenwashing"**

On June 20, 2024, Canada passed a series of amendments to the Competition Act that address corporate "greenwashing," among other matters. The amendments increase the potential scrutiny for environmental claims by bringing them within the scope of deceptive marketing practices. Under the newly amended law, public representations about a product's environmental benefits or mitigations need to be based on an "adequate and proper test," and public representations about the beneficial impact of a business or business activity must be "based on adequate and proper substantiation in accordance with internationally recognized methodology." Importantly, the burden for demonstrating a statement's validity is on the person making the representation. The Amendments accordingly introduce significant risk for companies operating in Canada when they make environmental claims. On July 4, 2024, the Competition Bureau Canada published a release following "a large number of requests" and indicated it would be providing guidance for the new provisions "on an accelerated basis" following public consultation.

5. **U.S. Supreme Court stays U.S. Environmental Protection Agency's (EPA) application of the Clean Air Act's "Good Neighbor" provision**

As summarized in our alert, on June 27, 2024, the U.S. Supreme Court granted a stay sought by Ohio and several other applicants to suspend the EPA's federal plan applying the Clean Air Act's "Good Neighbor" provision as it applied to such states. The provision required states located "upwind" to reduce their emissions to account for pollution they may export to any "downwind" states. As a result of the stay, only 11 states are currently subject to the federal plan.

V. APAC

1. Asia Pacific Loan Market Association (APLMA) publishes Model Provisions for Green Loans

On June 3, 2024, the APLMA announced the publication of its Model Provisions for Green Loans (**Model Provisions**) to bring clarity to green loan classification in the APAC loan markets. Green loans are defined by the APLMA as loans made available exclusively to finance or refinance eligible green projects, although an exhaustive definition of "green" has yet to be released in the market. The APLMA recommends that the Model Provisions are used by entities as a negotiation starting point rather than as mandatory guidelines. The Model Provisions are also intended to be adapted for different green loan structures in the APAC loan markets and have been designed for use in the APLMA's recommended forms of facility agreement where the loan or facility in question is to be marketed as a 'green facility' or 'green loan'. In particular, the Model Provisions recommend appointing a 'green loan coordinator', a detailed declassification mechanism, optional external reviews of annual green loan reports, and specific green loan reporting requirements. The APLMA has advised that it is keeping the Model Provisions under review as the market develops.

2. China announces plan to introduce a carbon footprint management system by 2027

On June 5, 2024, China's Ministry of Ecology and Environment announced a plan to implement a comprehensive product carbon footprint management system by 2027. Product carbon footprint is the measurement of the total greenhouse gas emissions generated by a product during its lifecycle. The planned system aims to track and reduce carbon emissions across various industries to meet climate goals and align with international standards. The Chinese government aims to create a preliminary national system for product carbon footprint labelling and authentication, with a focus on electricity, coal, and fuel oils. The first target is to develop calculation guidelines for approximately 100 key high-emitting products such as coal, steel, lithium batteries and natural gas by 2027, expanding to 200 products by 2030. This effort in producing a comprehensive database and providing analytics tools is part of China's broader strategy to engage in the development of international product carbon footprint rules by 2030 and achieve carbon neutrality by 2060.

3. Singapore and the Bank for International Settlements (BIS) collectively develop a blueprint for a climate risk platform for financial authorities

On June 12, 2024, the BIS Innovation Hub Singapore Centre and the Monetary Authority of Singapore (**MAS**) announced the development of a blueprint for a climate-risk platform for financial authorities known as Project Viridis (**Blueprint**). By using natural language processing to extract climate data from corporate disclosures, the climate-risk platform aims to integrate regulatory and climate data to help financial authorities identify, monitor, and manage climate-related financial risks. The development of such a platform is aimed at enhancing global financial stability by enabling more effective climate risk analysis. The Blueprint outlines the key features and metrics necessary for a climate-risk platform, including data on financed emissions, physical risk exposure, and forward-looking climate assessments.

4. Hong Kong publishes its legislative-focused hydrogen development plan

On June 17, 2024, Hong Kong's Environment and Ecology Bureau announced its Strategy of Hydrogen Development (**Hydrogen Strategy**) to develop hydrogen energy as part of its climate change efforts, aiming for carbon neutrality and international competitiveness. The 'Inter-departmental Working Group on Using Hydrogen as Fuel' (**Working Group**), established in 2022, is also integrated into the Hydrogen Strategy. The Working Group is responsible for studying the development and commercialization of various hydrogen energy technologies and exploring future hydrogen regulatory frameworks, and has already given agreement-in-principle to 14 hydrogen projects, including cross-boundary hydrogen transportation and supply facilities. The Hydrogen Strategy addresses topics such as technology, infrastructure, and public acceptance to create a supportive environment for hydrogen energy in Hong Kong. Legislative amendments will be introduced by 2025 to regulate hydrogen use, and the Hong Kong government plans to align hydrogen standards with international practices by 2027. The Hydrogen Strategy forms part of Hong Kong's ambitions to promote regional cooperation, investment, and its expansion into a demonstration base for hydrogen energy development.

5. Australia releases its Sustainable Finance Roadmap

On June 19, 2024, Australia's Department of the Treasury published its Sustainable Finance Roadmap (**Roadmap**), setting out its vision to implement key sustainable finance reforms and related measures to help with its transition to a net-zero economy. The key initiatives include (i) mandatory climate-related finance disclosures for large businesses with a progressive rollout from January 1, 2025, (ii) the development of a sustainable finance taxonomy by the Australian Sustainable Finance Institute by the end of 2024 to guide private capital towards sustainable activities, and (iii) the establishment of a sustainable investment labelling regime to take effect in 2027. These reforms aim to ensure transparency, investor confidence and the mobilization of private capital. There is also an additional focus by the Australian government to integrate nature-related finance objectives and enhance greenwashing supervision. The Roadmap forms part of the Australian government's wider Sustainable Finance Strategy which was first announced in November 2023.

6. Malaysia launches new certification program in sustainability and responsible investment

On June 20, 2024, Malaysia's Securities Industry Development Corporation (**SIDC**), part of Malaysia's Securities Commission, launched a new certification program: the Certified Capital Market Professional in Sustainable and Responsible Investment (**CCMP-SRI**). The CCMP-SRI aims to raise competency standards among professionals in the capital market to meet a growing demand for sustainable and responsible investment products. Notably, sustainable investments in Malaysia surged from seven Sustainable and Responsible Investment (**SRI**) funds worth RM 1.46 billion in 2020 to 68 SRI funds worth RM 7.7 billion in 2023. The program addresses critical sustainability concepts, practices, and strategies, ensuring graduates' abilities to lead in the sustainable investment industry by understanding financial performance and the broader impact of investments on society and the environment. The CCMP-SRI was also developed to align with the SIDC's Industry Competency Framework to meet the evolving landscape of sustainable investment while contributing to Malaysia's sustainability goals.

7. **Australia reverses decision on its disclosure standards to extend beyond climate-related financial disclosures**

On June 26, 2024, the Australian Accounting Standards Board (**AASB**) decided to reverse its October 2023 decision to limit the scope of the draft Australian Sustainability Reporting Standards – Disclosure of Climate-related Financial Information (**Australian Standards**) to climate-related financial disclosures so that the Australian Standards will now incorporate references to general sustainability. The decision has been taken to re-align the proposed Australian Standards with the International Sustainability Standard Board's two global baseline standards on general sustainability (IFRS S1) and climate (IFRS S2) following significant pushback from investors, sustainable finance bodies and non-profit organizations. The AASB's next board meeting is scheduled for mid-July 2024, with the aim for the draft Australian Standards to be finalized by the end of August 2024. The current plan is for large entities in Australia with the highest emission levels to be subject to disclosures obligations from January 2025, with mandatory reasonable assurance on all climate-related disclosures to begin in the fourth year of an entity reporting on such disclosures.

In case you missed it…

8. **Japan's Financial Services Agency (JFSA) proposes implementing mandatory sustainability disclosures from 2027**

On May 1, 2024, the Working Group on Sustainability Disclosure (Reporting) and Assurance established by the JFSA (**Working Group**), proposed two timelines for mandatory sustainability disclosure and assurance requirements for all companies listed on the Tokyo Stock Exchange, including foreign companies. This follows the Sustainability Standards Board of Japan issuing three Exposure Drafts of the Sustainability Disclosure Standards on March 21, 2024, which are modelled after the ISSB's sustainability disclosure standards (as reported in our April 2024 update). Under the Working Group's proposal, 'Prime' Tokyo-listed companies with a market capitalization of ¥ 3 trillion or more would issue their first sustainability report for the fiscal year ending March 2027, whilst those with a market capitalization of ¥ 1 trillion would begin reporting for the fiscal year ending March 2028. The JFSA is also considering pushing this timeline back by one year. A deadline for finalization of this reporting timeline remains under discussion and has yet to be announced.

9. **Hong Kong Monetary Authority (HKMA) extends the green and sustainable finance grant scheme to include transition bonds**

On May 10, 2024, the extension of the HKMA's Green and Sustainable Finance Grant Scheme (**GSF Grant Scheme**) for three additional years until 2027 came into effect, following its inclusion in Hong Kong's 2024-25 budget. Initially launched in May 2021, the GSF Grant Scheme has since provided subsidies to eligible bond issuers and loan borrowers for more than 340 green and sustainable debt instruments in Hong Kong, totaling approximately US$ 100 billion. The extension includes the HKMA's updated Guidelines on the GSF Grant Scheme which expand it to cover transition bonds and loans that seek to support industries transitioning towards decarbonization. The HKMA will continue to administer and update the GSF Grant Scheme over time based on market developments and industry feedback.

Read More

Warmest regards,
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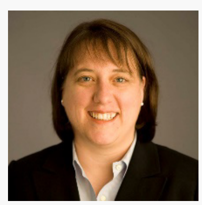

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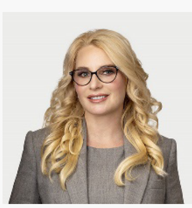

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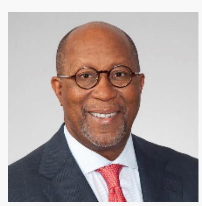

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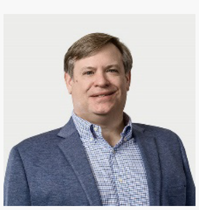

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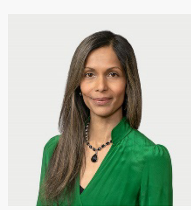

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