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COP15: Biodiversity Firmly Back on the Regulatory Agenda

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From October 11 to 15, 2021, the most significant global biodiversity summit in over a decade convenes in Kunming, China. The Kunming conference marks the 15th meeting of the Conference of the Parties (COP15) to the United Nations Convention on Biological Diversity (CBD), and aspires to do for biodiversity what the Paris Agreement did for climate change—namely, producing a landmark multinational accord to address one of the most pressing ecological and economic issues of our time.

COP15 is anticipated to finalize a Post-2020 Global Biodiversity Framework, outlining what countries need to do going forward, individually and collectively, to align humanity's trajectory with CBD's overall vision of "living in harmony with nature" by 2050. The world has continued veering off-course to date, failing to meet any of the 20 Aichi biodiversity targets[i] which CBD set in 2010.

However, optimists will observe that the goals proposed in the draft Post-2020 Framework[ii] are more outcome-oriented than CBD's previous goals, buttressed by targeted, time-bound measures to address the drivers of biodiversity loss. The draft goals are as ambitious as they are potentially far-reaching, including proposals to conserve 30% of the world's oceans and land by 2030, reduce pollution from pesticides, plastic waste, and nutrient excess by 50% by 2030, support integration of biodiversity-related information into business reporting, and promote the sustainable harvest of wild species.

Addressing biodiversity loss is by no means viewed solely as a responsibility of nation-states and governments. Corporations are increasingly under pressure from investors, the communities in which they operate, and other stakeholders to address biodiversity loss and account for their biodiversity impacts. In this alert, we discuss the significance of global action on biodiversity, and also provide a landscape overview of the modern regulatory developments (with our initial focus on Europe and the United States) and voluntary disclosure frameworks, reporting standards, initiatives, and performance assessment tools that are reshaping how the business community views, discloses, and addresses biodiversity risk.

1. **The Import of COP15 and Biodiversity**

Biodiversity – Why it is so important – A quick recap: Encompassing the variety of life, ecosystems, and species on Earth and the natural patterns they form,[iii] biodiversity is critical to the quality and function of the ecosystem services that society derives from nature. The World Economic Forum estimated that more than half the world's GDP (around US$44 trillion) is moderately or highly dependent on these services, and accordingly found that biodiversity loss is among the existential threats facing society today, in terms of both impact and likelihood.[iv]

Scientists have warned that human activity is currently driving a sixth mass extinction of life on Earth.[v] Such biodiversity loss and consequent damage to ecosystems could drain nearly US$10 trillion from the global economy by 2050[vi], with the deterioration of crop yields, buffers against the physical effects of climate change, soil and water quality, and other biodiversity-related forms of natural capital depreciation translating into lower productivity, supply chain disruptions, higher raw material costs, social instability, and other negative ramifications for many businesses.

The IPCCC Report: The recently published[vii] Sixth Assessment Report by the Intergovernmental Panel on Climate Change (IPCCC) stresses that climate change, disaster risk, economic development, biodiversity conservation, and human well-being are tightly interconnected. Biodiversity loss has nevertheless been overshadowed, somewhat understandably, by the threat of climate change. But as data collection methods, metrics, and technologies used to identify and evaluate both biodiversity degradation and the value of natural capital have advanced, so too has the business community—investors, businesses, lenders, credit agencies, and ESG raters alike—awakened to the reality that biodiversity loss is a serious systemic economic risk in its own right.[viii]

Perhaps more significantly, biodiversity risk is also climbing up the agenda of global regulators and supervisors.

2. **Modern Regulatory Action on Biodiversity**

Should COP15 produce a Paris Agreement analogue for biodiversity, we expect an increase in momentum behind the introduction of next generation regulations requiring businesses to disclose, diligence, and/or mitigate their risks relating to and impacts on biodiversity, paralleled by an increase in shareholder/stakeholder pressure of equal measure.

Global Finance: The Network for Greening the Financial System (NGFS), a group of central banks and financial supervisors, published an interim report[ix] jointly with INSPIRE (the International Network for Sustainable Financial Policy Insights, Research and Exchange) on Biodiversity and Financial Stability on October 8, 2021. The report highlights growing evidence that biodiversity loss could have significant economic and financial implications and recommends that central banks and financial supervisors undertake a series of measures to upskill in the area, develop methodologies to capture the risks of impacts, and importantly, start to take actions in relation to the financial institutions they supervise, including encouraging institutions to seek information from borrowers on biodiversity plans, exposures, and performance. Whilst it may take time for some of the specific recommended actions of the NGFS to filter through to financial institutions, other more immediately applicable regulations impacting the investment management industry and larger corporations have already surfaced.

European Union: The biodiversity ball has been rolling at some pace in Europe. This past summer, the European Union (EU) approved a report concluding that a new EU biodiversity governance framework is needed to set enforceable biodiversity protection targets and support the formation of Europe-specific biodiversity reporting rules (EU Biodiversity Strategy for 2030).[x] In addition, the EU is set to propose and adopt further technical screening criteria[xi] for environmental objectives, including biodiversity, under its Taxonomy Regulation (EU Taxonomy) by December 2021 and the first half of 2022, respectively.

This “Green Taxonomy” is, in part, designed to enable the designation of company activities as either sustainable or unsustainable based on whether a company’s activities meet to-be-determined “substantial contribution” and “do no significant harm” criteria with respect to biodiversity. Consequently, companies required to report sustainability information under the EU’s existing Non-Financial Reporting Directive (NFRD) or the proposed Corporate Sustainability Reporting Directive—which would expand upon the NFRD’s biodiversity disclosure mandates and scope of applicability—will also have to disclose the share of their activities that are aligned with the EU Taxonomy’s biodiversity protection criteria. Similarly, in connection with the EU’s recently enacted Sustainable

Finance Disclosure Regulation (SFDR), “financial market participants” will need to determine and disclose whether their economic activities, if linked to financial products offered as sustainable, qualify as taxonomy-aligned with respect to biodiversity.

European countries (including the UK): Further, on an individual basis, France[xii] and the Netherlands[xiii] have promulgated non-financial reporting laws for businesses and/or investors which require the consideration and/or disclosure of biodiversity impacts, with the United Kingdom (UK) appearing poised to follow suit. Biodiversity-related funds and initiatives[xiv], as well as legislation for the adoption of biodiversity net-gain principles for new significant infrastructure[xv], have gained considerable traction since the publication of the findings of the watershed “Dasgupta Review” of the economics of biodiversity.[xvi] In particular, the Dasgupta Review argues that institutional change is required (particularly in finance) such that (i) financial institutions and businesses are required to report on their dependencies and impacts on nature, and (ii) investors are provided with credible, decision-grade data based on measurement and disclosure of both climate- and nature-related financial risks.

Separately, the UK has announced plans to mandate the adoption of the Taskforce on Climate-related Financial Disclosures (TCFD) across the major segments of the UK economy by 2025. Changes have already been implemented to the UK Listing Rules introducing a requirement for all UK premium listed companies to comply with the TCFD recommendations and disclose how they are considering the impacts of climate change, and on a *comply or explain* basis report against the TCFD framework. Consultations also recently closed on extending these requirements to issuers of standard listed equity shares, certain regulated firms, and certain large UK registered companies and LLPs, with rules expected to come into force in 2022.[xvii] Whilst the efforts to mandate the TCFD across the UK are to be lauded, the TCFD in and of itself touches but does not adequately cover biodiversity loss. Certain aspects of the TCFD, including categories of physical and transition risk, are relevant to biodiversity loss, but there is a clear need for a distinct framework designed to focus on nature-related financial risks and incorporate the concept of natural capital (see ?3 below for recent developments involving the Taskforce on Nature-related Financial Disclosures).

United States: The United States Securities Exchange Commission (SEC) is expected to propose similar climate disclosure rules, or updated disclosure guidance, this month, and its request for public comment on its potential rulemaking has elicited calls for separate mandatory biodiversity risk disclosures.[xviii] The advent of such disclosures cannot be ruled out during the Biden Administration, which signaled its interest in preserving biodiversity when setting a target to conserve 30% of the nation’s land and water by 2030.

In the meantime, voluntary disclosure frameworks, reporting standards, initiatives, and performance assessment tools addressing biodiversity risk are proliferating, providing inspiration and bases for nascent biodiversity regulations, supporting compliance with existing rules, and gradually equipping investors with much needed data to facilitate effective engagement and stewardship on biodiversity loss issues.

3. **Voluntary Biodiversity Disclosure Frameworks, Reporting Standards, Initiatives, and Performance Assessment Tools**

Disclosure Frameworks and Reporting Standards

Existing Standards & Frameworks – How Biodiversity Loss is Incorporated: A number of voluntary disclosure frameworks and reporting standards addressing businesses’ biodiversity risks and impacts have been developed to date. Sustainability reporting standard No. 304 of the **Global Reporting Initiative**, for example, directs companies to report on their significant biodiversity impacts, how they manage such impacts, and the habitats they have protected and restored.[xix] **CDP** (formerly the Carbon Disclosure Project) has also begun incorporating biodiversity-focused questions into its business questionnaires, to date adding questions on biodiversity impacts, risks and/or opportunities to its forests questionnaires for the metals and mining and coal sectors. More recently, the **Climate Disclosure Standards Board** (CDSB) closed public consultation on its nascent biodiversity application guidance,[xx] which will support companies in reporting material land use and biodiversity-related information through the CDSB disclosure framework. The new guidance will focus on the first six reporting elements of the CDSB framework, including the topics of governance, management's environmental policies, strategies and targets, risks and opportunities, and sources of impact.

New Initiative – Taskforce on Nature-related Financial Disclosures: The disclosure framework that has received the most attention from observers, however, is not expected to be finalized until 2023. The recently-formed Taskforce on Nature-related Financial Disclosures (TNFD) is developing a framework specifically for nature-related disclosures, modelled on its climate-focused cousin, the TCFD. On October 6, 2021, in the run-up to COP15, the TNFD officially kicked-off their work on developing the TNFD framework.[xxi] Accordingly, the TNFD's recommendations are expected to focus on company disclosures around certain biodiversity impact metrics and targets as well as governance around the strategic impact of, and the assessment and management of, biodiversity risks and opportunities. More broadly, the TNFD aims to align with CBD's target of no net biodiversity loss by 2030 and net gain by 2050. Given the broad endorsement the TCFD has received from the business community, and the extent to which governments crafting climate risk disclosure regulations have referred to the TCFD as a model, it is widely expected that the TNFD (which already has the backing of the G7) will become an equally influential model for biodiversity disclosures.

Initiatives – Coalitions & Networks

Corporations seeking to elevate biodiversity loss on their ESG agendas and to meaningfully commit to actions in this area should actively consider participation in and support of one or more of the initiatives, charters, and coalitions noted below.

Among the growing chorus of initiatives calling for science-based biodiversity protection targets, the **Science Based Targets Network**[xxii] and **U.N. Principles for Responsible Banking**[xxiii] have each recently developed guidance for companies setting such objectives. Financial institutions in particular are coming under pressure to set targets, and the **Finance for Biodiversity Pledge**, for its part, has sought to commit its signatories to commit to science-based targets by 2024 (in addition to suggesting that financial institutions become legally liable for their impacts on ecosystems).

Members of the broader business and investor community are also uniting behind the biodiversity agenda through initiatives such as **Act4Nature, One Planet Business for Biodiversity, and Business for Nature**. Representing more than 900 companies with a cumulative revenue exceeding US$4 trillion, the **Business for Nature Coalition**, for example, has called on governments to adopt policies to reverse nature loss in this decade. Hundreds of coalition members have already made commitments to support three biodiversity-related U.N. Sustainable Development Goals (SDGs)[xxiv], and investor-oriented initiatives such as the **U.N. Principles of Responsible Investment** (which has been adopted by leading global asset owners and investment managers) have similarly recognized the business case for preserving biodiversity and the importance of biodiversity to achieving the SDGs generally.[xxv]

Other common initiatives focus more narrowly on the biodiversity effects of the cultivation of high-impact soft commodities such as palm oil, beef, and soy. Companies with ties to these industries have increasingly adopted "**No Deforestation, No Peat, No Exploitation** " (NDPE) procurement or lending policies, creating stranded asset risk for certain industry members. We expect NPDE policies to continue gaining traction going forward and other sector-specific biodiversity initiatives to rise to similar prominence.

Performance Assessment Tools for Organizations & Asset Managers – Nascent

Stages of Development

As with all ESG factors—as asset owners and managers are acutely aware—you cannot manage what you do not measure. Hence, the growing importance of performance assessment tools and measures in the biodiversity loss and impact space.

Historically, biodiversity value and/or business impacts on diversity have been measured on a location-by-location basis or on a nation-by-nation basis (based on national biodiversity indicators, for example). Important improvements in satellite imagery and other technologies used to measure localized impacts, and advancements toward a common lexicon to discuss impacts (*e.g.*, coalescence around metrics such as **Mean Species Abundance**), are currently being made with greater urgency. But perhaps more significantly, tools designed to measure *organization*-level biodiversity impact have recently multiplied.

In 2020, the Mission Économie de la Biodiversité presented its **Global Biodiversity Score**, a tool designed to assess the biodiversity footprint of business and financial assets. The U.N. Environment Programme Finance Initiative and Center for Sustainable Organizations then made their own contributions to the assessment cause in 2021 in launching the "**ENCORE**"[xxvi] **module** and **Biodiversity Performance Index** (BPI) prototype, respectively. Focused on the mining and agricultural sectors, the ENCORE module aims to allow banks and investors to explore the extent to which their financial portfolios indirectly drive species extinction risk and impact on ecological integrity. Over 30 financial institutions are currently testing the module. The BPI prototype, meanwhile, holds itself out as the world's first context-based biodiversity metric designed for companies and investors, using a composite of 10 biodiversity-related indicators to weigh organization-level performance in relation to ecological thresholds.

Continuing on the Road to Biodiversity

Understandably governments around the world are focused on achieving net zero deadlines, pushing ahead with decarbonization projects, and low-carbon strategies, and the intense "buzz" around COP26 will continue for weeks to come. These steps are not only critical to the reduction of greenhouse gas emissions, but also create local jobs, assist in retraining (and retaining) the existing workforce and help grow economies.

However, much like climate change, the loss of biodiversity is irreversible and immediate action is necessary. Let's see if natural capital receives the attention it requires this week and Kunming brings about global alignment for urgent action on biodiversity loss.

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[i] 20 Aichi biodiversity targets available at: https://www.cbd.int/sp/targets/.

[ii] The first detailed draft of the new Post-2020 Global Biodiversity Framework is available at: https://www.cbd.int/conferences/post2020.

[iii] The United Nations Environment Programme defines biological diversity or biodiversity as the variety of life on Earth and the natural patterns it forms. See: https://www.unep.org/unep-and-biodiversity.

[iv] The World Economic Forum's 2021 Global Risks Report is available at: https://www.weforum.org/reports/the-global-risks-report-2021.

[v] The World Wide Fund for Nature's (WWF) 2020 Living Planet Report, for example, shows a 68% decline in animal population size and 84% decline in freshwater wildlife in the past few decades. The report is available at: https://livingplanet.panda.org/en-us/.

[vi] As detailed in WWF's 2020 Global Futures report, available

at https://wwf.panda.org/?359334.

[vii] The IPCC Sixth Assessment Report was published on August 7, 2021 and is available at https://www.ipcc.ch/assessment-report/ar6/.

[viii] See, for example, the opening statement of the U.N. Principles for Responsible Investment Association's (UNPRI) "Investor Action on Biodiversity" discussion paper, available here.

[ix]
https://www.ngfs.net/sites/default/files/medias/documents/ngfs-press-release_2021-10-08_interim-report.pdf

[x] The report is available here.

[xi] Technical screening criteria have already been adopted for climate change.

[xii] France passed its Law on Climate and Energy in 2019, which includes an update to the 2015 Energy Transition Law's requirements on non-financial reporting by investors. Only climate issues are covered under the 2015 law, but the 2019 law takes into account the preservation of the biodiversity of the ecosystems.

[xiii] The Netherlands passed legislation on the mandatory disclosure of non-financial information in 1997 and, in 2003, produced a reporting guide stating that sustainability reporting should disclose information on the effects of business operations on biodiversity and the measures taken to mitigate these effects.

[xiv] Initiatives and funds include the England Trees Action Plan, Peat Action Plan, Benyon Review on Highly Protected Marine Areas (and the response to it), development of a Nature for Climate Impact Fund (£640 million announced at Budget 2020), Blue Planet Fund (£500 million), International Biodiversity Fund (£220 million), Green Recovery Challenge Fund (proposed to increase to £80 million) to deliver up to 100 nature projects in two years, and 25 Year Environment Plan.

[xv] Amendments to the Environment Bill to legislate (among other matters) for the introduction of: (i) biodiversity net gain for new nationally significant infrastructure are currently pending (requiring all new developments to demonstrate a 10% net gain in biodiversity at or near their sites); (ii) biodiversity credits allowing developers to purchase credits from the UK Government to be used to fund the creation of conservation sites; and (iii) prohibition on the use by large businesses of illegally produced commodities, due diligence requirements in relation to forest-risk commodities, and reporting on compliance. The Environment Bill still remains in the House of Lords and has not yet progressed to the final stages of receiving Royal Assent.

[xvi] The final report of the independent review (commissioned in 2019 by Her Majesty's Treasury (HMT)) on the Economics of Biodiversity led by Professor Sir Partha Dasgupta (Dasgupta Review) was published in February 2021. The report restarted the conversation on biodiversity in the UK, with HMT publishing the UK Government's response to the Dasgupta Review in July 2021 and emphasizing its commitment to (among other matters) delivering a nature positive future and to reverse biodiversity loss by 2030.

[xvii] From January 1, 2021, the UK Financial Conduct Authority (FCA) implemented changes to the Listing Rules (Listing Rule 9.8.6) introducing a requirement for all UK premium listed companies to comply with the TCFD recommendations and disclose how they are considering the impacts of climate change, and on a comply or explain basis report against the TCFD framework. The FCA also recently consulted on extending these requirements to issuers of standard listed equity shares and certain regulated firms. The UK Government's Department for Business, Energy & Industrial Strategy also recently concluded a consultation relating to mandatory climate-related financial disclosures by

publicly quoted and large private companies and LLPs and the TCFD. The Government response is still pending. The proposals apply to UK companies currently required to produce a non-financial information statement, those being UK companies with more than 500 employees and transferable securities admitted to trading on a UK regulated market, and relevant public interest entities; UK registered companies with securities admitted to AIM with more than 500 employees; UK registered companies which are not included in the categories above with more than 500 employees and a turnover of more than £500 million; and LLPs with more than 500 employees and a turnover of more than £500 million. These rules are expected to come into force for accounting periods on or after April 6, 2022.

[xviii] From the Commonwealth Climate and Law Imitative, for example. Comments submitted to the SEC are available at: https://www.sec.gov/comments/climate-disclosure/cll12.htm.

[xix] The Global Reporting Initiative (GRI) provides the most widely used sustainability reporting standards in the world. The GRI standards are available at: https://www.globalreporting.org/how-to-use-the-gri-standards/gri-standards-english-language/.

[xx] The CDSB's draft Biodiversity Guidance and further information on the consultation is available at: https://www.cdsb.net/biodiversity.

[xxi] The Agence Française de Développement (AFD) launched the TNFD Development Finance Hub at the first plenary meeting, which will sit under the umbrella of the TNFD's broader Knowledge Hub. Further information is available at: https://tnfd.global/news/first-plenary-launch-of-development-finance-hub/.

[xxii] The Science Based Targets Network's initial guidance on science-based targets for nature is available at: https://sciencebasedtargetsnetwork.org/wp-content/uploads/2020/09/SBTN-initial-guidance-for-business.pdf.

[xxiii] The Principles for Responsible Banking's Guidance on Biodiversity Target-setting is available at: https://www.unepfi.org/publications/guidance-on-biodiversity-target-setting/.

[xxiv] The three SDGs are: SDG6 (Clean water and sanitation), SDG 14 (Life below Water) and SDG 15 (Life on Land). The commitments of Business for Nature Coalition members involve acting and advocating for more ambitious nature policies and work on protecting and restoring nature. Before making commitments, companies are encouraged to understand their dependencies and impacts on biodiversity as they relate to their direct operations or supply chain.

[xxv] As reflected in UNPRI's "Investor Action on Biodiversity" discussion paper.

[xxvi] ENCORE stands for Exploring Natural Capital Opportunities, Risks and Exposure.

Gibson Dunn's 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, any of the following leaders and members of the firm's Environmental, Social and Governance (ESG) practice group, or the following authors:

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Related Capabilities

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