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

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We are pleased to provide you with Gibson Dunn's ESG monthly updates for March 2024. This month our update covers the following key developments. Please click on the links below for further details. **I. GLOBAL**

1. **France and Brazil launch EUR 1.1 billion program to protect Amazon rainforest**

On March 26 in Belém, Brazil, the Brazilian and French presidents launched a joint investment program to protect the Brazilian and Guyanese Amazon rainforest "with the aim of leveraging EUR 1 billion in public and private investments in the bioeconomy over the next four years." The investment plan will involve Brazilian state-run banks, such as the National Bank for Economic and Social Development (BNDES) and Banco da Amazonia (BASA), as well as the French investment agency. According to the signed declaration the presidents "consider it urgent to focus our efforts on establishing, by COP30, a bioeconomy model that considers the three dimensions of sustainable development — social, economic, and environmental — and allows us to reverse biodiversity loss and tackle climate change." This pledge to stop deforestation in the Amazon by 2030 comes two years before Brazil hosts the COP30 climate negotiations talks in Belém.

2. **Net Zero Banking Alliance tightens guidelines for banks' climate targets**

On March 13, members of the bank-led, UN-convened Net-Zero Banking Alliance ("**NZBA**") voted to adopt a new version of the Guidelines for Climate Target Setting for Banks. One key change is the expanded scope, which now includes not only lending and investment activities but also capital markets arranging and underwriting activities. This extension aims to provide a more comprehensive approach to climate target setting, acknowledging the significant role these activities play in banking portfolios as well as the scientific, regulatory, and methodological changes that have occurred since the original April 2021 Guidelines. According to the UNEP FI website, the guidelines are a product of an NZBA member bank-led review informed by their own experience of applying the original guidelines, setting and implementing climate targets, and financing transitions in different sectors. The new version "reinforces the guidelines, further outlining key principles to underpin the setting of credible and ambitious targets in line with achieving the objectives of the Paris Agreement". The updated version of the guidelines will apply to all new targets and any new iterations of existing targets set by NZBA member banks after April 22, 2024.

3. **Saudi Arabia introduces Green Financing Framework to drive sustainability**

On March 28, Saudi Arabia announced its Green Financing Framework, which seeks to attract funding for a range of sustainable investment opportunities. The Framework identifies eight types of projects eligible for funding from so-called "green" debt sales, ranging from support for cleaner transportation and renewable energy to projects that may help the desert kingdom adapt to climate change. The Ministry of Finance stated the structure will allow the government to sell green bonds and *sukuk* (Sharia compliant bonds) for projects that meet the criteria. Any sale of such debt would be a first for the central government as it aims to cut its greenhouse gas emissions by 278 million tonnes

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per year by 2030 and have net zero emissions by 2060. This announcement follows a number of recent initiatives which include the Saudi Green Initiative (“**SGI”**) to combat the adverse effects of climate change over the past few years. On March 27, the Kingdom celebrated its first Saudi Green Initiative Day organised under the theme “For Our Today and Their Tomorrow: KSA Together for a Greener Future” which aimed to highlight the collaboration of the more than 80 public and private sector projects that are part of the SGI. **II. UNITED KINGDOM**

1. **HM Treasury announces consultation on new regulatory regime for ESG ratings**

The UK Government confirmed on 6 March, as part of the Spring Budget, that it will regulate providers of ESG ratings to users within the UK. ESG ratings providers will fall within the regulatory perimeter of the Financial Conduct Authority. This follows the UK Government’s publication in March 2023 of a consultation on the future regulatory regime for ESG ratings providers alongside an updated Green Finance Strategy. Both publications were part of a wider set of ESG-related publications such as the Powering Up Britain – Net Zero Growth Plan and Energy Security Plan and the more recent consultation on addressing carbon leakage risk to support decarbonisation.

2. **UK to enforce tougher emission reduction rules on the oil and gas industry**

On March 27, the North Sea Transition Authority (“**NSTA**”), the UK government’s oil and gas regulator, published new guidelines for emissions reduction in the North Sea. These stricter guidelines for oil and gas producers follows from the 2021 NSTA (then “**OGA**”) strategy which placed an obligation on the industry to assist “in meeting the net zero carbon by 2050 target”. The NSTA’s new guidelines set out “four clear contributing factors to decarbonising the industry” — including asset electrification, investment and efficiency and action on flaring and venting. It will also look at “inventory as a whole”, ramping up scrutiny on assets with high emissions intensity. New developments with "a first oil or gas after 1 January 2030 must be either fully electrified or run on alternative low carbon power with near equivalent emission reductions”, the NSTA said. New developments with a first oil or gas date before 2030 should be electrification-ready at minimum. **III. EUROPE**

1. **European Council approves Corporate Sustainability Due Diligence Directive**

On March 15, the EU Council approved a revised version of the Corporate Sustainability Due Diligence Directive (“**CS3D**”). The CS3D imposed obligations on companies to conduct thorough due diligence encompassing identification, assessment, prevention, and mitigation of negative environmental and human rights impacts. To mitigate these, the CS3D stipulates that a broad range of elements must be addressed, including child and forced labour, greenhouse gas emissions and deforestation. Importantly, companies are required to examine and document findings beyond their immediate operations, encompassing both indirect business partners and subsidiaries. The CS3D has two key objectives: (i) to require companies to carry out due diligence to avoid adverse environmental and human rights impacts and (ii) to ensure accountability in case of actual adverse impacts being caused. The key obligations endorsed by the council in relation to due diligence are set out below: *“Chain of activities”:* This definition of a company’s downstream and upstream activities in respect of due diligence obligations has now been further narrowed, by excluding downstream activities performed by indirect business; and downstream activities at the product disposal stage (such as dismantling, recycling, composting and landfilling). *Financial institutions:* The provisional agreement was stated to cover only the upstream but not the downstream activities of financial institutions (thus excluding the investment and lending activities of such institutions). The review clause of the compromise text nonetheless continues to provide that the Commission shall prepare, within two years of the directive’s adoption, a report on the need for additional due diligence requirements tailored to the financial sector. *Groups of companies:* As per the provisional agreement, *ultimate parent companies* are responsible for meeting the due diligence obligations of the directive, save where the parent company’s main activity

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is holding shares in operational subsidiaries—and now, pursuant to an additional exemption introduced in the concession text, where the parent company does not engage in taking "*management, operational or financial decisions*" affecting the group or its subsidiaries. The parent company must also now apply to the competent supervisory authority for any such exemption. *Civil liability*: The civil liability regime has been further adjusted by making it clear that Member States are free to decide the conditions under which *trade unions, non-governmental organizations or national human rights institutions* can initiate collective redress mechanisms on behalf of victims. In particular, language referring to the ability of such a body to bring a claim "in its own capacity" has been deleted and the possibility for third-party intervention in support of victims in lieu of direct representation explicitly provided for.

2. **Corporate Sustainability Reporting directive and disclosure of climate risk information**

Another of the key obligations endorsed by the European Council under CS3D is the requirement to "*adopt and put into effect a transition plan for climate change mitigation*" ("**Climate Plan**"), which must have specific features. Paragraph 50 of the Directive states that Climate Plan must aim "*to ensure, through best efforts, that the business model and strategy of the company are compatible with*" (i) the transition to a sustainable economy; (ii) limiting global warming to 1.5 °C in line with the Paris Agreement; (iii) the objective of achieving climate neutrality as established in the EU Climate Law, including its intermediate and 2050 targets; and (iv) where relevant, the exposure of the undertaking to coal, oil and gas-related activities. It must include the following company-specific targets and reporting standards: (i) climate targets including specifically in terms of Scopes 1-3; (ii) identification of decarbonisation levers; (iii) an explanation of transition funding for the Climate Plan; and (iv) description of leadership accountability which must be defined specifically with regard to the Climate Plan. **IV. NORTH AMERICA**

1. **U.S. Securities and Exchange Commission adopts final Climate Change Rules**

On March 6, the U.S. Securities and Exchange Commission ("SEC") approved final climate change rules. More information on these rules is available in our client alert available here. The rules were immediately challenged in court by various parties, including several states and the Sierra Club. On March 15, the Fifth Circuit Court of Appeals granted an emergency administrative stay of the SEC's rules. On March 21, the Judicial Panel on Multidistrict Litigation selected the Eighth Circuit as the court that will consider the petitions for review challenging the SEC's rule, and on March 22, the administrative stay was dissolved when the Fifth Circuit cases were transferred to the Eighth Circuit. (Subsequently, on April 4, the SEC issued an Order a stay of its final rule "pending the completion of judicial review" of the consolidated Eighth Circuit petitions.)

2. **U.S. introduces bill to exclude ESG factors from Retirement Investment Plans**

On March 21, Congressman Greg Murphy introduced the Safeguarding Investment Options for Retirement Act, legislation to prohibit tax-advantaged retirement plan trustees from considering factors other than financial risk and return when making investment decisions on behalf of workers, retirees, and their beneficiaries. In his official press release, the Congressman explained the background to his decision. He stated that in recent years some retirement plans prioritising ESG factors had "performed more poorly compared to traditional investments, raising questions about trustees' priorities for investment." Under this legislation, if plans are found to be using non-financial risk and return factors, they risk losing their tax-advantaged status. The bill proposes to counteract "the left's environmental and equity agendas". Specifically, the Department of Labor's ("**DOL**") reversal under the Biden administration of the restrictions imposed under predecessor Donald Trump on retirement plans considering ESG factors when selecting investments. In November 2022, the DOL finalised rules under ERISA that permit

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fiduciaries of retirement plans governed by ERISA to consider ESG in the selection process for investments of such retirement plans. Congressman Murphy's bill is indicative of much of the wider Republican response to the DOL's 2022 rule and follows the January 2023 lawsuit filed in the Northern District of Texas by attorney generals from 25 states which challenges the 2022 rule.

3. **U.S. Government commits $750 million for growth of hydrogen industry in U.S.**

On March 14, the Department of Energy ("**DOE**") announced that it will allocate $750 million to a series of projects aimed at dramatically reducing the cost of clean hydrogen. Focused on advancing electrolysis technologies, manufacturing and recycling capabilities for clean hydrogen systems, this commitment is indicative of the Biden Administration's approach to hydrogen as crucial in reducing fossil fuels and emissions from hard to decarbonize industries such as aluminium and cement. The announcement follows the Biden administration's release in June 2023 of the U.S. National Clean Hydrogen Strategy and Roadmap, aimed at significantly increasing the production, use, and distribution of low carbon hydrogen in energy intensive industries. It outlines the commitment to scale U.S. clean hydrogen production and use to 10 million metric tonnes by 2030, and as much as 50 million tonnes by 2050. The new allocations by the DOE will be funded by the Bipartisan Infrastructure Law, which was passed in November 2021 and allocates $9.5 billion to clean hydrogen. The law gives authority to the DOE to allocate the funding, which includes up to $1 billion for research and development of reducing the cost of clean hydrogen produced via electrolysis; as well as $500 million to research and development of improved processes and technologies for manufacturing and recycling clean hydrogen systems and materials. **V. APAC**

1. **South Korea unveils $313 billion green financing plan to combat climate change**

South Korea has vowed to provide loans worth $313.4 billion to finance carbon-cutting projects, in a joint statement by the government and major banks on 19 March. By 2030, five state financial institutions including Korea Development Bank ("**KDB**") will provide those loans to encourage companies to switch to low carbon production, the announcement said. By 2030, these measures are anticipated to achieve a reduction of 85.97 million metric tonnes of greenhouse gases, fulfilling nearly 30% of the government's ambitious target. The plan to step up the fight against climate change was unveiled in a meeting between government officials and heads of South Korea's five major banks. The KDB and other big banks including Woori Bank and Kookmin Bank, will also create a new fund worth KRW 9 trillion for building new green energy facilities, the government added.

2. **Chinese stock exchanges consult on mandatory sustainability reporting requirements for listed companies**

China's three major stock exchanges, the Shanghai Stock Exchange, the Shenzhen Stock Exchange and the Beijing Stock Exchange, have announced new sustainability reporting guidelines for listed companies to begin mandatory disclosure on ESG related topics in 2026. The reporting requirements will cover four core topics, including governance, strategy, impact and risk and opportunity management, along with indicators and goals. The exchanges are taking a "double materiality" approach, which includes reporting on both the risks and impacts of sustainability issues, along with the companies' impacts on the environment and society. The mandatory reporting requirements will capture more than 450 companies listed across the three exchanges, with the reporting set to begin in 2026 for the 2025 reporting period. *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 For further information about any of the topics discussed herein, please contact the ESG Practice Group Chairs or contributors, or the Gibson Dunn attorney with whom you regularly work.

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