GIBSON DUNN

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

Client Alert | December 18, 2024

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

1. **COP29 highlights: United Nations (UN) climate talks conclude with climate pledge for developing countries, climate financing goals, and disclosure initiatives**

In late November, delegates at COP29, the UN's annual climate summit, agreed to provide annual funding of $300 billion for developing countries. While the total is three times the previous goal of $100 billion, the funding fell short of the $1 trillion in assistance sought by the recipient countries. The nearly 200 delegate countries further set a goal to scale climate financing from public and private sources to at least $1.3 trillion by 2035. Delegates also agreed to standards for a UN-backed global carbon market to facilitate carbon credit trading. At COP29, the Global Reporting Initiative (GRI) and CDP signed a memorandum of understanding demonstrating their agreement to increase their technical alignment through streamlined disclosures and allow disclosing companies to use CDP's annual questionnaire to report data in accordance with GRI's environmental, social, and economic standards. Through the new agreement, GRI and CDP will increase the interoperability of their assessment tools in an effort to benefit the over 14,000 organizations that use GRI standards and more than 24,800 companies that disclose through CDP.

2. **Institutional Shareholder Services Environmental, Social, and Governance (ISS ESG) launches customizable version of its Climate Impact Report**

On November 21, 2024, ISS ESG launched a new version of its Climate Impact Report that investors can customize to better understand their climate impact. Investors can tailor the Scenario Alignment portion of the Climate Impact Report by choosing between a standard package, incorporating two models, or an advanced package, incorporating five models. The report will show investors outputs and charts developed from their chosen model, and up to 22 possible scenarios are available. This new offering features sectoral analysis and uses models from the International Energy Agency, the Network for Greening the Financial System, and the UN Environment Programme.

3. **Glass Lewis publishes 2025 Proxy Voting Policy Guidelines**

On November 14, 2024, proxy advisor Glass Lewis released its 2025 Proxy Voting Policy Guidelines for the U.S., UK, and Europe. These guidelines will apply to shareholder meetings held after January 1, 2025, and include additional guidance on board oversight of artificial intelligence, board responsiveness to shareholder proposals, and change-in-control provisions for executive compensation. The guidelines also describe how Glass Lewis will evaluate shareholder proposals on corporate use of artificial intelligence technology. View the policy guidelines by market here.

4. **International Organization for Standardization (ISO) releases ESG Implementation Principles (IWA 48) for implementing ESG principles**

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ISO published IWA 48 in mid-November. These principles are meant to support companies' efforts to implement ESG reporting practices into the organization and produce consistent, comparable, and reliable disclosures. While the framework is designed for organizations of all sizes and sectors, small and medium-sized enterprises, organizations in developing countries, and top-level decision-makers are expected to find the principles particularly beneficial. ISO aims to advance global adoption of ESG practices through its publication of IWA 48.

5. **The International Financial Reporting Standards (IFRS) Foundation releases report detailing corporate climate disclosures**

On November 12, 2024, the IFRS Foundation released a progress report detailing advancements in mandated and voluntary corporate climate-related disclosures. The IFRS Foundation is now responsible for recording companies' disclosure progress following the disbanding of the Task Force on Climate-related Financial Disclosures (TFCD) disbanding in October 2023. The report focuses on how closely corporate climate-related disclosures align with the TCFD recommendations and whether reporting referenced the International Sustainability Standards Board (ISSB) standards. While 82% of reviewed companies disclosed information using at least one of the 11 TCFD recommendations, less than 3% disclosed in line with all 11 recommendations. Over 1,000 companies were noted as referencing the ISSB. The report also described progress towards ISSB reporting within legal or regulatory frameworks across 30 jurisdictions.

6. **The International Auditing and Assurance Standards Board (IAASB) releases International Standard on Sustainability Assurance 5000 (ISSA 5000), updating general requirements for sustainability assurance engagements**

On November 12, 2024, the IAASB released the ISSA 5000, which provides standalone, general requirements for external sustainability assurance engagements. The standard is designed to apply to disclosures for any sustainability topic across various frameworks and to be used by professional accountants as well as non-accountant assurance professionals. The ISSA 5000 is certified by the Public Interest Oversight Board, which oversaw the development of the standards. The Final Pronouncement of the ISSA 5000 is available here. **II. UNITED KINGDOM**

1. **UK Prime Minister launches Global Clean Power Alliance (Alliance) to accelerate energy transition**

On November 19, 2024, UK Prime Minister Kier Starmer launched the Alliance at the G20 Summit in a joint statement with Brazil's President Luiz Inácio Lula da Silva. The Alliance aims to support emerging and developing economies with the transition to clean energy and builds on commitments made at the COP28 climate summit to triple renewable energy capacity and double the global rate of energy efficiency. Founding members of the Alliance are Brazil, Australia, Barbados, Canada, Chile, Colombia, France, Germany, Morocco, Norway, Tanzania, and the African Union. The United States and the EU have also partnered with the UK on the initiative. The Alliance will address the most critical energy transition issues through a series of "missions." The first of these is the Finance Mission, co-led by the UK and Brazil, which focuses on unlocking private sector finance for renewable energy projects in developing nations.

2. **UK Chancellor announces series of sustainable finance initiatives at inaugural Mansion House Speech**

On November 14, 2024, Chancellor of the Exchequer Rachel Reeves announced the UK's long-term sustainable finance framework through a series of policy measures and consultation publications. These initiatives were stated to align with the government's aim to "harness the strengths of the financial services sector" to make the UK a "global leader in sustainable finance." The Chancellor then proposed a set of integrity principles for voluntary carbon and nature markets at COP29 on November 15, 2024. The Chancellor also announced a consultation seeking views of the value of implementing a green taxonomy in the UK, specifically whether it would be additional and complementary to existing sustainable finance policies. The consultation closes on February 6, 2025. In addition, the government plans to announce a transition plan consultation in the first half of 2025 alongside a consultation on UK Sustainability Reporting Standards disclosure requirements for "economically significant" companies in line with the ISSB standards.

3. **HM Treasury publishes its consultation response on the regulation of ESG ratings providers**

On November 14, 2024, HM Treasury (the UK Government's economic and finance ministry) published a consultation response paper on a future regulatory regime for ESG ratings providers together with draft legislation which applies to both the UK and overseas based ESG ratings providers. This follows a previous consultation published on March 30, 2023, which closed on June 30, 2023. A new regulated activity will be introduced and ESG ratings providers will need to obtain authorization from the UK Financial Conduct Authority and comply with the regulatory regime on an on-going basis. The consultation remains open for comment until January 14, 2025. HM Treasury intends to present the final statutory instrument in Parliament in 2025.

4. **UK to become one of the first countries to ban new coal mines**

On November 14, 2024, the UK Government announced it will introduce legislation that will prohibit licences for new coal mines. This follows the closure on September 31, 2024, of the UK's last coal-fired power station at Ratcliffe-on-Soar. There may be limited exceptions required for restoration or maintenance of safety. The announcement follows the UK Government's commitment to release GBP 1.5 billion previously being withheld from former miners' pensions following the privatization of British Coal in 1994. On November 29, 2024, over 100,000 former mineworkers received their first pension increase of 32%.

5. **UK Government confirms the introduction of a clean industry bonus for offshore wind developers**

On November 11, 2024, UK Prime Minister Kier Starmer announced the Clean Industry Bonus (CIB), an initiative aimed at encouraging offshore wind developers to invest in key industrial regions, coastal communities and oil and gas hubs. The CIB will provide GBP 27 million per gigawatt of offshore wind projects, with potential funding of up to GBP 200 million for projects between seven and eight gigawatts. This bonus aims to accelerate investment in sustainable, local suppliers specifically in industrial communities across Scotland, Wales, and Northern England.

6. **Financial Reporting Council (FRC) announces consultation on UK Stewardship Code**

On November 11, 2024, the FRC published a consultation on proposed revisions to the 2020 UK Stewardship Code. The consultation aims to streamline reporting requirements and reduce burdens for signatories whilst ensuring the Code provides a clearer focus on purpose of stewardship and the outcomes it intends to deliver. Key proposals set out in the consultation include (i) a revised definition of stewardship that emphasises the need to create long-term sustainable value for clients and beneficiaries as a key outcome of good stewardship; (ii) a reordered and streamlined reporting process including a new process for FRC evaluations which will focus on activities and outcomes rather than ongoing policies; (iii) two sets of Principles, one for asset owners and asset managers, and the other for service providers and (iv) new guidance to support effective implementation and help signatories with the transition to the new reporting arrangements. The consultation ends on February 19, 2025. An updated Stewardship Code is expected to be published in the first half of 2025 with an effective date of January 1, 2026.

7. **UK Financial Conduct Authority (FCA) publishes pre-contractual disclosure examples for the Sustainability Disclosure Requirements and investment labels regime**

On November 1, 2024, the FCA published non-exhaustive illustrative examples and approaches across a selection of labels to showcase how firms can meet the pre-contractual disclosure requirements with respect to sustainable investment products. The Sustainability Disclosure Requirements and investment labels regime entered into force on December 2, 2024, although firms have been using investment labels since July 31, 2024. A key concept of the new regime is that to qualify for a label, firms must meet specific criteria supported by disclosures. **III. EUROPE**

1. **European Financial Reporting Advisory Group (EFRAG) Sustainability Reporting Technical Expert Group approves draft of reporting standards for non-EU entities**

Under Article 40a of the Accounting Directive as amended by the Corporate Sustainability Reporting Directive (CSRD), certain in-scope EU entities are required, starting with financial year 2028 (reporting in 2029), to publish and make accessible a sustainability report covering information at group level of their non-EU ultimate parent. For such reports the European Commission will adopt specific reporting standards, known as the Non-European Sustainability Reporting Standards (NESRS), by June 30, 2026, at the latest, to be developed by EFRAG. On November 21, 2024, the EFRAG Sustainability Reporting Technical Expert Group (TEG) approved the first sector agnostic NESRS draft. The NESRS draft was prepared by tailoring the existing European Sustainability Reporting Standards (ESRS) to non-EU groups. The EFRAG Sustainability Reporting Board (SRB) will review these drafts in December 2024. Public consultation begins Q1 2025, lasting 120 days, with final drafts due by end of 2025. The NESRS have lighter disclosure obligations than the ESRS. The NESRS require only impact materiality reporting, without the need for a financial materiality assessment. They allow excluding impacts of sales or services outside the EU from the sustainability report. However, unlike the ESRS, they lack transitional provisions for the first years of reporting. Taxonomy reporting is required at the EU undertaking level, consistent with the CSRD, but not under the NESRS. For the avoidance of doubt, the NESRS will not apply to consolidated CSRD reporting by a non-EU parent in order to exempt the in-scope EU entities according to the Article 29a (8)/19a (9) Accounting Directive. For such reporting the full ESRS apply for the time being until standards for sustainability statements by non-EU undertakings have been developed in accordance with the Article 29b Accounting Directive.

2. **ESG ratings: The Council of the European Union (Council) greenlights new regulation**

On November 19, 2024, the Council adopted a regulation on ESG rating activities to enhance consistency, transparency, and comparability within the EU, boosting investor confidence in sustainable financial products. ESG ratings assess a company's or financial instrument's sustainability profile and related risks. The new regulation aims to improve the reliability of ESG ratings by increasing transparency and operational integrity while preventing conflicts of interest. ESG rating providers in the EU must be authorized and supervised by the European Securities and Markets Authority (ESMA) and follow transparency requirements regarding their methodologies and information sources. Non-EU providers must either obtain endorsement from an EU-authorized provider or be included in the EU registry based on an equivalence decision.

3. **European Commission publishes Commission Notice on the interpretation of certain legal provisions of the CSRD**

On November 13, 2024, the European Commission finalized its sustainability reporting FAQ document initially published as a draft in August 2024; the final document contains only minor changes to the August draft. This document interprets certain provisions of the

CSRD and other related directives and regulations. The FAQs, now published in the Official Journal of the EU (C/2024/6792), intend to help companies implement legal requirements and ensure the comparability of sustainability information. They provide clarity on application requirements, exemptions, reporting formats, value chain reporting, use of estimates, third-country company reporting, and audit requirements. Key topics include:

- Application and exemption options from sustainability reporting.
- First-time application of sustainability reporting and its format.
- Reporting over the value chain and using estimates.
- Reporting by third-country companies, focusing on Article 40a Accounting Directive.
- Assurance on sustainability reporting.

4. **European Commission provides further clarifications (FAQs) on the EU taxonomy for sustainable economic activities**

On November 8, 2024, the European Commission published a new Commission Notice (C/2024/6691) on the interpretation and implementation of certain legal provisions of the EU taxonomy regulatory framework, followed by another draft Commission Notice on November 29, 2024. The Commission Notices contain FAQs to help stakeholders implement the EU taxonomy, a system for classifying sustainable economic activities. This effort is part of further simplifying the disclosure process and reducing administrative burdens for the undertakings applying the EU sustainable finance framework and complements the previous four Commission Notices (2022/C 385/01, 2023/C 211/01, C/2023/267, C/2023/305) that have been published on the EU Taxonomy and its Delegated Acts so far. The new FAQs offer technical clarifications on general taxonomy requirements, specific activity criteria in the Taxonomy Climate and Environmental Delegated Acts, and the "do no significant harm" criteria. They also clarify the reporting obligations under both the Climate and Environmental Delegated Acts.

5. **CSRD Transposition**

The Belgian House of Representatives approved the draft bill transposing CSRD in Belgium on November 28, 2024. On November 30, 2024, Slovenia transposed the CSRD in its Companies Act (ZGD-1M). An overview of the transposition of CSRD into national laws can be found here. ***In case you missed it…*** On November 21, 2024, Gibson Dunn presented a webcast on the common challenges facing U.S. businesses subject to the CSRD. The webcast and related resources are available here. **IV. NORTH AMERICA**

1. **California solicits input on—and issues enforcement update for—future climate reporting**

As described in our recent blog post, on December 16, the California Air Resources Board issued a request for public feedback and information regarding certain implementing regulations for Senate Bill (SB) 253 (the Climate Corporate Data Accountability Act) and SB 261 (the Climate-Related Financial Risk Act). The request for comments came less than two weeks after CARB's recent enforcement notice, issued December 5, addressing the greenhouse gas emissions reporting requirements under SB 253.

2. **Eleven state Attorneys General sue large institutional investors alleging a conspiracy to constrict the coal market**

On November 27, 2024, 11 state Attorneys General alleged in a federal lawsuit in Texas that BlackRock, Inc., State Street Global Advisors, and The Vanguard Group illegally manipulated the coal market through their investments in publicly traded coal companies.

Led by Texas Attorney General Ken Paxton, the group claims that the top three U.S. asset managers used their holdings to push coal companies to reduce their output in violation of U.S. antitrust law and state antitrust laws. In the filing, the plaintiffs consider past and present membership in climate coalitions, such as Climate Action 100+ and the Net Zero Asset Managers initiative, as evidence of collective influence indicating a threat to competition.

3. **Shareholders of major food and drink manufacturers issue public letter requesting greater disclosure regarding healthiness of products**

On November 21, 2024, shareholders sent a public letter calling on the chief executives of several large public companies in the food and beverage industry to boost transparency regarding the healthiness of their products. Investors urged the companies to adopt international nutrition profiling models as part of their public disclosures, in addition to particular healthiness metrics. Investors pointed to the impact of unhealthy food sales on productivity, economic growth, and financial returns from their investments as drivers for why such disclosure is needed.

4. **Paul Atkins nominated to lead the U.S. Securities and Exchange Commission (SEC)**

On November 21, 2024, the SEC announced that Chair Gary Gensler will resign from his role effective midnight on January 20, 2025. Gensler has served as SEC Chair since April 2021. On December 4, 2024, President-elect Donald Trump selected former SEC Commissioner (2002-2008) Paul Atkins as his intended nominee for SEC Chair. If appointed, Atkins is expected to represent a shift in priorities from the Gensler-led SEC. Atkins has served as co-chair of the Token Alliance of the Digital Chamber of Commerce since 2017. In response to the SEC's proposed climate change disclosure rules in 2022, Atkins and other former SEC commissioners submitted a comment letter to the proposal, noting it "oversteps the Commission's congressionally delegated regulatory authority" and that the SEC's "rulemaking powers simply do not authorize it to require disclosure of the vast quantities of immaterial information."

5. **U.S. Department of Energy (DOE) releases first-ever clean energy blueprint**

On November 18, 2024, the U.S. DOE released its first-ever national blueprint for the manufacturing sector to harness clean energy to build on American manufacturing growth. Titled "The National Blueprint for a Clean & Competitive Industrial Sector," the blueprint is designed to be led by the private sector. It features five "whole-of-government strategies" to guide federal government involvement: (1) in the near term, accelerate commercially available, cost-effective lower carbon solutions; (2) demonstrate emerging solutions at commercial scale; (3) increase data use to drive emissions reductions and efficiency gains; (4) innovate and advance research to develop transformative processes and products for large greenhouse gas (GHG) emissions reductions; and (5) integrate across the product life cycle to minimize waste and reduce industrial products' embodied GHG emissions. The blueprint was developed with input from other federal agencies, including the Environmental Protection Agency and Department of Commerce.

6. **SEC charged Invesco Advisers, Inc. (Invesco) for making misleading statements regarding the percentage of assets that integrate ESG factors in investment decisions**

On November 8, 2024, the SEC charged Invesco for misleading investors with marketing materials that misstated the percentage of "ESG integrated" assets under management, in violation of the Investment Advisers Act of 1940. In particular, between 2020 and 2022, Invesco claimed that ESG-integrated assets made up 70-94% of its parent company's assets under management. The SEC order stated that Invesco lacked a clear definition of ESG integration and that the assets included a significant amount held in passive exchange-traded funds without consideration for ESG factors. Invesco agreed to settle the charges by paying a $17.5 million civil penalty.

7. **Challenge to California's climate disclosure laws progresses to discovery phase**

On November 5, 2024, a federal judge in the U.S. District Court for the Central District of California denied a motion for summary judgment by business groups challenging the state's new climate disclosure laws, Senate Bill ("SB") 253 and SB 261. The plaintiffs, including the U.S. Chamber of Commerce and business groups, argued that California's climate disclosure laws conflict with federal regulations and violate the First Amendment by compelling speech. The federal court did not address the merits of plaintiffs' claims. Instead, the court allowed the case to proceed to the discovery phase for further factual development. The climate disclosure laws were signed into law by California Governor Gavin Newsom on October 7, 2023. SB 253 requires certain companies to make annual greenhouse gas emissions disclosure, while SB 261 mandates biennial climate-related financial risk disclosure. For further details on SB 253 and SB 261, please see our client alerts on the adoption and amendment of the laws. ***In case you missed it…*** The Gibson Dunn Workplace DEI Task Force has published its updates for November summarizing the latest key developments, media coverage, case updates, and legislation related to diversity, equity, and inclusion. **V. APAC**

1. **Five firms adopt Hong Kong's Code of Conduct for ESG Ratings and Data Products Providers (the Code)**

As covered in our October update, the International Capital Market Association (ICMA) published a voluntary Code of Conduct that aims to establish and promote a globally consistent, interoperable, and proportionate voluntary code for providers offering ESG ratings and data products and services in Hong Kong. Five firms have now adopted the Code: Bloomberg, CDP, MioTech, Moody's, and MSCI ESG Research LLC. The Code is modeled on international best practices and sponsored by the Hong Kong Securities and Futures Commission. It is closely aligned to the recommendations by the International Organization of Securities Commissions' Report on "Environmental, Social and Governance (ESG) Ratings and Data Products Providers".

2. **Association of Southeast Asian Nations (ASEAN) stock exchanges to develop harmonized ESG data infrastructure**

On November 27, 2024, representatives from stock exchanges across ASEAN met in Malaysia to develop the ASEAN-level ESG data infrastructure, known as the ASEAN-Interconnected Sustainability Ecosystem (ASEAN-ISE). The aim of ASEAN-ISE is to enable accurate, efficient and standardized ESG data collection, analysis, and reporting, to promote sustainable investment in the region. At the conference, ASEAN-ISE members agreed to issue a request for information (RFI) to identify solutions that will support the initiative in achieving its target outcomes over the next three years. In a joint statement, Indonesia Stock Exchange (IDX), the Philippine Stock Exchange (PSE), the Stock Exchange of Thailand (SET), and Singapore Exchange (SGX) said "[t]he RFI outlines the framework for a unified data infrastructure, emphasizing the development of an interconnected ecosystem to facilitate seamless ESG data exchange, ensuring a sustainable operating model that can promote market accessibility through an ESG lens."

3. **Hong Kong Monetary Authority (HKMA) launches Enhanced Competency Framework on Green and Sustainable Finance (ECF-GSF) (Professional Level)**

On November 21, 2024, the HKMA launched its Professional Level ECF-GSF, aimed at helping mid- to senior-level banking practitioners "*acquire specialised domain knowledge related to GSF and develop professional competencies in the GSF-related area.*" The ECF-GSF sets out the competency standards for banking practitioners performing GSF-related functions in the banking industry in Hong Kong. The HKMA has been working with the banking industry and relevant professional bodies to implement an industry-wide framework across all levels of the banking industry. It hopes that this will enable more effective training for new entrants and professional development for existing practitioners, helping to maintain Hong Kong's status as a leading international financial center. The ECF is not a mandatory licensing regime, but the HKMA strongly encourages banks to adopt it as a benchmark to enhance the level of core competence and on-going professional development amongst personnel.

4. **Singapore joins EU and China in expanded green financing taxonomy**

On November 14, 2024, Singapore joined the EU and China in an expanded taxonomy on green financing at the COP29 climate summit. With the publication of the new taxonomy, known as the Multi-Jurisdiction Common Ground Taxonomy (M-CGT), the bilateral EU-China CGT was expanded to include the Singapore-Asia Taxonomy (SAT). This will enhance the inter-operability of taxonomies across China, the EU, and Singapore. The M-CGT contains 110 economic activities across eight sectors that could be eligible for green financing. It serves as a technical reference document for financial institutions, corporations, investors and external reviewers, allowing them to assess what is considered green across the three jurisdictions. While noting that the M-CGT is not legally binding, the Monetary Authority of Singapore (MAS) said in a press release that "green bonds and funds that align with the M-CGT criteria can be considered by cross-border investors whose markets reference the taxonomies which are mapped to M-CGT, subject to applicable laws and regulations of each jurisdiction."

The following Gibson Dunn lawyers prepared this update: Lauren M. Assaf-Holmes, Alexa Bussmann, Mitasha Chandok, Martin Coombes, Becky Chung, Ferdinand Fromholzer, Elizabeth Ising, Sarah Leiper-Jennings, Vanessa Ludwig, Johannes Reul, Helena Silewicz*, and Katie Tomsett. **Helena Silewicz, a trainee solicitor in London, is not admitted to practice law.* 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: **ESG Practice Group Leaders and Members:** 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) Robert Spano – London/Paris (+33 1 56 43 13 00, rspano@gibsondunn.com)

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