GIBSON DUNN

LEXOLOGY Webinars

ESG for Private Fund Managers

19 January 2021

What we will cover today

1

Regulatory Overview – Global, Europe & UK

2

Sustainability as an asset class

3

A closer look: EU SFDR, taxonomy and UK proposals

4

Integrating ESG into investment processes and portfolio companies

5

Engaging with investors, investor reporting and trends

GIBSON DUNN

Regulatory Overview – Global, Europe & UK

What do we mean by ESG?

Environment	Social	Governance
• Climate change • Greenhouse gas emissions • Sustainable resources • Hazardous materials, waste and pollution • Clean technology • Deforestation • Biodiversity and ecosystems • Water management • Land contamination	• Human rights • Modern slavery • Working conditions and employee welfare • Employee relations • Talent attraction and retention • Local communities • Information security • Data governance • Health and safety • Product governance • Equality and diversity • Supply chains • Controversial weapons	• Financial planning/ reporting • Systems and controls • Board diversity • Board structure • Board independence • Shareholder rights • Anti-bribery and corruption • Executive remuneration • Political lobbying • Political donations • Tax strategy

Overview of key rules, regulations and initiatives: Global

GLOBAL

- **Sustainable business/markets:**
  - UN Principles for Responsible Investment (2006, but updated)
  - International Organization for Standardization (ISO): Guidance on Social Responsibility (2010)
  - OECD Guidelines for Multinational Enterprises (2011)
  - International Organization of Securities Commission (IOSCO): Objectives and Principles of Securities Regulation (2017)
  - Sustainability Accounting Standards Board: Industry Standards (2018)
- **Environment:**
  - UN Sustainable Development Goals (2015)
  - Task Force on Climate-related Financial Disclosures: Recommendations (2017)
  - Climate Disclosure Standards Board Framework (2019)
- **Human Rights:**
  - International Labour Organisation (ILO): Declaration on Fundamental Principles and Rights at Work (1998, but updated)
  - Global Reporting Institute Standards (2000)
  - UN Guiding Principles on Business and Human Rights (2011)
  - ILO Principles concerning MNEs and Social Policy (2017)
  - *UN Draft Binding Treaty on Business and Human Rights**

- **Sustainable business/markets**:
  - UN Global Compact: Corporate Sustainability Initiative (2000)
  - IOSCO: Statement on Issuer ESG Disclosures (2019)
  - Davos Manifesto (2020)
- **Diversity:** 30% Club (2010)
- **Supply chains:** UN Global Compact: Decent Work in Global Supply Chains (2017)
- Possible changes under Biden administration?

Hard Law
***Proposed Law**
Soft Law (Guidance/voluntary standards)
Expression of strategy

Overview of key rules, regulations and initiatives: Europe

EUROPE

- **Sustainable business/markets:**
  - Sustainable Finance Disclosure Regulation (2019)
  - Non-Financial Reporting Directive (2014)
  - Market Abuse Regulation (2014)
  - Taxonomy Regulation (2020)
  - *AIFMD/MiFID II proposed amendments**
- **Environment:**
  - *Proposed Green Bond Standard**
  - Carbon impact benchmark regulations
- **Human rights:**
  - *Proposed legislation for mandatory corporate human rights due diligence**
  - *Proposed legislation on directors' duties and sustainable corporate governance**

- **Sustainable finance:** Sustainable Finance Action Plan (2018) and EU Green Deal Investment Plan (2020)

- **Sustainable business/markets:**
  - ESMA Guidelines and Technical Standards (as updated)
- **Environment:**
  - Guidance on EU Conflict Minerals Regulation (2017) [corresponding legislation to come into force 2021]*
  - Guidelines on non-financial (climate-related) reporting (2019)
  - European Climate Pact

Hard Law
***Proposed Law**
Soft Law (Guidance/voluntary standards)
Expression of strategy

Overview of key rules, regulations and initiatives: UK

UK

- **Corporate governance:**
  - Companies Act 2006
  - Companies (Misc. Reporting) Regs 2018
  - FRS 102: (UK/Ire Financial Reporting Standard) (updated 2019)
- **Environment:**
  - FCA: Mandatory enhanced climate-related disclosures by listed issuers
  - *UK government announcement: Proposal for mandatory climate change disclosures across all industries by 2025**
  - *DEFRA: Forest risk commodities – Proposed mandatory due diligence**
- **Human rights / diversity:**
  - Modern Slavery Act 2015 (*Proposed enhanced obligations**)
  - Modern Slavery Act 2015 (Transparency in Supply Chains) Regs 2015
  - Equality Act 2010 (Gender Pay Gap Information) Regs 2017
  - Equality Act 2010 (Specific Duties and Public Authorities) Regs 2017
  - Criminal Finances Act 2017, s13

- **Corporate governance:**
  - DTI Ministerial Statement on Duties of Company Directors (2007)
  - UK Corporate Governance Code (2018)
  - GC100 Guidance on Directors' Duties (2018)
  - BEIS Q&A re Companies (Miscellaneous Reporting) Regs 2018
  - UN PRI memo on ESG risks in s172 CA 2006 (2019)
  - FRC UK Stewardship Code (2020)
  - FRC statement on non-financial reporting frameworks (2020)
- **Sustainable business/markets:**
  - Investment Association Principles of Remuneration (2019)
  - FCA Disclosure Guidance and Transparency Rules 2020
  - Supply chains: Home Office guidance on transparency (2020)

- **Environment:** UK Government Green Finance Strategy (2019)
- **Human rights / diversity:**
  - HM Treasury: Women in Finance Charter (2016)
  - Parker Review on Ethnic Diversity of UK Boards (2020)

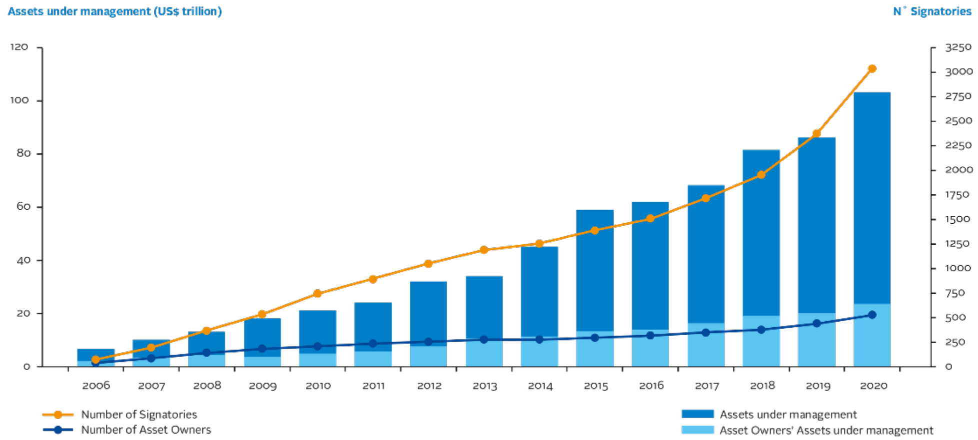
Hard Law
***Proposed Law**
Soft Law (Guidance/voluntary standards)
Expression of strategy

GIBSON DUNN

Sustainability as an asset class

Increasing Investor Demand

- In addition to heightened regulatory attention, sponsors are hearing louder messages from institutional investors on the importance of ESG considerations
- UN-backed Principles for Responsible Investment (PRI) was launched in 2006 with 100 signatories. By 2020, the number of signatories had grown to over 3,000, representing over $***100 trillion*** in AUM



Source: UNPRI

- According to a 2018 global survey by FTSE Russell, more than half of global asset owners are currently implementing or evaluating ESG considerations in their investment strategy

ESG and Fund Terms

Does it make sense to talk about sustainability as an asset class?

"ESG funds" can take a variety of forms, including:

- *Impact funds*
- *Funds focused on sustainable asset classes*
- *Traditional funds that integrate ESG considerations*
- *Funds raised by sponsors that have made ESG commitments*

Incorporation of ESG metrics into fund terms can also vary widely:

- *Investment policies restricting specific categories of investments*
- *ESG-specific reporting / impact tracking*
- *Modification of investment processes and manager duties to integrate ESG considerations*
- *Economic terms designed to encourage alignment around ESG goals*

Sustainability as an Asset Class

- Growing focus on ESG committed funds over time, including in 2020, driven in part by ESG commitments by mega-fund sponsors
- Distribution across asset classes, with some variation (e.g., private credit)
- Solid reported financial returns with lower volatility than traditional strategies

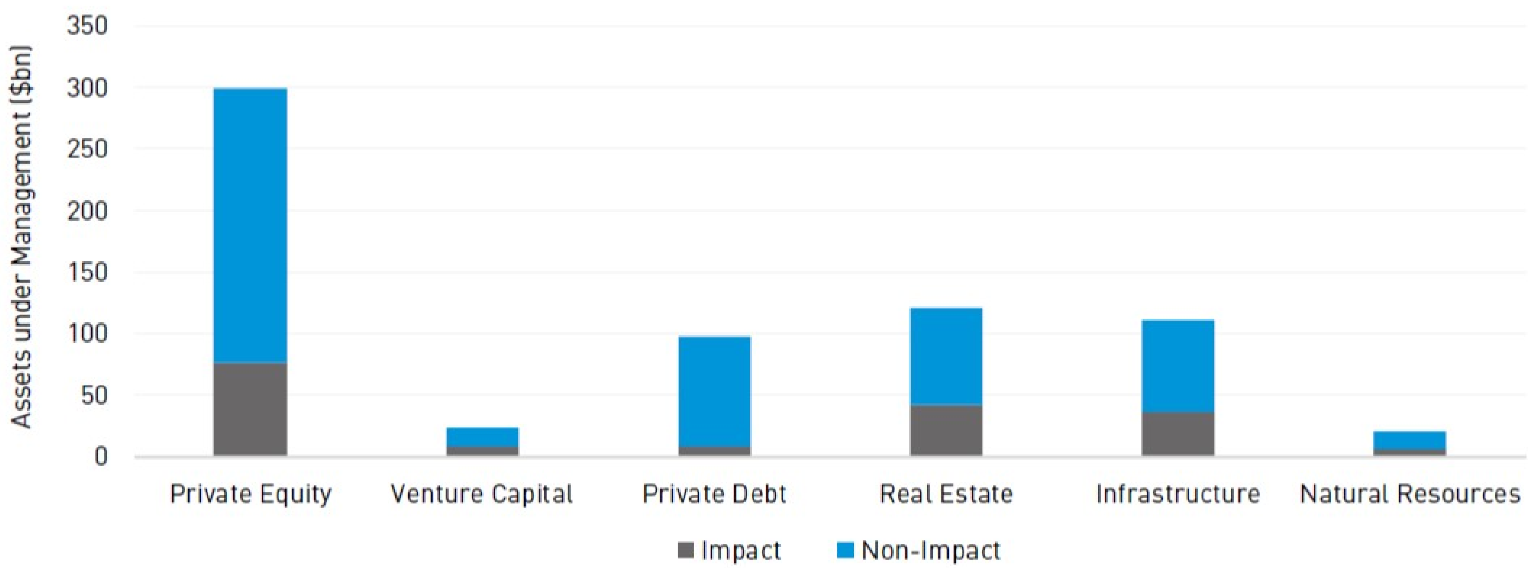
Fig. 4: Proportion of Total Private Capital Fundraising under ESG Commitment, 2011 - 2020 YTD

Source: Preqin Pro. Data as of September 2020

Sustainability as an Asset Class

- Growing focus on ESG committed funds over time, including in 2020, driven in part by ESG commitments by mega-fund sponsors
- Distribution across asset classes, with some variation (e.g., private credit)
- Solid reported financial returns with lower volatility than traditional strategies

Fig. 8: Assets Managed by ESG-Committed Funds with vs. without Impact Label

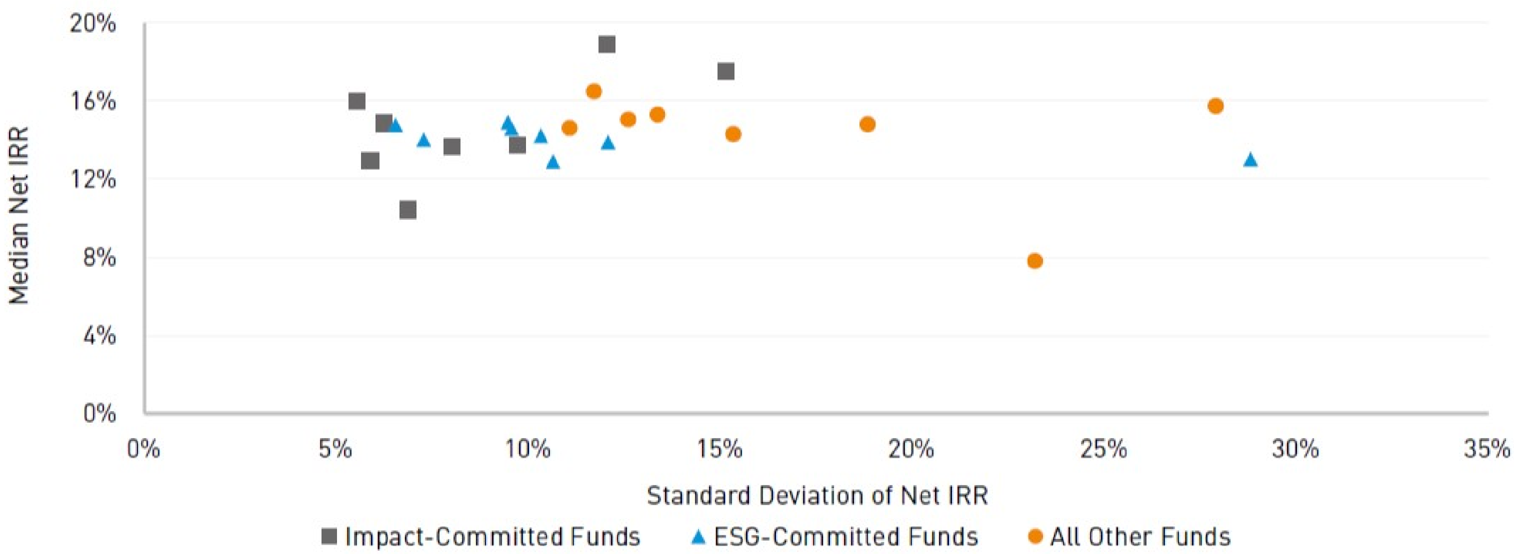


Source: Preqin Pro

Sustainability as an Asset Class

- Growing focus on ESG committed funds over time, including in 2020, driven in part by ESG commitments by mega-fund sponsors
- Distribution across asset classes, with some variation (e.g., private credit)
- Solid reported financial returns with lower volatility than traditional strategies

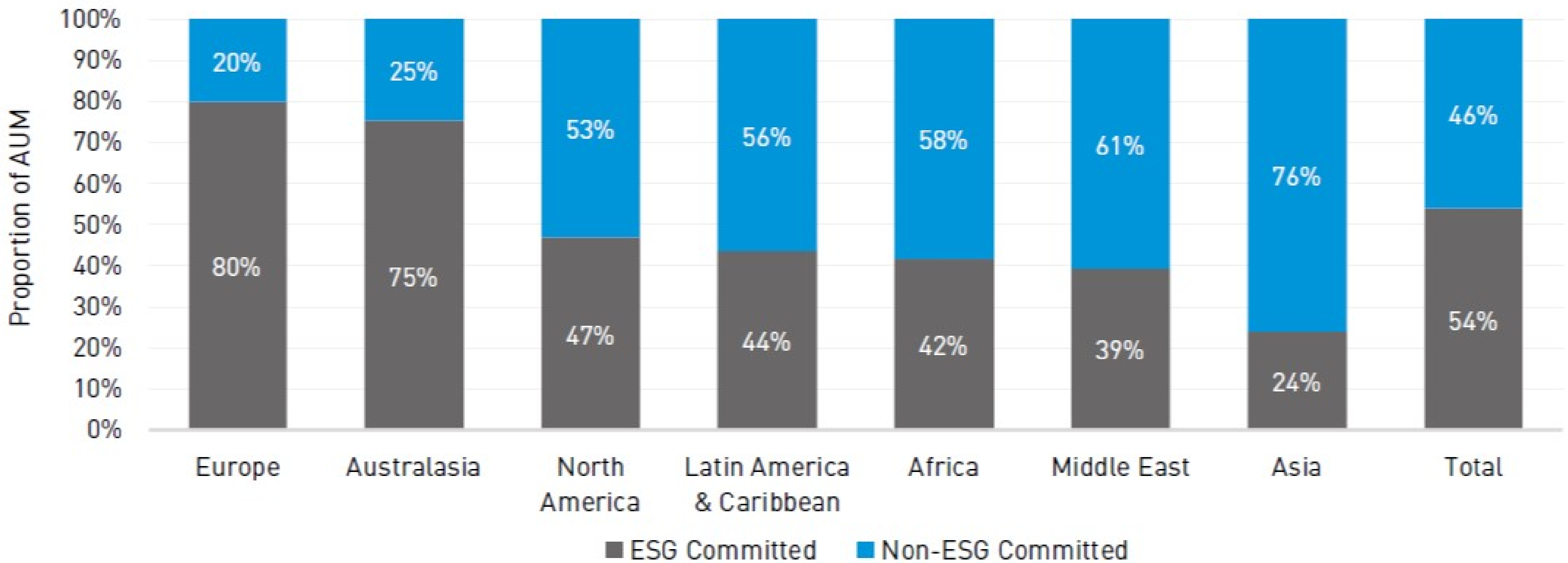
Fig. 14: Risk/Return of Sustainable Private Equity Funds (Vintages 2010-2017)*



Net IRRs are since inception. *Source: Preqin Pro. Most Up-to-Date Data*

Comparing Markets

Fig. 3: Proportion of Regional Private Capital Assets Managed under ESG Commitment



Source: Preqin Pro. Data as of September 2020

Comparing Markets

	Regulatory framework	ESG funds raised since 2014
EU/UK	- Existence of a regulatory framework means compulsory focus on ESG by fund managers - Further proposals to amend MiFID II, UCITS and AIFMD may increase regulatory focus	1,811 Europe-focused funds raising $1.24tn
US	- SEC has emphasized ESG within the framework of its traditional focus on compliance and disclosure - Several US state governments have moved to facilitate incorporation of ESG considerations into business entity governance - Many observers expect an increased focus on ESG under the Biden administration	1,409 North America-focused funds raising $1.37tn
Asia	- Generally, less focus on formal regulatory framework - However, increasing number of institutional investors (prominent sovereign wealth funds) and asset managers in the region are revamping investment activities to incorporate ESG	558 vehicles Asia-focused funds raising $259bn

GIBSON DUNN

A closer look: EU SFDR, taxonomy and UK proposals

EU sustainable investment legislative framework

- Sustainable Finance Disclosure Regulation (SFDR)
- Taxonomy Regulation
- Proposed MiFID II / AIFMD amendments

EU SFDR – scope and key dates

- Applies to "financial market participants" (including AIFMs and MiFID portfolio managers) and "financial advisers". Distinction in application of requirements between funds which are dark green, light green or neither
- No distinction between EU/non-EU fund managers in legislation. Non-EU fund managers potentially caught by <u>product level</u> disclosure requirements when marketing funds in EU under national private placement regimes (note: ESAs letter to EU Commission of 7 January 2021)
- Most provisions apply from 10 March 2021. Certain periodic reporting requirements for ESG focused products apply from 1 January 2022 and other requirements relating to principal adverse impacts come in on 30 December 2022

EU SFDR – what does it do?

Imposes harmonised sustainability-related disclosure to investors requirements on fund managers

Three broad categories of rules, applying (i) at level of the fund manager; (ii) to the fund manager with respect to any fund / segregated mandate, regardless of whether it has an ESG focus; and (iii) to the fund manager with respect to funds/segregated mandates with an ESG focus

Not just a case of making disclosures – strategic business decisions will be required

EU SFDR – what should in-scope fund managers be thinking about?

- Determine categorisation of products (dark green, light green or neither)
- Formulate policy on the integration of sustainability risks in the manager's investment decision-making process (to what extent does this integration already take place?)
- Decide whether going to implement due diligence policy with respect to the principal adverse impacts of its investment decisions on sustainability factors (at fund manager level). Mandatory for larger managers from 30 June 2021
- Update remuneration policy on how consistent with integration of sustainability risks
- For each product, decide whether to assess the likely impacts of sustainability risks on returns
- If implement sustainability DD policy, decide whether and how each financial product considers principal adverse impacts on sustainability factors
- Ensure disclosures included in investor documentation/on website, as required (including additional disclosures required where ESG focus). Put systems in place to gather requisite information to feed into disclosures – challenges posed in relation to obtaining requisite ESG data and delayed Level 2 RTS application

EU SFDR – key disclosure requirements (1)

Website disclosures	• Integration of sustainability risks • Consistency of remuneration policy with integration of sustainability risks • “Principal adverse impacts” (comply or explain) • Specific disclosures for products promoting (i) environmental or social characteristics; or (ii) sustainable objectives
Pre-contractual disclosures (*Article 23 disclosures / Ts&Cs for portfolio service*)	• Integration of sustainability risks (comply or explain) • “Principal adverse impacts” (comply or explain) • Specific disclosures for products promoting (i) environmental or social characteristics; or (ii) sustainable objectives

EU SFDR – key disclosure requirements (2)

Periodic disclosures (*annual report of AIF / periodic report under MiFID*)

- Include information on principal adverse impacts on sustainability factors, where these are considered
- Amongst other things, where financial product promotes environmental or social characteristics or has sustainable investment as its objective, will need to disclose certain information - for example, extent to which environmental or social characteristics are met, in relation to financial products that promote environmental or social characteristics

EU Taxonomy Regulation – scope and key dates

- Applies primarily to financial market participants making available financial products, such as AIFMs/MiFID portfolio managers

- Requirements relating to certain environmental objectives are due to apply from 1 January 2022 and others from 1 January 2023

EU Taxonomy Regulation – what does it do?

Sits alongside the SFDR and establishes an EU-wide classification system intended to provide issuers, financial institutions and investors with a common language to identify the extent to which economic activity can be considered to be environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable

Fund managers are required to disclose the degree of environmental sustainability of funds / segregated mandates which are promoted as environmentally sustainable and include disclaimers where they do not

Proposed MiFID II/AIFMD amendments

MiFID II proposed changes

- Financial advisers/portfolio managers required to undertake mandatory assessment of sustainability preferences of clients
- Changes to the MiFID II product governance regime

AIFMD proposed changes

- Incorporate consideration of sustainability risks in due diligence requirements
- Require AIFMs to retain the necessary resources and expertise for the effective integration of sustainability risks
- Provide that the identification of conflicts of interest must also include conflicts of interest that could arise as a result of the integration of sustainability risks

UK position (1)

TCFD-aligned disclosures fully mandatory across the economy by 2025

"Supporting the flow of accurate climate-related information along the investment chain is vital if we are to encourage better business, risk and investment decisions, and help the markets allocate capital to the right projects at the right price" (Nikhil Rathi, FCA CEO, 9 November 2020)

FCA to consult in H1 2021 on the new rules for UK fund managers

Rules to come into force on phased basis, starting from 2022 for fund managers with AUM in excess of £50bn

UK position (2)

Mr Rathi has also announced that FCA considering other measures to combat potential 'greenwashing' e.g. has developed a set of principles to help firms interpret existing rules requiring that disclosures are 'fair, clear and not misleading'

UK will also implement a green taxonomy – a common framework for determining which activities can be defined as environmentally sustainable. The UK taxonomy will take the scientific metrics in the EU taxonomy as its basis and a UK Green Technical Advisory Group will be established to review these metrics to ensure they are right for the UK market

For reporting periods starting from 1 January 2021, premium listed companies will be required to disclose how climate change affects their business, in line with the TCFD on "comply or explain" basis

FCA will consult this year on moving to mandatory disclosures for premium listed companies and extending obligation to other listed companies

GIBSON DUNN

Integrating ESG into investment processes and portfolio companies

Key drivers, challenges and opportunities? (1)

Designing and implementing an integrated ESG investment strategy – What is the landscape? What are the key challenges?

- For investors - most important factors when selecting an ESG manager:
  - ESG values/ mission statement
  - Track record
  - ESG reporting capability
- For managers - top barriers to ESG integration:
  - Data quality and availability
  - Costs of technology
  - Risk of greenwashing and related claims/ litigation
  - Advanced analytical skills
  - Skill sets and specialist expertise
- ESG integration as in investment approach is becoming mainstream / expected by investors

Key drivers, challenges and opportunities? (2)

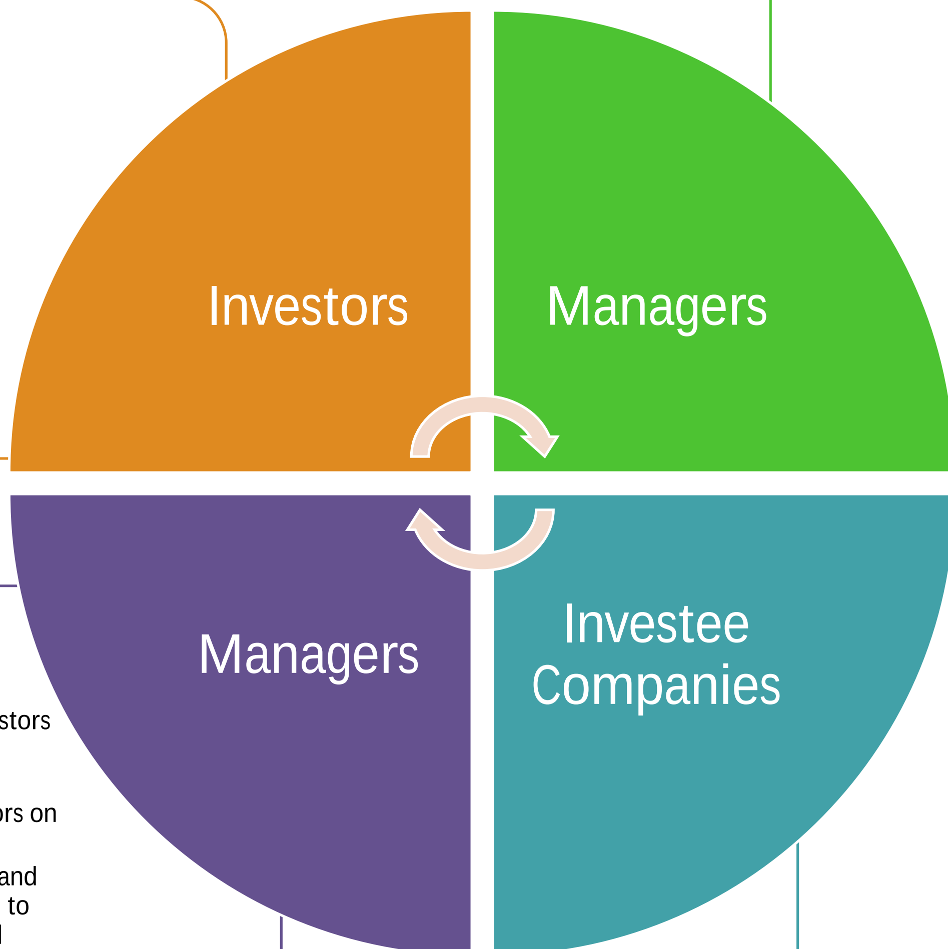
Designing and implementing an integrated ESG investment strategy – What is the landscape? What are the key challenges?

- Managers find differentiation at investor and investee company level a real challenge
  - Investor expectations:
    - Inconsistent/ multiple, burdensome reporting requirements
    - Developing and in some cases uninformed
    - Managers to push ESG agenda and undertake dialogue with investee companies
  - Investee companies:
    - Significant variation between sector, geography and individual companies in relation to: (i) ESG risks and impacts (ii) progress on their ESG journey/ maturity
- Where and how to start designing and writing an ESG investment policy?
  - Some useful guidance: (i) BVCA – "Responsible Investment Toolkit"; (ii) EVCA – Guide to ESG Due Diligence and training courses (ii) UN PRI guidance – "Policy, Structure & Process"

ESG Investment – Drivers, Design & Implementation

- Investment values and objectives
- Hard law requirements e.g. requirements on UK pension trustees
- Soft law requirements e.g. Stewardship Code
- Engagement or reporting obligations arising as a result of membership of voluntary forums, initiatives, coalitions or as signatories of relevant industry standards e.g. One Planet SWF Framework; UN PRI

- Investment values and objectives
- Establish governance to integrate ESG into form investment strategy
- Hard law requirements e.g. SFDR
- Soft law requirements e.g. voluntary reporting against SDGs
- Additional engagement or reporting obligations arising as a result of voluntary initiatives, coalitions or as signatories of relevant industry standards e.g. UN PRI
- Embed into all stages of life-cycle of an investment (pre-investment DD to exit) and engagement with investors



- Methodology and systems to facilitate reporting back to investors and other stakeholders on ESG performance
- Proactively engage with investors on key ESG issues
- Consider what other reporting and disclosures are appropriate e.g. to wider public, other internal and external stakeholders

- Corporate law duties on directors or managers in relation to stakeholder issues
- Mandatory reporting requirements e.g. on modern slavery; energy and carbon
- Voluntary reporting requirements e.g. Wates Principles on Corporate Governance for large private companies
- Reporting in line with managers' investment reporting requirement

Designing an ESG framework – Step 1

STEP 1 - ESG Strategy Underpin & Approach: What are the key questions to consider?

- Core - What are our core values and principles as a firm?
- Investment Fundamentals - What are our investment objectives and investment beliefs?
- Prioritisation - What are our investment priorities?
- Value Add - Is there an area where we can take a lead role?
- Tailored & Holistic - How are we differentiating between asset classes, issues, geographies, whilst ensuring a holistic and consistent policy overall?
- Which specific ESG investment approaches and for which asset classes?:
  - ESG or Sustainability integration
  - Postive screening
  - Negative screening including bespoke screens (e.g. with specific definitions, de minimis levels)
  - Thematic investing
  - Turnaround
  - Shareholder engagement
  - Impact investing

Voluntary options for designing, reporting & measuring (1)

KEY STANDARDS, PRINCIPLES & FRAMEWORKS	
UN PRI (UN Principles for Responsible Investment)	*6 principles covering ESG investment integration, stewardship, disclosure and reporting*
TCFD (Taskforce on Climate-related Financial Disclosures)	***Framework** providing 11 recommended disclosures of climate-related information*
SASB (Sustainability Accounting Standards Board) (*)	*77 industry standards to report on non-financial/sustainability information that have material impact on performance; 11 key sectors*
GRI (Global Reporting Initiative) Standards (*)	*Modular, inter-related sustainability reporting standards showing impact and management of economic, environmental or social factors*
CDP (Carbon Disclosure Project) Reporting (*)	***Framework** for reporting against questionnaires on climate change, forests and water security. Identifies connection to other frameworks.*
CDSB (Climate Disclosure Standards Board) (*)	***Framework** for reporting environmental and climate change information. Aligned with other global standards*
UN Global Compact	*10 principles covering human rights, labour, anti-corruption and environment for companies to integrate in strategy*
UN SDGs (UN Sustainable Development Goals)	*17 goals adopted by UN member states focused on ending poverty, tackling climate change and supporting economic growth*
IIRC (International Integrated Reporting Council) Framework (*)	***Framework** for integrated reporting which lays out how an organisation creates value for itself and for others*
WEF SCMs (World Economic Forum's International Business Council Stakeholder Capitalism Metrics)	***NEW** standards providing 21 core metrics and 37 expanded metrics based on 4 principles of governance, people, planet and prosperity and draws on existing standards/ frameworks*

Voluntary options for designing, reporting & measuring (2)

OTHER STANDARDS & INDUSTRY RELEVANT PRINCIPLES & FRAMEWORKS	
Asset Management Taskforce 'Investing with Purpose' Report	***Guidance*** *comprising 20 recommendations to promote stewardship behaviours and guidance across different asset classes including RE/ infrastructure and private markets*
Emerging Markets Private Equity Association Guidance	***Guidance*** *for fund managers on integrating ESG into the emerging markets investment process*
BVCA ESG Disclosure Framework & Guide to Responsible Investment Toolkit	*Framework for fund managers to provide rationale for ESG due diligence and facilitate dialogue between firms and their investors; requires disclosures during fund raising and fund life*
Invest Europe GP Due Diligence Guidance and Questionnaire	***Best practice due diligence guide*** *to identifying and addressing material ESG risks and opportunities, prior to investment and during the ownership period. It also includes a comprehensive questionnaire covering a wide range of ESG issues*
International Finance Corporation Environmental and Social Performance Standards	***International benchmark*** *for identifying and managing environmental and social risk in private sector investment*
OECD Guidance on Responsible Business Conduct	***Guidance*** *for companies on key due diligence considerations, aimed at preventing and addressing adverse impacts related to human and labour rights, the environment, and corruption caused by portfolio companies*
Equator Principles	***Risk management framework*** *for financial institutions to determine, assess and manage environmental and social risk in project finance*
Poseidon Principles	***Framework*** *for integrating climate considerations into lending decisions, in the shipping industry, in order to promote international shipping's de-carbonisation*
Institutional Limited Partners Association (v3.0) 2019	*Principles for private equity aimed at enhancing engagement between LPs and GPs revised in 2019 to include guidance on non-financial disclosures and ESG integration*

Voluntary options for designing, reporting & measuring (3)

OTHER STANDARDS & INDUSTRY RELEVANT PRINCIPLES & FRAMEWORKS	
WDI (Workforce Disclosure Initiative)	***Framework*** *for improving transparency on work place issues and human rights. Aligned with other global standards*
European Investment Bank's Energy Lending Policy	***Principles*** *governing EIB's future engagement with, and lending into, the energy sector*
HCF (Human Capital Framework)	***NEW framework*** *to assist companies in measuring and accounting for their workforces and to transition to value talent as an asset and not an expense*
International Standards Organization (ISO)	*Various ESG related* ***standards*** *on specific issues or for specific sectors*
• ISO 14001	*Environemental Management*
• ISO 26000	*CSR Management*
• **ISO 19600 & ISO 37001**	*Compliance and anti-bribery*
• ISO 14007	***NEW*** *standard on determining environmental costs and benefits*
• ISO 14008	***NEW*** *standard to assess monetary value of an organisation's environmental aspects and impact*
• ISO 14097	***Under development*** *– standard on greenhouse gas management and related activities includin principles and requirements for assessing and reporting investments and financing activities related to climate change*
American Investment Council Guidelines for Responsible Investment	***Guidelines*** *for PE firms that apply prior to investing in companies and during their period of ownership on environmental, health, safety, labour, governance and social issues*
UN Principles on Responsible Investment	*See Slides 45 and 54 for details on UN PRI*
Alternative Investment Management Association (AIMA) Responsible Investment Policies for Hedge Fund Firms	*See Slide 54 for further details on AIMA Policies. Guidance on designing a responsible investment policy for hdge fund firms including in relation to governance and investment approach*

Designing an ESG framework – Step 2 (1)

STEP 2 - ESG Investment Procedures & Policies: Key options and questions to consider

- Are there any **mandatory** standards or frameworks that do or may apply? e.g. *TCFD*
- What are the expectations of our current and targeted investors? Do they apply particular voluntary standards or frameworks? Are they subject to mandatory requirements which impact their expectations of managers?
- Decide on which principles or frameworks strategy will be aligned to. Prevalent examples in the investment and asset management sector:
  - UN Sustainable Development Goals
  - UN Global Compact
  - ILPA (v 3.0)
  - Global Reporting Initiative
- Are there any issue specific, sector, geographic or asset specific principles or frameworks that should also be considered/ adopted? Examples:
  - Lending (e.g. project finance - *Equator Principles; or* shipping – *Poseidon Principles*)
  - People (e.g. *Workforce Disclosure Initiative*; *Human Capital Framework*)
  - ISOs (e.g. Quality or Environmental Management – *ISO 9001 & 14001*; Social Responsibility – *ISO 26000*)

Designing an ESG framework – Step 2 (2)

STEP 2 - ESG Investment Procedures & Policies: Key options and questions to consider (contin.)

- What systems are in place to identify key ***ESG risks*** relevant to any investment and ***ESG opportunities*** which support the specific investment approach(es) that the firm has adopted?
- Investors increasingly expect all managers to have in place, at a minimum, a process to identify key ESG risks (ESG integration)
- What system(s) will be used?
  - Design own due diligence questionnaire templates and/or supplement or use industry DDQs?
  - Examples: *Invest Europe ESG Due Diligence Questionnaire; OECD Guidelines on Responsible Business Conduct*
  - Supplement with 3rd party ESG scores or ratings? Examples: See next slide
- How are firm policies being implemented at portfolio company level?
- Are the firm's objectives and investment beliefs clearly articulated and understood both internally and externally?
  - Tips: (i) simplicity and ease of understanding; (ii) staged approach across asset classes **is** acceptable and recommended

Designing an ESG framework – Step 3

STEP 3 – How will ESG factors and performance be assessed, measured and monitored?

- Statements on strategy and purpose without this underlying supporting data will no longer satisfy investors
- Setting key performance indicators (KPI) and measuring performance against these is key and will feed into information that is reported to investors
- Where possible, simple and verifiable/ capable of quantitative assessment or audit
- Governance around KPI setting, implementation at portfolio company level and monitoring
- Pre-define materiality thresholds
- Use of bespoke software tools and/or AI to assist with collation of data and analysing complex and varied data sets
- What scoring systems will be used over the hold period?
  - Third party scoring/ ratings or develop a proprietary scoring framework?
  - If using 3rd party scores, use with care - note differences between methodology and approach which can (materially) impact outcomes or scores

Optional scoring and classifications

LEADING & EMERGING METRICS, CLASSIFICATIONS & RATINGS	
Apex Private Markets ESG Ratings (*NEW* *private market portal, providing ratings of private companies against 300 data points benchmarking global standards e.g. SASB)*	**Sustainalytics** *(Public database, rating companies out of 100 based on preparedness, disclosure and performance. Sector/industry-based comparison.)*
RepRisk Ratings and Database *(RepRisk's Index (RRI) gives a measure (0 to 100) of a company's reputational risk exposure to ESG issues. RepRisk Rating (RRR) gives a letter rating (AAA to D) RepRisk's ESG Risk Platform is an ESG due diligence database)*	**Future-Fit Business Benchmark** *(Business tool designed to guide progress towards a sustainable future and promote the SDGs. It offers a holistic framing of companies' social and environmental impact)*
B Labs' 'B' Corporation Certification *(Certification provided to organisations which achieve a specified score of at least 80 out of 200 against a set of social and environmental standards)*	**Inrate's ESG Impact Ratings** *(Rates companies against a survey of more than 180 ESG thematic indicators, a 12-step results scale ranging from A+ to D-)*
GIIRS Ratings *(Global Impact Investing Rating System rates companies' and funds' ESG impact)*	**Ecovadis Ratings** *(Offers sustainability and CSR)*
GRESB *(formerly **Global Real Estate Sustainability Benchmark**) provides ESG benchmark and frameworks to assess performance of property companies, REITs, real estate funds, infrastructure funds and assets*	**Vigeo Eiris' Ratings, Research and Opinions** *(Evaluates integration of ESG factors in strategies, operations and management. Uses framework of 38 sustainability criteria, and assesses through 330 indicators applied to principles of action)*

Designing an ESG framework - Step 4

STEP 4 – Integrating the ESG Investment Approach: What does this mean in practice? Key areas to focus on and develop

- Ensure that the relevant approach and specific policies exist and apply across the whole life-cycle of investment i.e. during or at the following stages:
  - pre-investment due diligence (including process for setting materiality)
  - hold period [NB: particularly important with ESG turnaround strategies; onus on investees to report]
  - exit phase
- What governance systems are in place? Who is responsible? Tricky issues?
  - Where does ESG sit in the firm? How are ESG considerations factored into the investment process?
  - Is it left to the Managers? Skills gaps? Do "specialists" advise or consult with the Managers? How are tricky ESG issues resolved? How are grey issues resolved?
- What policies and training is in place to support the strategy, including identification of relevant ESG risks and opportunities?
- How are key developments (legal and regulatory developments) identified and complied with?

Designing an ESG framework - Step 5

STEP 5 – Designing and Engagement & Compliance Policy

- Investors
  - Policy and approach in relation to engagement with investors?
  - Diligence on individual institutional investor constraints and requirements
  - Preferences in relation to engagement – frequency; format; who to meet
  - Consider Investor days to enhance/ elaborate on performance and sustainability issues?
- Investee companies
  - How encourage investee companies to improve ESG risk management and develop more sustainable business practices
    - Educating investee companies on firm level ESG investment policies
    - Management remuneration policies – ESG linked incentivisation?
  - Ongoing monitoring of investee companies to ensure compliance with all mandatory and firm mandated ESG requirements
  - What information are investee companies required to report on to managers? In what form? Ideally in a form which can facilitate and smooth onward reporting to investors

Designing an ESG framework – Step 6 (1)

STEP 6 – Reporting, Disclosures & Collaboration: Other elements to consider

- Private reporting/ disclosures:
  - Process and channels for reporting and updating investors
  - Consider specific commitments in PPM and side letters
  - Reporting should cover: (i) **quantitative** (e.g. Specific data against KPIs); and (iii) **qualitative** (e.g. case studies/ examples of application of ESG investment strategy and outcomes) matters
- Public reporting/ disclosures and engagement:
  - Mandatory disclosure requirements: See section 3 above and slides 42 - 44 for examples
  - Voluntary disclosure frameworks, certifications and memberships: Examples
    - Global Reporting Initiative – those who adopt the GRI can choose to publish their reports
    - Consider becoming a signatory to the UN PRI (See slide 45)
  - ESG is a team game – Consider participating in specific ESG forums and industry groups; influence development of policy

Designing an ESG framework – Step 6 (2)

STEP 6 – Reporting, Disclosures & Collaboration: Other elements to consider (contin.)

Mandatory disclosure requirements – Assessment and implementation of additional reporting obligations at investee company level. Do any of these apply?

- <u>Section 172 Statement (The Companies (Misc. Reporting) Regulations 2018)</u>
  - Application: To companies which satisfy two of three of the following criteria: (i) turnover of more than £36m; (ii) balance sheet of more than £18m; (ii) more than 250 employees (regardless of locality)
  - Scope: Annual Strategic Report for must include a statement which describes how the directors have had regard to the matters set out in section 172(1)(a) to (f) when performing their duty under section 172
- <u>Wates Corporate Governance Principles for Large Private Companies 2018</u>
  - Application: Larger private companies i.e. (i) more than 2,000 employees; and/or (ii) a turnover of more than £200 million, and a balance sheet of more than £2 billion
  - Scope: Annual Directors' Report to include statement on corporate governance. Companies can use the Wates Principles to aid disclosure. Wates' requires boards to have regard to 6 principles including **Prin 1**: Purpose and leadership – "An effective board ***develops*** and promotes ***the purpose of a company***..." . **Prin 4**: Director responsibilities – These include developing systems to ensure access to information to make informed decisions on environment, employee engagement, stakeholder engagement. **Prin 6**: Opportunities and risk – " ***promote long-term sustainable success*** of the company ..."

Designing an ESG framework – Step 6 (3)

STEP 6 – Reporting, Disclosures & Collaboration: Other elements to consider (contin.)

- <u>Statement on employee engagement (The Companies (Misc. Reporting) Regulations 2018)</u>
  - Application: UK companies incorporated under Companies Act 2006 where the monthly average number of UK-based employees exceeds 250
  - Scope: Annual Directors' Report to include statement on how have engaged with employees and have had regard to employee interests
- <u>Statement on business relationships (The Companies (Misc. Reporting) Regulations 2018)</u>
  - Application: Same criteria as applies to s172 reports
  - Scope: Annual Directors' Report to include statement summarising how directors have had regard to need to foster business relationships with suppliers, customers and others, and the effect of that regard, including on the principal decisions taken by the company during the financial year
- <u>Energy and carbon reporting Streamlined Energy and Carbon Reporting (Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018)</u>
  - Application: Same criteria as applies to s172 reports (companies and LLPs)
  - Scope: Annual Directors' Report to include disclosure on UK energy use and carbon emissions

Designing an ESG framework – Step 6 (4)

STEP 6 – Reporting, Disclosures & Collaboration: Other elements to consider (contin.)

- Modern Slavery Act Statement (Modern Slavery Act 2015)
  - Application: Businesses with a global turnover of £36 million or more + operates in the UK
  - Scope: Standalone statement of the steps being taken to combat modern slavery. Proposed changes enhancements announced in Sept 2020.
- Gender Pay Gap Reporting (The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017)
  - Application: Companies with 250 or more employees based in England, Scotland or Wales
  - Scope: A report must be produced on various measures of the gender pay gap

UN PRI – A deeper dive

What is the UN Principles of Responsible Investment (PRI)?

- The Principles for Responsible Investment were first launched in 2006 by an international group of institutional investors reflecting the increasing relevance of ESG issues to investment practices

What are its key elements?

- Six Principles of Responsible Investment covering: (i) ESG integration in investment policies; (ii) active ownership; (iii) disclosures by entities invested in; (iv) promotion of principles; (v) collaboration to enhance effectiveness of implementation; (vi) reporting of performance

Who has signed up?

- Over 3,000 signatories in over 60 countries. 2018 Report – 1,449 signatories responded; 49% held private equity assets. Almost equal split between Europe and N America

Some key elements

- Guidance across specific asset classes including private equity, real estate and infrastructure
- Guidance on specific ESG issues including evaluation, engagement and reporting on each. Includes questions aligned to TCFD and other climate related questions
- 5 point framework on how to invest aligned with SDG outcomes. EU Taxonomy alignment case studies.
- Specific resources for asset owners including on manager selection process, appointment and monitoring

Asset class differentiation and approach – Debt (1)

- <u>Background</u>
  - Similar to equity investment considerations: debt investments will need to comply with internal ESG policies/adopted frameworks (e.g. sector specific frameworks such as Poseidon and Equator Principles) including positive and negative screening
  - ESG evaluation has traditionally been less prevalent in private debt markets and has lagged behind public debt markets on measuring and reporting but now the subject of increased focus
  - Analysis will help quantify risks that cannot be measured by traditional financial metrics contributing to downside protection on portfolio returns
- <u>Private Debt</u>
  - No public disclosures so investors need to take a pro-active approach to ESG due diligence
  - UN PRI has issued industry guidance for responsible investment in private debt
  - Focus on "bottom-up" approach: more time to make an investment decision, greater direct access to companies' owners/management and underlying data, allowing closer and more detailed bilateral dialogue on ESG issues
  - Private debt less liquid, and tenures often longer than public debt so due diligence and research will be key to meeting long term ESG objectives

Asset class differentiation and approach – debt (2)

- <u>On-going compliance</u>
  - **For debt investors, who lack shareholder rights, covenants are the “G” in ESG. Key focus on:**
    - Purpose clauses
    - On-going ESG reporting obligations/accuracy of information representations
    - Positive and negative behaviour undertakings
  - <u>Covenants</u>
  - **Will ESG provide investors with the opportunity to tighten covenant packages?**
    - <u>Private Debt:</u> Potentially greater opportunity to negotiate deal specific ESG terms
    - Borrowers/Fund Managers will typically now be making ESG commitments to their shareholders/LP investors. Should lenders get the benefit of these commitments?
    - Loan Market Association (LMA)/Loan Syndications and Trading Association (LSTA) role in developing market ESG terms vs individual investors’ role in negotiating these provisions
    - Sector specific terms starting to develop in certain markets (e.g. Green/Sustainability Linked Loans)
  - <u>Policy on Remedies</u>
    - Enforcement (or threat of enforcement)? Trade out?

Asset class differentiation and approach – real estate (1)

- Why may a differentiated approach be required
  - Long term in nature (long term investment horizon) and illiquid
  - ESG manifest at a local level (e.g. weather, water stress)
  - RE projects are inherently less flexible or adaptable
- What are the key relevant ESG factors which come into play?
  - Factors relevant across each of E, S and G however some more relevant to RE (including construction and development):
    - Various "S" elements including: (i) Health and safety; (ii) labour standards and working conditions; (iii) community development/ relationships; (iv) occupier amenities; (v) controversial tenants
    - Some "G" elements of pertinence: (i) anti-bribery and corruption; and (ii) ESG clauses in existing leases
- Due diligence – issues and approach
  - Identification of legacy issues and areas/ opportunities for improvements
  - Consider relevant investor targets which may be relevant e.g. energy consumption
  - Data sources – (i) raw data provided by investee company/owner or developer; (ii) third party reports (e.g. consider a GSREB RE assessment); (iii) independent sources (e.g. flood records)

Asset class differentiation and approach – real estate (2)

- Due diligence – valuation assessment
  - Impact of ESG factors on valuation for example:
    - Discount if need to upgrade equipment or improve energy performance
    - Discount if there is future income uncertainty e.g. buildings which do not meet minimum energy performance
    - Discount if there is obsolescence risk e.g. low quality buildings with shorter life
- Strategy and opportunities across the asset class
  - KPI setting: New developments or major renovation work potentially can aim for higher ESG standards/ KPIs compared to older operational assets where limited work/ improvement can be undertaken
  - Influence and impact: New builds offer greater opportunity to introduce sustainable features at design stage
- Investment and engagement approach during hold period
  - Typical targets/ KPIs include: (i) green house gas emissions; (ii) waste management
  - Engagement approach can include communities and tenants e.g.
    - Tenant engagement and management e.g. (i) educate on sustainable or ESG issues and how to improve outcomes; (ii) consider introducing ESG clauses in lease agreement

GIBSON DUNN

Engaging with investors & investor reporting

Investor engagement – relevant backdrop

- **Investor expectations - general**
  - ESG integration is favoured investment approach i.e. consideration of ESG factors (risks and opportunities) across life cycle of an investment
  - Expectation that managers have sole or at least partial responsibility for bringing about change in investee companies [NB: CoreData Study, Nov – Dec 2020]
- **Top 3 drivers behind investor sentiment and objectives in this area**
  - Alignment with corporate values and principles (58%)
  - Regulatory and industry pressure (49%)
  - Potential for higher returns and lower risk (35%)
- **Top 5 ESG focus areas**
  - (1) Climate change; (2) healthcare; (3) food and agriculture; (4) education; (5) diversity
- **Core investment expectations**
  - No softening on expected rates of returns
  - Hold periods (notwithstanding longer time frame on many ESG issues) should not be longer

Investor engagement – relevant backdrop and key questions

- **What is impacting how investors approach ESG issues? What should managers be aware of?**
  - Managers should be informed as to the hard law and soft law which apply to or are being adopted by asset owners as these will impact both how managers engage with investors on ESG issues and what they expect of firms (disclosure and transparency)
  - Investors are also now utilising more “active” tools to drive engagement and change
  - Investors also have their own views on frameworks under which companies should consider reporting
- **Key questions for managers to consider and areas to investigate**
- What are the hard law obligations which impact their investors in relation to engagement?
- What soft law is impacting how their investors may wish to engage? What voluntary codes or frameworks have they signed up to?
- What are the key values of and constitutional constraints/ requirements on the investor?
- Are the investors members or parties to any initiatives, forums which impact their policy approach and/or collective engagement on specific issues?
- What are the hard law obligations which impact investors in relation to reporting?
- What are the trends and drivers impacting additional reporting?

Stewardship & engagement - key rules and codes impacting investors and managers

Key duty / source	Application		Scope
	Addressee	Asset class	
Occupational Pension Schemes (Investment) Regulations 2005 (as amended in 2018 / 19)	Pension Scheme Trustees	Non-exclusive	• Required to cover in pension scheme's statement of investment principles (**SIPs**) the extent to which social, environmental or ethical considerations are taken into account in making investments • More recent amendments also require the SIP to cover "financially material considerations" which include ESG considerations.
Pensions and Lifetime Savings Association (PLSA) - Stewardship and Voting Guidelines 2020	Pension scheme investors / service providers / companies	Listed shares	• Guidance for schemes in acting as good stewards of their assets, including how to exercise votes on key issues of concern during the AGM season • Defined set of investment beliefs to include ESG issues • Key issues including voting on climate change and individual accountability
National public policy	Asset owners (SWFs)	Shares (listed or unlisted), assets (including land, IP etc.)	• National legislation or constitutional requirements may prohibit certain investments or require positive action/ investments in certain areas
Institutional Limited Partners Association (v3.0) 2019	LPs/ GPs	Non-exclusive	• Principles for private equity aimed at enhancing engagement between LPs and GPs revised in 2019 to include guidance on non-financial disclosures and ESG integration
Private Equity Reporting Group	PE firms and larger UK portfolio companies	Shares (unlisted)	• Promotes and monitors compliance with the Sir David Walker Reporting Guidelines for Disclosure and Transparency in Private Equity • Obligations on firms in their reporting to LPs to follow established guidelines, such as those published by Invest Europe • Specific disclosure obligations on portfolio companies

Stewardship & engagement - key rules and codes impacting investors and managers

Key duty / source	Application		Scope
	Addressee	Asset class	
UN Principles on Responsible Investment (UN PRI)	Asset owners, Investment managers	Shares and debt (listed and unlisted), assets e.g. real estate, infrastructure	• Six principles for promoting stewardship, in recognition that "*Institutional Investors have a duty to act in the best long-term interests of [their] beneficiaries, that ESG issues can affect the performance of investment portfolios… and that applying these principles may better align investors with broader objectives of society."* • The principles (which signatory firms volunteer to adhere to) include commitments to (a) incorporate ESG into investment analysis and decision making, (b) become active owners, and incorporate ESG into ownership policies and practices and (c) file regular public reports on their progress • Signatories number 2,300 participating financial institutions, as of Jan 2020
Alternative Investment Management Association Policies (Jan 2020)	Hedge fund and private credit firms	Listed equity, bonds and commodities Loans	• Policy and Practice: ESG considerations at Alternative Investment Management Firms & Responsible Investment Policies for Hedge Fund Firms • Policy and practice guidelines issued to aid alternative investment firms to create responsible investment policies (including in relation to stewardship) and to differentiate themselves by embedding ESG into firm management
Stewardship Code 2020	Asset manager / asset owners / relevant service providers	Shares and debt (listed), assets e.g. real state, infrastructure	• Primarily focuses on listed equities, but also relevant for other asset classes e.g. fixed income, real estate and infrastructure (including those outside the UK) • *"Stewardship is the responsible allocation, management, and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society."* • 12 "apply or explain" principles aimed at asset managers / asset owners; 6 principles aimed at service providers • Principles cover: (i) engagement; and (ii) reporting (annual Stewardship Report)

Stewardship & engagement - key rules and codes impacting investors and managers

Key duty / source	Application		Scope
	Addressee	Asset class	
UK Asset Management Task Force / Investment Association: Investing with Purpose Report (Nov 2020)	Asset managers / Asset owners / relevant service providers / government	Shares and debt (listed and unlisted)	• 20 recommendations aimed at increasing the focus on stewardship in investment management. • Recommendations include calls for (a) increased stewardship across a broader range of asset classes (e.g. fixed income and in private markets), (b) increased activism on the part of shareholders (through shareholder resolutions) and bondholders, (c) more clarity from investors regarding their stewardship expectations and (d) action to support improved disclosure by investee companies. • *"By acting as responsible stewards of capital, insisting that companies build wealth whilst protecting the public interest, whether by reducing carbon emissions, acting as decent employers, or operating with integrity towards consumers and suppliers, institutional investors can serve their own clients and beneficiaries more fully"*
International Corporate Governance Network (ICGN) Materials	Investors / investee companies / service providers	Primarily focused on shares (listed and unlisted), but non-exclusive	The ICGN has published a range of materials, including: a. the Global Stewardship Principles (7 principles aimed at investors); b. the Global Governance Principles (8 principles aimed at investee companies); c. Guidance on Institutional Investor Responsibilities; and d. the Statement of Shared Governance Responsibilities (governance priorities for investee companies and investors during the pandemic, including long-term perspective, climate change, comprehensive monitoring and sustainability)
Institutional Investors Group on Climate Change (IIGCC)	Asset managers/ Asset owners	Varies across different programmes	The IIGCC has set up different programmes including: a. Investor Practices Programme – to assist investors to collaborate, deepen understanding of investor practices on climate change – aligned to TCFDs b. Paris Aligned Investment Initiative – how investors can align their portfolios to the goals of the Paris Agreement; common definitions and key concepts. Currently consulting on Net Zero Investment Framework

Engagement –'hard law' and 'soft law - Examples

- Stewardship Code: Updated version requires investors to take account of material ESG factors including climate change when fulfilling their stewardship responsibilities.
  - FRC Review of Early Reporting Sept 2020 - Key Takeaways/ Tips for Best in Class Approach
    - Clear statement of investment beliefs, 3-5 year strategy and purpose. How is this reflected in stewardship and how are engagement priorities set and implemented?
    - Clarity as to how investor/ beneficiary considerations are solicited and addressed; what information is being provided to clients with breakdown against client and asset type
- Asset Managers: PLSA (Pensions and Lifetime Savings Association), ILPA (Institutional Limited Partners Association), AIMA (Alternative Investment Managers Association) – each of these bodies have issued industry guidance recommending integration of ESG issues into due diligence, investment *and stewardship*
- UN PRI: Active Ownership 2.0: Proposed aspirational standards for enhanced stewardship which explicitly prioritises: (i) seeking outcomes over processes and activity; (ii) common goals to address systemic issues requiring collection action and collaboration to achieve thee. The detail is currently under development/ enhancement.

Reporting: ‘hard law’ and ‘soft law’ - Examples

- Pension Trustees/Schemes
  - New rules requiring Statements of Investment Principles (SIPs) to include ESG considerations which trustees consider financially material
- UN PRI LP Responsible Investment Due Diligence Questionnaire
  - Questionnaire for LPs to establish their expectations and processes around responsible investment, and to encourage dialogue between limited and general partners on the subject
- UN PRI
- Compulsory for signatories to report on their responsible investment activities annually and be assessed upon it. The platform offers a forum to learn from peers. More PE managers signing
- Note timelines – (i) reporting between January to March by signatories; (ii) reports assessed between April – June; (iii) assessment published in July
- Recent changes to framework – e.g. more streamlined, additional mandatory climate questions
- Stewardship Code 2020
  - Annual Stewardship Report
  - First reports due (for activities in calendar year 2020) by 30 April 2021 (for asset owners)

Market trends & developments (1)

- **Asset Management Taskforce – Investing with Purpose (Nov 2020):**
  - Report sets out recommendations for asset management industry on 3 pillars including strengthening stewardship behaviours across full range of investments
- **UN PRI**
  - Three new guidelines on engagement by asset owners with managers covering manager (i) selection; (ii) appointment; and (iii) monitoring (Oct 2020)
  - Active Ownership 2.0 - higher standard of stewardship under development (2019)
- **New reporting frameworks and standards:**
  - The Five key global standard setters (CDP, CDSB, GRI, IIRC and SASB) facilitated by Impact Management Project - Shared vision of what needed for progress towards comprehensive corporate reporting and statement of intent to work together to achieve it (Sept 2020)

    - Prototype standard for reporting on how sustainability matters enhance or erode enterprise value (Dec 2020)
  - IFRS Foundation: Consulting on the role of the Foundation in contributing to global sustainability standards including establishing a new Sustainability Standards Board (Sept 2020)
  - World Economic Forum International Business Council & the Big Four – Stakeholder Capitalism Metrics comprising common standards/ metrics which is based and built upon GRI, CDSB, TCFD. 21 Core Metrics and 37 Expanded Metrics. Launch in January 2021.

Market trends & developments (2)

- **UK Green Finance Strategy 2019** Other sustainability goals: UK Environmental Bill
- **Net Zero by 2050** – actions being taken by both UK Government and companies
- **Conference of the Parties (COP) 26 - Glasgow (Nov 2021)**
  - UK as co-host utilizing platform to lead in this area and in run up made key announcements; more expected
- **Green finance** - UK Launch of first UK "green gilt" or green sovereign bond in 2021
- **Green Industrial Revolution (November 2020)**
  - UK Government & HM Treasury Financial Services Statement setting out 10 Point Plan
  - Positioning UK as a global leader in green technologies and at the forefront of "green finance"
  - £12 billion investment – creation of 250,000 green jobs
- **Enhanced adoption of the Task Force on Climate-Related Financial Disclosures (TCFDs)**
  - Will move towards mandatory disclosures in the UK by 2025 by the latest, across the whole economy and possibly earlier (2023) for some parts of industry.
  - Financial Reporting Council has recently said public interest entities (PIEs) should report against TCFD and use SASB

GIBSON DUNN

Our ESG practice

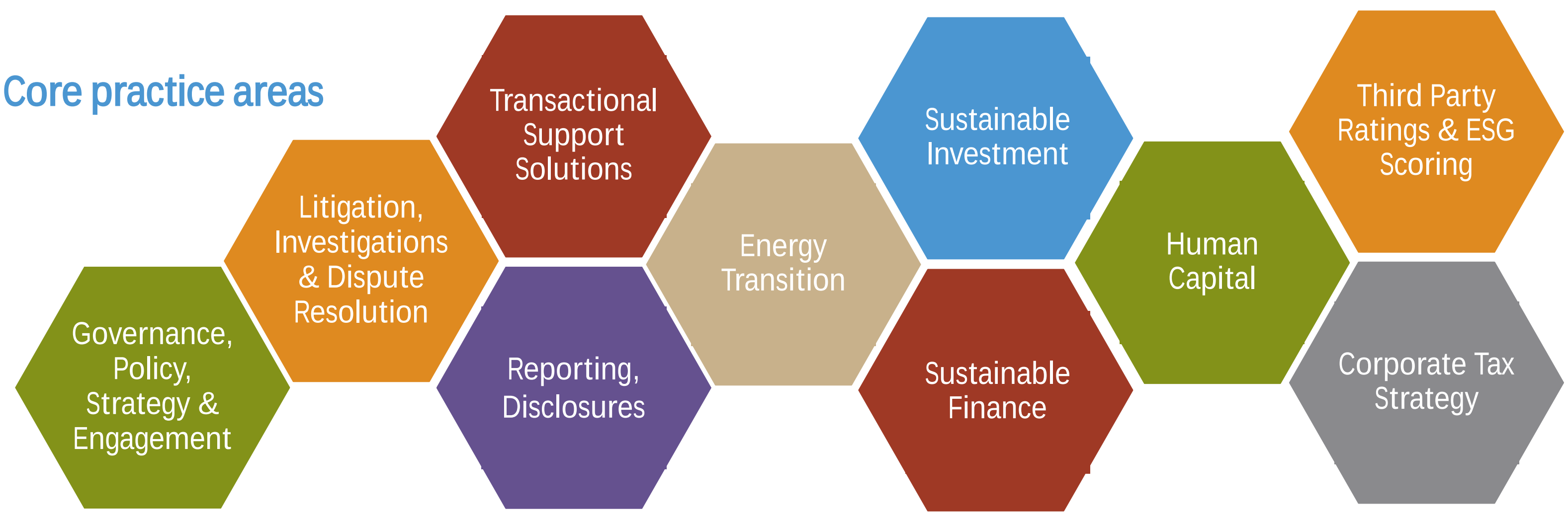
Environmental, Social & Governance (ESG)

Gibson Dunn's ESG practice provides comprehensive and sophisticated advice to clients on their corporate responsibility and environmental, social and governance (ESG) risks and opportunities.

Clients are facing increasing calls from stakeholders and regulators, as well as within their own organizations, to proactively address ESG across their business footprint. In practical terms, this means grappling with a complex web of developments across jurisdictions, as well as growing industry guidance and regulatory scrutiny, and management of legal, reputational and litigation risk; all while addressing public disclosure requirements and calls for greater transparency.

Our ESG practice is a multidisciplinary, international team leveraging lawyers from across the firm practicing in the areas of litigation, corporate governance, corporate transactions, finance, labor and employment, compensation, information security, tax and business and human rights. We engage in constant collaboration and leadership across these disciplines in recognition of the universal nature of these issues for our clients. We offer seamless and integrated advice – collaborating with our ESG colleagues across the global firm.

Core practice areas



GIBSON DUNN

Practical guidance & key takeaways

Practical guidance for managers

1

Define your purpose

- Devote regular board and management time to clearly articulate purpose of the organisation
- Define: your values, mission and vision
- Be mindful of fatuous and meaningless statements

2

Set your ESG strategy … and embed it

- Gather input from investors and internal stakeholders including investment professionals, legal & compliance, investor relations
- Set clear and measurable targets
- Keep it simple – do not burden the investment process
- Embed ESG considerations when setting or revising investment strategy across the entire life cycle from pre-investment diligence to exit strategy and approach

3

Be accountable

- Consider where the different elements of your ESG strategy lie – define roles and allocate responsibility
- Ensure a holistic and consistent approach at a firm level to investment stage and investee company level
- Identify skills gaps at board and management level. Utilise external guidance/ consultants as necessary
- On an asset class/ geographic/ issue basis, decide which frameworks and/or standards to adopt – be mindful of current and upcoming regulatory developments
- Decide what metrics, scoring or certifications to adopt or secure (if any) and proposed use
- Important thing is to have an intention and strategy and to improve and enhance progressively

Practical guidance for managers

4

Engage with investors

- Pro-actively engage with investors and identify key ESG investment priorities and objectives
- Tailor events for ESG investors e.g. Sustainability Days
- Be mindful of the reporting obligations/ investment guidelines that impact investors

5

Policies and raising awareness at a firm and investee company level

- Review and update existing company policies and guidance whilst ensuring it is functional
- Educate board and investment professionals on ESG responsibilities, duties and investor and other stakeholder expectations
- Educate and train accountable persons on developing legislation and trends

6

Develop a communication strategy

- Celebrate your ESG strategy and communicate it to stakeholders. Consider appointing ESG ambassadors
- Be clear where you are on your ESG journey – manage expectations internally and externally – ESG integration is a learning and iterative process

7

Taking it to the next level

- Consider becoming a signatory to relevant industry groups. Participate in industry forums and identify other opportunities for partnership … ESG is a team game!

8

Start …

- Helpful guidance is available from industry bodies such as the BVCA and UN PRI
- Start with identifying what the firm is already doing and build on these … doing nothing is not an option

GIBSON DUNN

Speaker Biographies

Speaker biographies

Michelle Kirschner
Partner, London
mkirschner@gibsondunn.com

Michelle Kirschner is Partner in Gibson Dunn's financial regulatory team. She advises a broad range of financial institutions, including investment managers, integrated investment banks, corporate finance boutiques, private fund managers and private wealth managers at the most senior level. Ms. Kirschner has extensive experience in advising clients on areas such as systems and controls, market abuse, conduct of business and regulatory change management, including MiFID II, MAR and Senior Managers & Certification Regime. Following the EU referendum, she has spent considerable time advising regulated clients in relation to their options for conducting business in / into the EU following Brexit. She has also conducted internal investigations, in particular reviews of corporate governance and systems and controls in the context of EU and UK regulatory requirements and expectations.

Selina Sagayam
Partner, London
ssagayam@gibsondunn.com

Selina Sagayam is a Partner in Gibson Dunn's international corporate team. Her practice focuses on international corporate finance transactional work, including public and private M&A, joint ventures, international equity capital markets offerings and advisory work focused on corporate governance, shareholder activism and securities law advice. Regarded as one of the leading public M&A advisers in the UK, Ms. Sagayam has advised on hostile, competitive and recommended takeovers. Ms. Sagayam is also noted for her expertise in financial services and regulatory advice. She advises boards and senior management of international corporations, exchanges, regulators, investment banks, and financial sponsors (private equity and hedge funds) on such issues. Her experience as a senior secondee at the UK takeover Panel and also as a non-executive director of a FTSE250 company has positioned her uniquely in her practice area. Ms. Sagayam established and co-chairs the firm's UK ESG Practice group and is one of the firm's ESG Practice leaders.

Speaker biographies

John Senior
Partner, New York
jsenior@gibsondunn.com

John Senior is a Partner in the corporate department based in New York. He has extensive experience counselling sponsors on the organisation and operation of private investment funds, including buyout, infrastructure, real estate, natural resources, social impact and venture capital funds; co-investment funds; independent sponsor transactions and investment club programs. He was named a Rising Star for Investment Funds by IFLR1000 (2021). Mr. Senior also advises sponsors on internal partnership arrangements, strategic secondary and spin-out transactions, regulatory compliance and negotiations with service providers.

Chris Hickey
Associate, London
chickey@gibsondunn.com

Chris is an Associate in the London office and is a member of the firm's Financial Institutions Practice Group. He advises on a range of UK and EU financial services regulatory matters. This includes the regulatory elements of corporate transactions, regulatory change management and ongoing compliance requirements to which firms are subject. His clients include, among others, private equity firms, institutional asset managers, corporate finance boutiques and investment banks.


GIBSON DUNN
LEXOLOGY
Webinars
ESG for Private Fund Managers
19 January 2021