大成 DENTONS

COP26

The takeaways and 'what nexts' for in-house legal

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When we look back on COP26, what will we think?

Did governments go far enough with their pledges?

Were they realistic?

And importantly, is there going to be the political will to actually fulfil the pledges made?

The agreement struck in Paris in 2015 was a critical milestone in the race against climate change. However, with little detail on implementation all eyes were on Glasgow for tangible and deliverable progress on enhancing and pursuing governmental pledges. Earlier this year we reviewed the status quo in terms of the implementation progress of the Paris commitments, on a country by country basis. If your organization is interested in knowing where countries are now – take a look at this tracker on Dentons.com in our ESG: global solutions hub.

A summary of the takeaways from COP26 can be found in this document. But the real question is: what does this mean you should be doing next? Globally speaking governments failed to match the expectations of a broad range of stakeholders and have fallen behind the momentum in the business world. The lack of global consensus on climate ambition will translate into a patchwork quilt of state-level action which makes management of legal risk extremely complex for multinationals. We highlight the areas General Counsel need to keep focused on to fully manage the risk and need to raise in the context of their organization's commitments to net-zero and broader organizational planning around climate and other ESG related commitments.

For a truly global perspective on risks and issues (as well as opportunities and competitive advantage) related to the ESG agenda, please contact a member of our global ESG steering group or simply email **dentons.askesg@dentons.com**.

Key commitments made

1. Net Zero Pledges

90% of the world economy is now covered by net zero commitments which is a huge increase from the 30% level over a year ago. India has stated it will only reach net zero by 2070, however, which is two decades after the target. Despite this, various climate models have calculated that, based on the new pledges, we may now be on track to warming of 1.8 or 1.9°C as opposed to the previous 2.2 – 2.9°C estimates. This still falls far below the 1.5°C lower limit set out in the 2015 Paris Climate Agreement, and so many had hoped that throughout the course of COP26 China – and others – would make bolder statements to enable 1.5°C to be a legitimate goal.

2. New Pacts – The Global Methane Pledge, Glasgow Leaders' Declaration on Forest and Land Use and Global Coal to Clean Power

Nearly 90 countries – comprising two-thirds of the global economy, and half of the top 30 major methane emitter countries – have joined the effort to slash emissions from methane greenhouse gases by 30% by 2030 (from 2020 baseline). This joint agreement by the EU and the US could be crucial in keeping the global temperature below 2°C given that methane is responsible for a least a quarter of today's global warming. Unfortunately, China, India and Russia have not yet joined the pact. Additionally, over 100 global leaders – covering 90% of the world's forests – have pledged to halt and reverse deforestation and land degradation by 2020 including China, Brazil and Russia. Thirdly, under the Global Coal to Clean Power statement, 77 signatories comprising 46 countries have joined together to accelerate a transition away from coal in a way that benefits workers and communities and ensures access to affordable, reliable, sustainable and modern energy for all 'as soon as possible'. Unfortunately, the 'as soon as possible' is a weaker target than the anticipated 2030 deadline and the US have so far failed to sign the agreement.

3. Glasgow Breakthrough Agenda

Over 40 leaders have made a commitment to work together this decade to accelerate the development and deployment of the clean technologies and sustainable solutions needed to meet the Paris Agreement goals, ensuring they are affordable and accessible for all. Leaders that have signed up have also committed to discussing the global progress every year starting in 2022. The first five targeted breakthroughs are: clean electricity, electric vehicles, green steel, hydrogen and sustainable farming. There are several initiatives supporting each of these breakthroughs including GGI-OSOWOG – an initiative to mobilise political will, finance and assistance to interconnect continents and to maximise the power of renewable energies.

4. Funding

There were several noteworthy announcements in relation to finances and funding in the first week including 450 of the world's biggest banks and pensions funds, with assets worth $130 trillion, committing themselves to the goal of limiting greenhouse gas emissions. Additionally, Alok Sharma claimed that the $100bn climate aid target, which should have been met in 2020, would be met by 2022. Furthermore, over 20 countries committed to halting all financing for fossil fuel developments overseas and diverting it to spending on green energy from next year (this excludes existing projects and fossil fuel projects 'at home'). Finally, the US, UK, France, Germany and the EU pledged $8.5m to help South Africa finance a quicker transition from coal – although a positive development, this has led other countries such as Singapore to argue that they require similar financing.

5. Final Pact – a step forward, but not enough

The agreed document has had mixed responses. It is undeniably a step towards goals such as 1.5°C and net zero, albeit a very small one. Firstly, coal and fossil fuels have been referenced in the wording of a COP agreement for the first time, but stakeholders feel that their total elimination has been watered down by what they deem to be a weak clause requiring merely the 'phase-down' of their use and only in relation to 'unabated coal' and only for 'inefficient fossil fuel subsidies'. Secondly, the agreement has not managed to achieve the required level of new NDCs from countries which would ensure 1.5°C and carbon neutrality by 2050, however, the request for countries to come back with new NDCs at COP 27 next year does mean that this aim could still be in sight. Thirdly, the requirements for increased financing from the main polluting nations were heavily contested through the conference and many of the key mechanisms relating to loss and damage were removed in the final draft, however, the intention is that this will also be re-discussed in 2022.

Requiring a 2022 round table on these issues means that the 5 year deadline for new NDCs, which previously existed, is luckily no longer the accepted time frame given that 2026 will be too late in many respects. Additionally, providing a space where both of these issues will be re-discussed ensures that all states will have to have active discussions around these issues over the next 12 months and either present new NDCs and funding plans or have very good reasons and arguments not to. It also means countries will be caught out if they have not implemented the provisions of the new pact, progressed the other pledges they have made or committed to agreements they have signed. Hopefully this increased political pressure, and the risk of being held to account by the media and public, will mean that fewer countries will shirk their responsibilities.

6. Week 2 pacts/ pledges/commitments

A few key commitments come to the fore during the second week; one being a series of announcements which have built momentum around international implementation of the Gender Action Plan from COP 26 including funding and strategies to ensure more gender-responsive climate programming and the enhancement of economic opportunities in the clean energy sector for women. Other pacts included leaders signing up to and mobilising finance in relation to the Principles for Locally Led initiatives and 19 countries signing a new partnership to establish at least 6 green shipping corridors that will ensure zero emission routes. Finally, the Zero Emissions Vehicle Pact was introduced – endorsed by multiple countries, companies and bodies – which promises global collaboration to ensure that 100% of sales of new cars and vans will be zero emission by 2040 (and 2035 in leading markets) and that there will be a global effort to facilitate an equitable and just transition.

7. Article 6

The final deal implements Article 6 of the Paris Agreement 2015 and further establishes the rules and guidance around it – although these will continue to be developed in the coming years. The article allows countries to partially meet their climate targets by buying offsets which represent emission reductions by others.

Article 6 has been a significant sticking point between countries for a long time, preventing its implementation until now. The finalised outcome, therefore, consists of quite a few compromises including: a two tiered approach to tax, limiting the carrying over of offsets to the new market to only those created since 2013 and rules relating to when proceeds must be funnelled towards an adaptation fund for developing countries. One of the greatest controversies around Article 6 previously related to the risk of double counting. This new agreement has limited this risk by allowing the country generating the credit to decide whether to authorise it for sale to another nation or to count it towards their own climate targets. If the credits are authorised and sold, the seller country must make the corresponding adjustments to their own NDC to reflect this and ensure that this process does not lead to a net increase in emissions across participating parties.

8. UK to retain presidency

The UK will also retain presidency over COP 27 next year in Egypt, with Alok Sharma also still filling the role of president. This means that the United Kingdom must ensure that we follow up on all the main pledges, pacts and commitments we have agreed to, to avoid greenwashing accusations which will inevitably come to the fore. Furthermore, it will be important that the United Kingdom acts as a front runner in relation to not only everything discussed during the conference, but also concepts that did not make it into the final agreement and new ideas. This will allow a much stronger basis through which to lead the summit next year and try and encourage a stronger and more robust outcome.

COP26 timeline
What happened when?

1 November

1. Boris Johnson announced a funding package, as part of the UK's Clean Green Initiative, to support the rollout of sustainable infrastructure and revolutionary green technology in developing countries.
2. UN secretary general António Guterres said countries should update their climate pledges annually rather than every five years.
3. XI Jinping, Bolsonaro and Putin not joining in person or via video link, only via written statement. Turkey's president Recep Tayyip Erdogan also absent after complaining that the British government had failed to meet his demands for security arrangements in Glasgow.
4. Xi Jingping made no major climate pledges in his address.
5. Narenda Modi, pledges that India will target net zero by 2070.
6. Bolsonaro pledged to cut emissions from 43% to 50% by 2030 but the baseline year is unclear.
7. Biden urges global climate action but stops short of making new US pledges.
8. Merkel pleads for introduction of global carbon pricing.
9. Pedro Sánchez Pérez-Castejón said his government would increase its climate funding for developing countries by 50 per cent in the next few years, aiming to reach $1.35bn per year by 2025.

2 November

1. Nearly 90 countries join effort to slash emissions of methane greenhouse gas 30% by 2030, from 2020 levels – 'the Global Methane Pledge'.
2. Over 110+ global leaders have pledged to halt and reverse deforestation and land degradation by 2030, including China, Brazil and Russia. This is undermined by $19 bn in public and private funds. The EU pledged $1bn.
3. US, UK, France, Germany and EU pledge $8.5m to help South Africa finance a quicker transition from coal. This is called the Accelerated Just Energy Transition.
4. US re-joins the High Ambition Coalition (which set the goal of holding temperatures to 1.5°C)
5. Guillermo Lasso Mendoza, Ecuador's president, said the country would add an additional 60,000 sq km of protected ocean to the 130,000 sq km that already exist around the Galapagos Islands.
6. Pension funds in the Nordic countries and UK have announced they will invest $130bn in clean energy and climate projects by 2030. As part of this commitment, the funds will also report every year on the progress of their climate investments.
7. Nigeria has announcement a commitment to electrifying 5 million households using decentralised solar energy solutions.
8. Norway will double its climate financing contribution, Jonas Gahr Støre, the prime minister of Norway, has told COP26, reiterating his country's commitment to reducing its emissions and helping others to reduce theirs.
9. African countries are preparing to spend at least $6bn a year from their tax revenues on adapting to the impacts of the climate crisis and are calling on the rich world to provide $2.5bn a year for the next five years to enable them to meet their goals.
10. A plan to coordinate the introduction of clean technologies in order to rapidly drive down their cost has been agreed at the COP26 summit by world leaders, including the UK, US, India and China. The first five breakthroughs being targeted are clean electricity, electric vehicles, green steel, hydrogen and sustainable farming, aiming to make these affordable and available to all nations by 2030 and potentially creating 20m new jobs. It is called the Glasgow Breakthrough Agenda. Leaders who have signed up are also committing to discussing global progress every year in each sector starting in 2022.

3 November

1. More than 450 of the world's biggest banks and pension funds with assets worth $130tn have committed themselves to a key goal in limiting greenhouse gas emissions – named 'GFanz'. It will have an advisory panel made up of 20 independent experts and 7 NGOs to scrutinise progress.
2. Rishi Sunak has claimed that the UK will become the UK's first ever net zero aligned financial centre.
3. Alok Sharma claims that the $100bn climate aid target will be met by 2023 at the latest.
4. Janet Yellen (US treasury secretary) has stated the US is quadrupling the level of international climate finance to more than $11bn a year by 2024.
5. A project aiming to preserve indigenous languages has been launched at COP26 – The Living Language Land project.
6. A newly released climate model found that new pledges made in the past few days have put the world on a pathway to 1.9°C of heating above pre-industrial levels.
7. Indonesia dangling 2040 coal end date if – like South Africa – it's offered a financial package.
8. More than 20 countries (including US, UK, Denmark, Costa Rica) and financial institutions (European Investment Bank) will halt all financing for fossil fuel development overseas and divert the spending to green energy instead from next year. However, those countries are able to continue developing their own fossil fuel resources at home. China and Japan have shunned the initiative.

4 November

1. Global Coal to Clean Power statement made today – 77 signatories, 46 countries (23 of which are pledging to end coal for the first time).
2. The International Trade Union Confederation have stressed how important it is that the climate ambitions does not lead to abandoned workers and/or communities. The ITUC and World Resources Institute have, however, released a job study – Green Advantage – which shows that dollar for dollar, investment in clean energy returns at least two jobs to one compared with fossil fuels.
3. The new 1.9°C trajectory, based off analysis using the new pledges by India, Korea and Brazil, is an improvement compared to the 2.2°C – 2.7°C range of outlooks pre-Glasgow. In order to reach to the goal of 1.5°C, however, the EU is banking on China coming up with more ambitious plans and that the US will signal more funding to poorer nations.
4. The International Energy Agency has gone further, and its "number crunch" suggests the world temperature increase may even now have reduced to 1.8°C following new pledges.
5. Twelve of the UK's major media brands, including Channel 4, ITV, Sky and STV, have agreed to increase the amount and improve the quality of their climate change storytelling across drama, comedy and daytime programming.
6. A study has shown that about half the world's fossil fuel assets will be worthless by 2036. This means that countries which are slow to decarbonise will suffer greatly, potentially leading to regional pockets of misery and global instability.
7. The Irish government has unveiled its sector by sector climate action targets. By 2030 it aims to have increased its proportion of renewable electricity to up to 80%.

5 November

1. The US climate envoy John Kerry has said the $100bn promised by rich nations to poor nations can now be delivered in 2022, a year earlier than previously thought.
2. Global carbon emissions are on track to rise by 13.7% by 2030, according to an updated UN analysis. That is a stark contrast to the 50% cut that is needed by then to retain the possibility of keeping global temperature rise to 1.5°C and avoid the worst impacts of the climate crisis. The glimmer of good news is that the projected rise in 2030 emissions is down from 16% two weeks ago, after 14 new national pledges were included.
3. The Energy Transition Commission have stated that the avalanche of commitments and initiatives seen in the first week of COP26 – if fully delivered by nations – would amount to 40% of the emissions cuts needed by 2030 to keep the world on track to a maximum of 1.5°C of global heating.

8 November

1. The legitimacy of the COP26 climate summit has been called into question by civil society participants who say restrictions on access to negotiations are unprecedented and unjust.
2. The fossil fuel industry has the largest delegation at COP 26, bigger than any country. This means that fossil fuel lobbyists far outweigh the delegations of some of the most vulnerable countries at the conference.
3. Greenpeace has been reacting to the first draft of the Glasgow final decision text which countries are working to agree at COP26. They describe it as "exceptionally weak" and point out that it fails to mention phasing out fossil fuels. Greenpeace says the first draft of a Cop text is usually relatively ambitious before it is negotiated down by countries for a final agreement.
4. The EU has called out other countries for weak pledges and has called on other rich countries to come up with emissions reduction plans and money to help developing nations.
5. African nations have asked that COP26 opens discussions on a mega-financing deal that would channel $700bn (£520bn) every year from 2025 to help developing nations adapt to the climate crisis.

9 November

1. Research released by UK Met Office has stated that a billion people will be affected by extreme heat stress if the climate crisis raises the global temperature by just 2°C.
2. Volkswagen and Toyota are apparently refusing to sign a deal to end new car emissions by 2040 – a deal which is set to be unveiled later this week. It is rumoured that Germany, China and the US have also not yet signed however Volvo, GM, Ford and Daimler have.
3. All four UK health secretaries are pledging to build climate-resilient health services this morning as they commit to become net zero, alongside 46 other countries making similar commitments as part of Science and Innovation Day. The NHS in Scotland has committed to being a net zero carbon emissions health service by 2045, while in Wales the ambition is for the public sector to be collectively net zero by 2030.
4. The Climate Action Tracker (CAT), the world's most respected climate analysis coalition, has announced that temperature rises will top 2.4°C by the end of this century, based on the short-term goals countries have set out at COP26. This is a short term analysis as opposed to the long term analyses last week which suggested a rise of 1.8 or 1.9°C. The CAT analysts also found a chasm between what countries have said they will do on greenhouse gas emissions and their plans in reality – supposedly, if current policies and measures are taken into account, rather than just goals, heating would rise to 2.7°C.
5. The UK government has pledged to fund £165m to help "progress gender equality while tackling climate change".

10 November

1. Draft text released overnight. It explicitly mentions the phase-out of fossil fuel subsidies, emphasises the Paris agreement target of 1.5°C above pre-industrial levels and criticises developed countries for their failure to meet the $100bn annual target of climate finance for developing countries promised in Paris in 2015. Called out for being very weak currently.
2. Draft text urges parties to revisit and strengthen the 2030 targets in their nationally determined contributions, as necessary to align with the Paris Agreement temperature goal by the end of 2022.
3. Greta Thunberg has filed a petition to the UN secretary general, António Guterres, demanding that the UN declare a "global level 3 emergency", the highest level available. If one were declared, it would allow more resources and technical expertise to be directed to countries which have been hit hardest by climate breakdown.
4. UK confirmed pledge made in July for zero-emission HGCs by 2040 and new charge point design.
5. 24 countries and a handful of car manufacturers have today joined a pledge to end the era of fossil-fuel powered vehicles by 2040 "or earlier". However, the group largely consists of countries who had already made that pledge such as the UK and Ireland, and does not contain major car manufacturing countries such as the US or Germany.
6. The UK is not joining the Beyond Oil and Gas Alliance, which was founded by Denmark and Costa Rica as a club of countries committed to phasing out oil and gas production. The announcement of new members has been postponed to tomorrow.
7. Norwegian delegate reports on article 6 (re implementation of carbon markets) and stated there have been 15 rounds of negotiations, and that good progress has been made but one of the main outstanding issues is that of money for adaptation for poorer countries.
8. The UK's rail unions have called for a massive increase in spending on rail services and infrastructure, and deep cuts to fares, in a bid to shift people from their cars onto zero carbon trains.
9. A declaration backed by 20 states who are the first to join the international aviation climate ambition coalition (IACAC) was published on Wednesday, signed by some major economies such as the UK, US, Japan and France. But other major economies – Germany, China, Russia, and India – were noticeably absent. It commits signatories to "align" aviation with the Paris target of limiting temperature increases to 1.5C, but has postponed adopting interim reduction targets and strategies until an assembly of the International Civil Aviation Organisation – the industry's governing body, in a year's time.
10. China's climate spokesman Xie Zhenhua has announced a "China-US joint Glasgow declaration on enhancing climate action" which reiterates the Paris goal and will lead to progress in the 2020s. He said the US and China had reached agreement on climate finance, NDCs, and would work with other countries to tackle other issues. They will also co-operate on renewable energy roll out and decarbonising energy whilst China will set up its own methane reduction plan to work alongside the methane deal signed by others last week.

11 November

1. Australia is being called out for being one of the 'problem nations' of this year, with a key interest in the longevity of its fossil fuel production.
2. A large area of Glasgow city centre, which has been notorious for its air pollution and congestion, will become car-free within five years, the city's council leader has pledged.
3. Alok Sharma has said that progress has been made on the draft text, but there is a lot more to be done. He highlighted finance as a major difficulty – the money developing nations need for clean development, adapting to the climate crisis and paying for the damage that is now inevitable. The next draft is supposedly going to be published tonight.
4. 15 of the world's largest and most reputable academic publishers have, for the first time, made available their most important articles on climate heating. The papers have been shared to make it much easier for the public to find and act on the world's most important and scientifically verified climate research.
5. The Beyond Oil and Gas Alliance launched today under co-chairs Denmark and Costa Rica – with France, Ireland, Wales, Sweden, Greenland, Quebec, California and New Zealand alongside the founding members. Under the alliance, these regions have all signed up to setting a deadline on new oil and gas licensing – but they were all relatively modest oil-producing nations that have already put forward plans to ban new oil and gas exploration in the past. The alliance does not include the world's biggest oil producers – the US, Saudi Arabia, Russia and Canada – or Europe's largest producers, the UK and Norway.
6. New study claims the new New COP26 pledges announced on methane, coal, transport and deforestation could nudge the world 9% closer to a pathway that keeps heating to 1.5°C.
7. The UN secretary general highlighted a forthcoming, UN-backed body to expose greenwash from companies pledging to cut emissions without credible – or any – plans to meet them.
8. Poland has confirmed that it plans to continue burning coal until 2049 as it deems itself not to be a 'major economy' as per the 'clean power transition statement'. The presence of coal in the Polish energy mix until 2048 means other EU member states must do more to hit the 2050 net-zero target.

12 November

1. Mixed reactions to the second draft text but most people think it appears to be weaker than the first – ie 'demands' is not used anywhere in the text which is the strongest power available.
2. New article 29 – Recalls Articles 3 and 4, paragraphs 3, 4, 5 and 11, of the Paris Agreement and requests Parties to revisit and the 2030 targets in their nationally determined contributions as necessary to align with the Paris Agreement temperature goal by the end of 2022, taking into account different national circumstances.
3. Fossil fuel and coal phase-outs are still included in this draft of the text – their use can continue if 'abated'.
4. Addition of Article 62 – also acknowledges the important role of a broad range of stakeholders at the local, national and regional level, including indigenous peoples and local communities, in averting, minimizing and addressing loss and damage associated with the adverse effects of climate change;
5. 'Urged' amended to 'requested' in relation to countries coming back in 2022 with new NDCs.
6. It has been argued that some progress has been made at Glasgow, but no major country's pledges are yet in line with holding global heating to 1.5°C.
7. The EU has hinted at more funding.
8. More than 300 coal plants will be closed as a result of announcements and pledges made at Glasgow COP26. 370 given a close-by date, 90 new projects likely to be cancelled, 130 called into question (some in China and Indonesia).

Main sticking points –

9. Subsidies for fossil fuels – a lot of countries want 'inefficient' deleted.
10. Finance – the G77 + China bloc of developing nations – which represents 85% of humanity – are unhappy about current plans for "loss and damage" – the compensation for climate disasters they say rich nations have a moral duty to pay them.
11. The need to recognise human rights and indigenous rights in carbon trading rules.
12. New NDCs in 2022.

13 November

Final draft signed.

‘The seen and unseen’ ESG legal risks for your business

Above the water
(likely ‘seen’ & managed risks)

INVESTORS
- Governance

YOUR BUSINESS
- Governance & reporting requirements

LENDERS
- Governance

Below the water
(less obvious risks – are they being managed?)

LENDERS
- Legal risk management

YOUR BUSINESS
- Compliance
- Legal risk management
- Reputation risk management

BUSINESS CUSTOMERS
- Compliance

COP26 is the most recent example of developing ESG requirements that are creating legal risk for business. Those risks that are above the waterline will be visible to GCs, for example governance requirements to disclose certain impacts and report in specified ways under Company law or Listing rules. However, as mechanisms evolve to address unacceptable environmental and social impacts, such as carbon emissions, to what extent are compliance regimes (like supply chain due diligence laws), legal risks (such as sanctions for anti-competitive behaviour of over-stating sustainability credentials) or defence costs to prevent reputational damage currently below the waterline? Further, GCs need to have a line of sight on the legal risks of key stakeholders. Shown here in red bubbles, these legal risks cascade down into pressure on the business. Our horizon scanning below places COP26 into this legal risk context.

Horizon scanning: issues for General Counsel and in-house legal to consider

Net Zero

When a business makes a net zero, or any other, pledge the business is opening itself up to governance and reporting risks, particularly under the requirements of the Task Force on Climate Related Financial Disclosures (TCFD). If the business then fails to pursue this pledge it faces legal risks, particularly in the form of NGOs bringing actions for false performance sustainability claims or breach of commitments and voluntary reporting. The main grounds being negligence for breaching an assumed duty of care and human rights abuses.

If your business makes product sustainability claims as part of their pledges this will lead to external pressures from investors who will expect and require progress in relation to your pledge in order to meet their own governance requirements. It also exposes the business to additional legal risks as the Competition Markets or Advertising Standards may being claims for false or unfulfilled pledges.

As governments face increased pressure to implement their net zero pledges, they will almost certainly introduce transformational decarbonisation laws. These new laws will also present compliance and legal risks for your business. New laws could include changes to emissions trading schemes, border tax and the introduction of whole sector specific regimes – particularly likely in the built environment and transportation sectors. As these laws will have a trickle down effect into many aspects of a business, General Counsels need to ensure that they horizon scan and feed incoming regulatory changes into their business strategies to try and manage these risks in advance.

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Deforestation

Deforestation is a prime example of an unseen risk for a business as it seems so far away from the present and pressing daily contemplations of a General Counsel in the UK. However, it is an increasingly major compliance risk for the business.

For example, under the new requirements of the Environment Act 2021 a "large business" (which will be defined in secondary legislation) must undertake greater supply chain due diligence to ensure the business is not using any products grown on illegally deforested land (as per the laws of that country). If any commodities are found to have been produced in a way which violates local laws it will be illegal for UK businesses to continue to use them. The company will then be required to report annually on their due diligence. The level of sanctions will also be defined in secondary legislation so are currently unknown, but given the upward trend in the monitoring and punishment of corporations for breach of environmental laws it is likely to be material.

General Counsels must ensure that they are aware of all new and upcoming laws and regulations, such as the one detailed above, so that they can ensure the business is compliant and protect themselves from sanctions and the negative impact this would have on reputation, external investment and attracting employees.

Glasgow Breakthrough Agenda

As country leaders start to create the sustainable solutions that will enable countries to meet the Paris Agreement goals, General Counsels will be asked how their business can monetise the enhanced sustainability credentials of these solutions. Carbon offsets is one such way that business can monetise market leading decarbonisation. As this area is still currently unregulated (although regulation is inevitably in the pipeline) the main risk this currently presents is reputational damage. If the business is not seen to be reacting to these global commitments and aspirations, or not deemed to be taking advantage of the potential for profit growth, this could negatively impact their relationship with investors, lenders, customers and employees.

Underpinning all of this is the very pervasive topic of 'greenwashing' – as businesses start to market their sustainable solutions they are at grave risk of being called out for falsehoods. As a business, you must be able to substantiate your claims. If not, the business is exposing itself to legal risk from actions brought for false product sustainability claims (as discussed above).

Carbon reductions are one such way that businesses can ensure that they combine their own, and the country's, environmental goals with new competitive brand and profile

Funding

As lenders will also have to report in line with the TCFD from the 1st of January 2022, they similarly face additional pressure to meet governance requirements. This in turn creates an external risk for General Counsels who will be asked: what do these new commitments from the banks and pensions funds means for the cost of finance? Crucially, if companies and businesses do not adapt accordingly and prove their own ESG credentials in order to encourage investment, they will likely be cut off from finance streams which are crucial to growth.

Final Pact

The fact that the agreement has used neutral language and words such as 'suggests' or 'requests' in lieu of 'demands' – the strongest power available to them – potentially presents a big compliance risk for businesses. As legislative and regulatory landscapes develop in different countries at varying times and in inconsistent ways, General Counsels have a huge challenge in ensuring that they are aware of all of these changes as they happen to avoid breaching any laws. Inevitably, all states will begin to formulate new strategies around their NDC, net zero plan and phasing down of fossil fuel use over the next year, in preparation of COP 27, and this will impact on how a business can and must operate in the very immediate future. If businesses do not work to align their approach with these new strategies, they are also putting their reputation is danger. Ignoring such 'hot topics' or failing to adapt positively to them will reduce the attractiveness of the company to both investors, lenders and potential new customers or employees.

Week 2 Pledges

As businesses ramp up their voluntary commitments in order to keep pace with the movements and changes that are either required, or expected, in light of the new announcements or pledges made by governments globally, the business is again opening itself up to legal risks. Theses risk come in the form of both product sustainability claims by NGOs, activists or the public and damning greenwashing accusations by the media.

Additionally, this changing landscape will directly result in firstly, increased expectations from investors who will then be required by their own governance commitments to preference businesses who are adapting – and thriving – within this new environment and secondly, by employees who will be much more attracted to companies which have championed ie gender equality or carbon neutrality.

Article 6

The development of the Article 6 mechanism for aligning emission reductions under government schemes to governments' nationally determined contributions will reinforce the current trend towards carbon emissions trading and offsetting. Further work on voluntary offsets markets and their interface with local regulatory regimes and the global marketplace will therefore need to be a key area of focus for General Counsels over the coming months and years. Understanding the complexity of these overlapping rules will be key to ensuring the authenticity of net zero commitments.

UK to retain presidency

A direct result of the increased expectation on the UK to act as a beacon of progress over the next 12 months will be a heightened lens on UK businesses. This will come with pressure and enquiries from the media (both in the UK and globally), competitors and NGOs if companies fail to show advances which match those that the UK government is claiming. Mirroring everything mentioned above, as the regulatory landscape develops – due to the weight of retaining the presidency – General Counsels must continually horizon scan and develop their strategies to retain control over their compliance and risk management.

How Dentons supports its clients

Our experience in supporting clients with their ESG requirements spans all types of organizations, markets and industry sectors. Wherever you are on your ESG journey, Dentons can help – anywhere in the world.

DENTONS GLOBAL ADVISORS Our extensive ESG legal offering is further strengthened by the recent launch of Dentons Global Advisors, an elite multidisciplinary advisory firm that provides integrated strategic counsel and support for clients facing complex opportunities and challenges spanning commercial, reputational, financial, regulatory, geopolitical and governance dimensions. Established public affairs leaders bring unique expertise in commercial diplomacy and an ability to translate your goals into terms governments and other stakeholders understand. Industry-leading strategy and communications advisors are ready to support during key moments when enterprise value is at stake.

ESG Strategy and agility assessments

- ESG strategy, risk and compliance advice tailored to your organization and markets
- Legal baseline review
- Legal risk review of current ESG statements
- Advice on accreditation and validation approaches
- Future planning – risk screening, agility assessment (covering how ESG is managed in your organization) and advice on governance structures
- Quarterly horizon scanning for changes in law
- Identifying and engaging key stakeholders e.g. investors, shareholders, funders, employees and NGOs
- ESG policy mapping

Implementation and change management

- Transforming ESG plans to execution
- Legal remedies
- Ongoing audits
- Advice on management structures, processes and people in relation to ESG risk
- Environmental policies – sustainability, waste management, energy use/efficiency and sustainability, packaging.
- Social policies – ethical and human rights, modern slavery, equality and diversity, policies regarding child and exploitative labor, health and safety, corporate donations.
- Employee code of conduct, handbooks and contracts
- Governance – anti-money laundering, anti-bribery and corruption, grievance procedures, procurement processes.
- Stakeholder identification and advocacy

ESG Supply Chain Risk Management

- Supply chain risk analysis, assessment and strategic mitigation
- Board responsibility for supply chain sustainability
- Data management and certification diligence
- Due diligence of supplier questionnaires
- Contract structuring for suppliers
- Advising on contractual protections, including audit or termination rights, warranties or reference to international standards
- Advising on control mechanisms and how to address non-compliance (e.g. contractual penalties / termination / step in rights)
- Supply chain disclosures and reporting
- Marketing – allowable claims on sustainable procurement

ESG Financing

- Financing structures and terms, advising on either the borrower or the lender side
- Carbon offsets
- Green/ sustainable bonds
- Sustainability-linked loans
- Identification of DFI, philanthropy partners

ESG Due Diligence/ Transactions

- Implementation of ESG into all stages of a deal
- ESG legal and compliance diligence
- Vendor diligence prior to a sale
- Transition diligence between signing and closing where we are able to assist the client with business continuity challenges and non-legal risks arising as a result of integration
- Post-closing integration and risk management advice
- Political, policy and reputational risk diligence

ESG Compliance & Corporate Reporting

- Corporate reporting best practices
- Corporate reporting for listed companies
- Sustainable Finance Disclosure Regulation, EU and UK Taxonomy.
- Verification or writing disclosures and other investor materials
- Sustainability report drafting
- Review and analysis of emerging policy

ESG Crisis Response Products

- Litigation support
- Incidents
- Changes of law
- Sanction response
- Investor disclosure
- Supply chain-linked crisis products
- Media statements.
- Crisis communications

Knowledge and intelligence

Our legal teams across the world are producing legal alerts, articles and webinars. To access the latest news by country and theme, visit our Global ESG hub at **www.dentons.com**

We have also developed a number of global intelligence solutions including global trackers which review regulation on a country by country basis relating to: climate, resource efficiency, ecosystems & biodiversity, modern day slavery, workplace welfare & equality, governance and community impacts and indigenous peoples.

Executive training and workshops

- ESG leadership for Boards and executive teams
- ESG legal risk exposure and management
- Stakeholder needs and expectations
- Overview of the key standards, frameworks and approaches for your industry sector
- Legal baseline – an overview of the key legal issues to examine from a regulatory perspective
- Linking executive compensation and employee codes of conduct and handbooks to ESG

Dentons Global ESG Leadership Group

Ipshita Chaturvedi
Partner, Environment and Natural Resources Law
Singapore
ipshita.chaturvedi@dentons.com

Andrew Cheung
Partner, Compliance & Regulatory Investigations
Dubai
andrew.cheung@dentons.com

Nicky McIndoe
Partner, Environment and Planning
New Zealand
nicky.mcindoe@dentons.com

José Ignacio Morán
Partner, LAC leader for the global Environment and Natural Resources Group
Chile
joseignacio.moran@dentons.com

Itweva Nogueira
Partner, Oil and gas sector specialist
Certified compliance trainer (CIPE.Org)
Angola
itweva.nogueira@dentons.com

Matthew Clark
Shareholder and Co-Leader, Corporate National Practice Group
US
matthew.clark@dentons.com

Purvis Ghani
Partner, Labour & Employment
UK
purvis.ghani@dentons.com

Daniela Jaimes
Partner, Corporate/commercial, Banking & Finance
Venezuela
daniela.jaimes@dentons.com

Andrew J. Park
Partner, Corporate & Commercial
South Korea
andrew.park@dentons.com

Sivi Sivanesan
Partner, Corporate
Singapore
sivanesan.s@dentons.com

Stephen Shergold
Partner, Global Chair, ESG Group
UK
stephen.shergold@dentons.com

Gail Lione
Prior to joining Dentons, Gail served as General Counsel of three companies in three different industries: global marketing /manufacturing; publishing, printing and digital imaging; and insurance banking and financial services. Gail is also a Fellow of the ESG Center of The Conference Board.
Senior Counsel, US
gail.lione@dentons.com

Elżbieta Lis
Partner, Head of Sustainable Investment Practice
Europe
elzbieta.lis@dentons.com

Birgit Spiesshofer
Europe Chief Sustainability & Governance Counsel
Adjunct Professor for International Economic Law and Business Ethics, University of Bremen.
Germany
birgit.spiesshofer@dentons.com

Vivien Teu
Partner, Asset management & ESG
Hong Kong
vivien.teu@dentons.com

Dina Lorentz
Dina is a lecturer at the Frankfurt School of Finance & Management on sustainable finance related matters, and author of a number of related publications.
Germany
dina.lorentz@dentons.com

Alex MacWilliam
Partner, Canada Leader for Global Environment and Natural Resources group
Canada
alex.macwilliam@dentons.com

Sivakumaren Mardemootoo
Partner, Banking, Corporate Finance and Commercial
Mauritius
sivakumaren.mardemootoo@dentons.com

Jodie Wauchope
Partner, Planning Environment & Government
Australia
jodie.wauchope@dentons.com

Gary Yang
Before joining Dentons, Gary was Director Legal and Government Affairs at two Fortune 500 MNCs, AkzoNobel and Air Liquide.
Partner, Litigation, Government Investigations, Environmental
China
gary.yang@dentons.com

Dentons Global Advisors

Melissa Estok
Principal, Albright Stonebridge Group,
Dentons Global Advisors
mestok@albrightstonebridge.com

Melissa Kopolow
Vice President, Sustainability,
Albright Stonebridge Group, Dentons Global Advisors
mkopolow@albrightstonebridge.com

ABOUT DENTONS

Dentons is the world's largest law firm, connecting top-tier talent to the world's challenges and opportunities with 20,000 professionals including 12,000 lawyers, in more than 200 locations, in more than 80 countries. Dentons' polycentric and purpose-driven approach, commitment to inclusion and diversity, and award-winning client service challenge the status quo to advance client interests.

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