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The Sustainable Finance Law Review

First Edition

Editor: Anna-Marie Slot, Global ESG Partner of Ashurst LLP

THE SUSTAINABLE FINANCE LAW REVIEW

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PREFACE

Sustainable finance is a relative youngster in the world of finance, but it is growing up fast. Public and private financing of sustainable/green projects, or those with provisions in line with borrowers' and issuers' environmental, social and governance (ESG) commitments, has exploded.

Since the signing of the Paris Agreement in 2015, more than 100 countries have committed to net zero emissions targets. Countries have also acted at a national level with ambitious target-setting and nationally determined contributions (NDC) pursuant to the Paris Agreement. They are not alone. By mid-2022, more than one-third of the world's largest publicly traded companies had net zero targets. Financial institutions have also engaged with various policies introduced to enshrine ESG commitments, in terms of both their own lending targets and the carbon emissions linked to those targets. Investors at both retail and institutional levels increasingly look to the financial markets as an important lever in achieving such targets.

For over three decades the United Nations has brought together almost every country on earth for the global climate summits – known as the Conference of the Parties (COP). At COP26 in 2021, private finance showed up in force to play its role in the transformation of the business ecosystem as we know it. Precisely what that role entails is a live debate and the discussions regarding the purpose of sustainable finance cover a wide spectrum of issues – from greenwashing, to the fundamental shift of credit including the risks and opportunities of ESG considerations. We saw that debate play out in real time during COP27.

Notwithstanding ongoing considerations about the purpose of sustainable finance, financial market participants have reacted by creating a wide variety of financial products marketed as sustainable, green or ESG-friendly. The rapid increase in both supply of and demand for sustainable investment products has, at times, resulted in a lack of consistency, transparency and reliability of disclosures and metrics. Governments and regulatory bodies are increasingly focused on imposing guidelines and frameworks to address these issues.

Although sustainable finance continues to elude strict definition at present, significant efforts are being made globally to ensure quality and transparency in the industry, to impose consistent frameworks such as the International Sustainability Standards Board (ISSB) and disclosure requirements such as those of the Task Force on Climate-related Financial Disclosures (TCFD) that support comparability and interoperability among firms and products, and to provide investors with sufficient information to monitor the impact of their investments.

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In this inaugural edition we aim to:

a provide a snapshot of the current state of sustainable finance and the status of regulatory efforts across multiple jurisdictions; and

b track the evolution of sustainable finance and outline key trends for the near future.

I thank all of the contributors for their expertise, hard work and dedication in producing this volume.

Anna-Marie Slot
Ashurst LLP
London
December 2022

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Chapter xx

COP27

Anna-Marie Slot and Eileen Kelly[1]

I INTRODUCTION

The 27th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP27) took place in Sharm el-Sheikh, Egypt, from 6 to 18 November 2022 under the Egyptian presidency. COP27 marked the 30th anniversary of the adoption of the United Nations Framework Convention on Climate Change (UNFCCC).

Against a backdrop of economic and geopolitical issues, including those caused or exacerbated by the war in Ukraine, many feared that COP27 would backtrack on the commitments made at COP26. Indeed, few countries followed through on their commitments to reset their nationally determined contributions (NDCs), with Australia and the European Union being rare exceptions among developed regions.

Despite a significant amount of engagement and interest in net zero commitments, energy transition and sustainable finance worldwide, the continued lack of clarity on government action, along with the intended pathways to achieve them, limits the ability of financial market participants to distribute capital efficiently.

Private finance was a significant area of focus, as the billions committed thus far to fighting climate change remain far below the levels of investment required to implement the Paris Agreement. Efforts to increase investment include proposals to reform public lenders, such as the World Bank, to allow them to take on more risk and lend more money, with the hope that this encourages increased participation by private investors.

Although the final COP27 deal contemplated the phasing down of unabated sectors like coal power and the phasing out of inefficient fossil fuel subsidies, it fell far short of expectations by failing to take significant steps to rein in climate-damaging emissions, either by setting more ambitious national targets or by scaling back the use of fossil fuels. Commitment to more aggressive action to reduce reliance on fossil fuels remains weak amid the energy crisis following the war in Ukraine, and groups launched at COP26 in Glasgow that are dedicated to phasing out fossil fuels have this year struggled to recruit additional members.

Other long-standing discussions did progress, most notably with respect to the establishment of a loss and damage fund. However, COP27 nevertheless saw a more subdued outcome than many had hoped for, and continued efforts will be needed at COP28 to achieve the sort of climate action required to deliver on the 1.5°c commitment.

1 Anna-Marie Slot is a partner and Eileen Kelly is a senior associate at Ashurst LLP.

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II THE NEED FOR CLIMATE FINANCE

Each COP presents its own unique challenges and opportunities.

At COP26 in Glasgow, Scotland, the private sector played a key role, and finance was at the heart of the discussions and resolutions arising from the conference. Important announcements were made by Mark Carney and Rishi Sunak regarding financial services businesses, including climate transition plans being mandated by the UK government, signalling real progress towards putting climate at the heart of companies' efforts.

However, adoption of similar plans globally remains inconsistent. COP27 was focused on implementation and the increased voice of the Global South. The focus on the role of finance in delivering on climate change solutions that was evident at COP26 continued, and indeed COP27 acknowledged formally the finance sector's role in the fight against climate change.

In its Sharm el-Sheikh Implementation Plan published on 20 November 2022, the UNFCCC emphasised the importance of the role finance plays in delivering the 1.5°c commitment. According to the International Energy Agency's World Energy Outlook 2022, approximately US$4 trillion per year needs to be invested in renewable energy until 2030 in order to reach net zero emissions by 2050, and a global transition to a low-carbon economy is expected to require investment of at least US$4 to US$6 trillion per year.

Implicit in these funding requirements is the increasing gap between the needs of developing countries, particularly those needs that result from the increasing impacts of climate change, referred to as adaptation finance, and related increases in indebtedness, and the active support for their efforts to implement their NDCs. Current estimates place those needs at approximately US$5.9 trillion for the period to 2030.

Although developed countries have previously committed to the goal of providing US$100 billion per year in support to developing countries by 2020, to address the impact of climate change and support the low carbon transition in the developing world, this goal has not yet been met, and falls well short of the financial support needed. According to the UNFCCC, global finance flows in 2019 to 2020, estimated to be US$803 billion, represented only 31 to 32 per cent of the annual investment needed to keep the global temperature rise well below 2°c or at 1.5°c above pre-industrial levels, and is also below what would be expected in the light of identified investment opportunities and the cost of failure to meet climate stabilisation targets.

Additionally, of the US$100 billion already committed in support for developing countries, only about US$20 billion was earmarked to fund adaptation measures to help countries become more resilient against the impacts of climate change. At COP26 in Glasgow, countries agreed to double that proportion and, after some negotiation, that promise was affirmed at COP27.

Climate finance has been pivotal to UNFCCC discussions and, in particular, the use of blended finance (the mix of public and philanthropy-backed finance and private capital) is key to mobilise new sources of capital for sustainability development goals. The Central Banks and Supervisors Network for Greening the Financial System launched a blended finance initiative at COP27 to help its members overcome potential regulatory and implementation barriers by developing a 'Blended Finance Handbook'. This financing method will encourage monetary and supervisory capital allocation for the net zero transition.

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III LOSS AND DAMAGE

As an initial step in addressing the shortfall in funding required by the developing world to mitigate the impacts of climate change, COP27 concluded with a decision to establish and make operational a loss and damage fund. Loss and damage refers to the increasing gravity, scope and frequency of loss and damage associated with the adverse effects of climate change, resulting in devastating economic and non-economic losses, including forced displacement and impacts on cultural heritage, human mobility and the lives and livelihoods of local communities. Although loss and damage impacts all regions of the world, it comes with significant financial cost in the developing world, where it increases the debt burden and limits the realisation of the United Nations sustainable development goals. The new loss and damage fund will aim to compensate vulnerable nations for loss and damage from climate-induced disasters. However, there is no agreement yet on how the financing for the fund should be provided and by whom, and it is likely to take several years to negotiate these details. Funding adaptations in response to climate change are also key to prevent future loss and damage requirements from spiralling and, although the call from COP26 to double adaptation financing was repeated at COP27, overall progress on this point was insignificant.

IV SUSTAINABILITY FRAMEWORK FOR TRADE TRANSACTIONS

Following a roadmap announced in Glasgow at COP26, the International Chamber of Commerce (ICC) published a pilot version of the first-ever industry framework to assess the sustainability performance of trade transactions. This Wave 1 framework sets out an agreed industry definition of sustainable trade and embeds an approach that covers the entire life-cycle of an international trade transaction across five different dimensions, from the buyer and supplier to the nature and purpose of the goods or services sold. At COP27, the ICC Secretary General announced that more than 20 banks and corporates, including BNP Paribas, Commerzbank, Lloyds Bank, Commonwealth Bank of Australia, DNB, Santander, Société Générale, Wells Fargo and Yes Bank, have pledged to pilot the application of the Wave 1 framework for transactions in the textiles sector. The ICC will publish the findings from these pilots and set out how it will use the findings to enhance the framework by mid-2023.

V CONCLUSION

Against the background of the outcomes of COP27, there remains a significant role for private finance to play in funding the transition to a low-carbon economy. This role is two-fold: financing the solutions required to decarbonise the economy, and engaging in stewardship activities to encourage companies to engage in net zero or low-carbon transitions.

It is clear from COP27 that one of the key takeaways involves collaboration between both the public and private sector – forming climate philanthropy partnerships across geographies to better footprint sustainable financial investments. Multilateral development banks and the private sector need to work together to de-risk investments via innovative structures to be able to scale change.

The private sector also has a pivotal role to play in reallocating capital to new partnerships and ventures that are genuinely climate change driven – clean 'tech-celeration'. This will enable companies to measure the credibility and progress of their net zero targets and scale up

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to accelerate their net zero transition. As governments and public bodies continue to clarify their goals and the paths towards achieving them, the financial markets will respond and the risks and opportunities of sustainable finance will grow.

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ANNA-MARIE SLOT

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Anna-Marie Slot is Ashurst's first global ESG/sustainability partner, appointed in 2019 and global head of high-yield debt. She leads the firm's ESG strategy both internally and for clients. She has delivered a number of significant initiatives including establishing the firm's sustainability goals, co-creating Ashurst's first digital product, ESGReady and launching Ashurst's first podcast channel, ESG Matters@Ashurst, and its first series, '30 for Net Zero 30'. Together with Tara Waters, she co-leads the Fintech Legal Labs powered by Ashurst. Anna-Marie was also named the 'Most Innovative Sustainable Lawyer' at the Financial Times Innovative Lawyers Europe Awards 2021.

Anna-Marie has over two decades of finance experience acting for investment banks and companies in a wide range of corporate finance and securities transactions, including high yield debt offerings, sustainable finance, liability management including consents and tender offers, refinancings and numerous securities transactions, such as Rule 144A and Regulation S debt offerings, as well as mezzanine debt investments and senior credit facilities.

EILEEN KELLY

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Eileen Kelly is a senior associate in our finance practice. Eileen's practice focuses on banking and capital markets transactions. She has advised public and private companies, sponsors, lenders and financial institutions on a variety of debt, equity and financing transactions, including sustainable finance transactions, in the United States and Europe.

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