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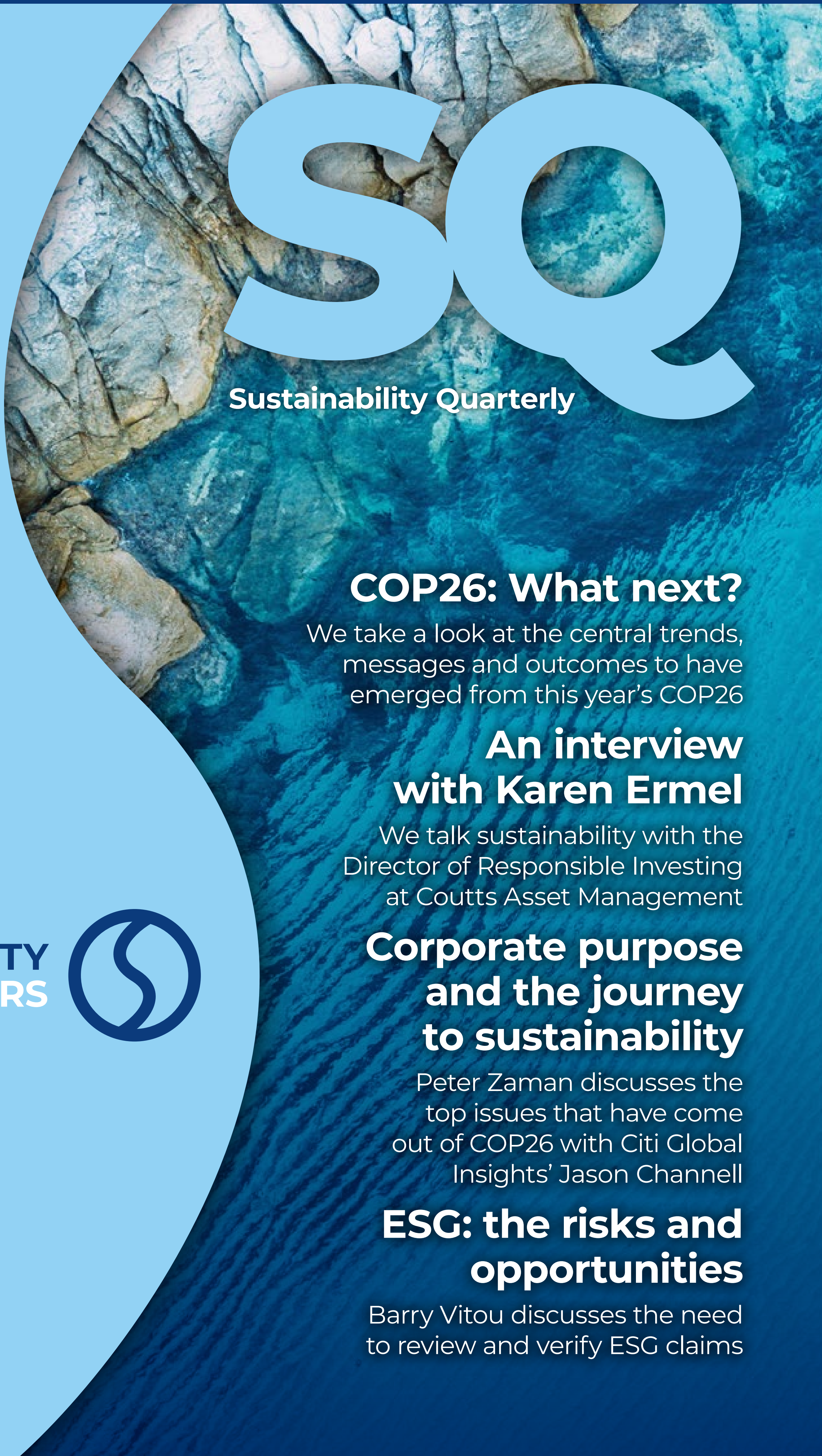

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Sustainability Quarterly

COP26: What next?

We take a look at the central trends, messages and outcomes to have emerged from this year's COP26

An interview with Karen Ermel

We talk sustainability with the Director of Responsible Investing at Coutts Asset Management

Corporate purpose and the journey to sustainability

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SUSTAINABILITY IN OUR SECTORS

FEBRUARY 2022

HFW

SUSTAINABILITY IN OUR SECTORS

HFW is a leading global law firm with deep, sector-focused expertise, that is committed to promoting sustainability in its sectors.

Welcome to the fourth edition of our quarterly magazine, Sustainability Quarterly.

This feels like a particularly appropriate moment to arrive in your inboxes: a new year, optimism that the worst of Covid might finally be behind us, and – crucially – just long enough since COP26 to be able to put into meaningful perspective the implications of all that happened in Glasgow. As we report, the conference brought the role of private and public organisations, governments and individuals into sharp focus. HFW partner Alessio Sbraga, who attended the conference, details the central themes and outcomes.

We also cover the first in a series of HFW Sustainability webinars where Jason Channell, Head of Sustainable Finance at Citi Global Insights, discusses with Peter Zaman the role of sustainable finance in a post-pandemic, climate-challenged world, and why we can feel encouraged about the progress being made.

We have our usual roundup of ESG-related legal and regulatory developments, an interview with Coutts' Responsible Investing Director, Karen Ermel, and advice from Barry Vitou to companies to review and verify ESG claims in light of the huge uptick in ESG investment.

We welcome your engagement and feedback, so if you have comments about this edition or would like to find out more on our sustainability expertise, please feel free to contact me or one of HFW's Industry Group Leads or Legal Services Heads.

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Legal Updates

Hope versus reality: COP26 and MEPC 77

At COP26, enthusiasm was high for decarbonisation in shipping. The First Movers Coalition and Clydebank Declaration initiatives were announced, and discussions centred on accelerating the IMO's decarbonisation target to net zero green house gas (GHG) emissions by 2050.

Reality struck at MEPC 77 however, with discussions over the accelerated IMO targets and decisions on several proposals for 'market based measures' (MBMs), involving levies on carbon emissions and R&D funds, all deferred until 2023.

Despite some positive developments with the IMO CARES project and Arctic black carbon, the slow pace of change at the IMO may increase the risk of regional measures, such as the EU's 'Fit for 55' initiative, which would lead to a multi-layered regulatory landscape (read more **here** and **here**).

BIMCO carbon emission clauses

HFW has assisted shipping association BIMCO to draft a series of new standard contractual clauses for the international maritime industry in response to strict carbon emission regulations impacting the future operation of the shipping industry. Read more **here**.

JOSEPH MALPAS
Associate

Deforestation regulation

The European Commission has introduced a draft law which would ban the import and export of six core agricultural commodities to and from the EU – beef, soya, palm oil, coffee, cocoa and timber - where these products have been linked to deforestation. The draft law would require companies to prove that the products they are importing into or exporting from the EU single market have not contributed to the processes of deforestation and forest degradation.

The draft law will need to be approved by EU member state governments and the European Parliament before it comes into force. Read more **here**.

ANTHONY WOOLICH
Partner

Parametric insurance and climate change

The insurance market's role in building resilience and adapting to climate change was in focus at COP26, in particular the use of insurance products and innovative solutions to help increase insurance coverage levels in vulnerable economies, and available relief in the event of disaster. Parametric (or index-based) insurance is one such tool, covering approximate losses agreed upfront upon the occurrence of an objectively determined trigger event (unlike indemnity cover, which is based on actual loss suffered). The fixing of the trigger is paramount, in order to minimise the basis risk, i.e. the risk that an event occurs that causes substantial loss but is not caught by the trigger. As cover is typically narrower, and policyholders' losses don't need to be quantified, parametric insurance premiums may be lower, and claims paid faster.

Common triggers for parametric cover include natural disasters or weather events, and it has already been used by governments as a means of providing relief funds after catastrophic climate change related events. The fast payment of claims allows citizens and businesses to rebuild earlier, potentially minimising the impact of such events.

Although the market is already familiar with parametric insurance, various novel parametric insurance solutions have recently been created including products developed for the fisheries sector, coral reefs and extreme weather events affecting farmers in some African countries. An innovative new product developed for the Belize government will provide insurance to cover Belize's loan repayments after hurricane events, and there is also scope for parametric insurance products to provide funds for humanitarian aid.

LARA KERBELKER
Associate

AsiaPac sustainability updates

The Association of Southeast Asian Nations (ASEAN) continued the sustainable finance drive, releasing the ASEAN Taxonomy for Sustainable Finance version 1 in November 2021. This Taxonomy will be the framework for all ASEAN Member States providing a uniform approach to sustainable finance and supplementing national sustainability efforts. Recognising the different needs of the Member States, the Taxonomy includes a 'Foundation Framework', and a 'Plus Standard' with guidance for benchmarking green investments and activities in 6 sectors. The Taxonomy is expected to develop over time as a discussion framework between the ten Member States.

The Stock Exchange of Hong Kong Limited (HKEX) ESG reporting requirements for listed companies are set to become more focused, with HKEX amending the ESG Reporting Guide Appendix 27 to include Financial Stability Board Task Force recommendations on Climate-Related Financial Disclosures (TCFD) on mandatory ESG reporting, in effect from July 2020. To help issuers prepare TCFD climate change reporting, HKEX issued Guidance on Climate Change Disclosures. HKEX published a 2020/2021 review of IPO applicants' corporate governance practices, diversity and ESG and launched the ESG Academy – an educational hub to guide issuers and businesses to align ESG objectives with business goals. The new HKEX Practical Net-Zero Guide for Business available on STAGE Resources Library - Guidance provides guidance to companies working towards net zero carbon emissions. Together with the HKEX Sustainable & Green Exchange (STAGE) online platform, a new equities section on STAGE displays ESG metrics for HKEX-listed companies to encourage transparency and ESG engagement.

SIAN KNIGHT
Knowledge Lawyer,
Hong Kong

Aviation industry COP26 commitments

The deal reached at COP26 in relation to Article 6 of the Paris Agreement provided welcome clarification for the aviation industry on the use of the Article 6.4 mechanism for other international purposes. Trade body Airlines for Europe commented that this would aid business decision-making and influence airline investments in sustainable aviation fuel (SAF) and sustainable fleet renewal. COP26 also saw the launch of the International Aviation Climate Ambition Coalition (IACAC). A group of 23 developed and developing nations, including the United States, issued **this declaration** committing to, amongst other aims, rolling out SAFs, boosting investment in zero-propulsion technologies and, crucially, supporting countries where the transition to clean aviation will be the most difficult.

A **toolkit** to assist governments in developing SAF policy was also launched at the conference by the World Economic forum."

ASHLEIGH OVLAND
Knowledge Lawyer,
Aerospace

Road transport sustainability

In anticipation of COP26, governments and industry leaders were urged to do more to accelerate the transition to zero emission vehicles (ZEVs). Over 100 countries, states, cities and organisations signed the Glasgow Declaration on Zero-Emission Cars and Vans to end the sale of internal combustion engines worldwide by 2040. Read more **here** about the incentives and solutions aimed at reducing the environmental impact of the road transport sector, against the commercial challenges for road freight and logistics businesses.

AMY GYNGELL
Associate

Edited by **Ruth Allan De Maldonado** and **Holly Colaço**, Shipping Knowledge Lawyers

COP26: What next?

This year's UN climate change conference, COP26, was the most anticipated since the landmark Paris agreement was struck. The annual meeting of global nations took place in Glasgow in November following a year where sustainability and climate change issues were under the worldwide spotlight like never before.

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Partner Alessio Sbraga attended the Shaping the Future of Shipping conference organised by ICS during COP26. "I learnt about what the shipping sector itself is doing to combat carbon emissions and was suitably impressed," he says. "There were so many positive takeaways and consistent messaging."

The annual conference's bedrock principles remain the same; to unite global resources to secure global net zero by mid-century and keeping 1.5 degrees within reach, protecting communities and natural habitats, and mobilising finance to achieve its goals. However, a number of key themes arose throughout the two week program. We take a look at the central trends, messages and outcomes to have emerged from this year's COP26.

Collaboration in Insurance

This year the conference had a day dedicated to the vital role organisations in the finance and insurance industry have to play in mitigating the effects of the climate crisis. In an important move, global insurance giants including AXA, Allianz, Aviva, Generali, Munich Re, SCOR, Swiss Re and Zurich agreed to act together to form the Net-Zero Insurance Alliance (NZIA), to support the industry transitioning underwriting portfolios to net zero greenhouse gas emissions by 2050.

Regulation and Reporting

The conference saw a considerable impetus on regulation and reporting. While climate change related activities reporting hasn't been widely subject to strictly defined metrics for companies, there is a shift towards a much more transparent and prescriptive approach. The role of central banks and regulators to make sure that financial systems can resist the impacts of climate change was highlighted, as well as their duty to support the transition to net zero. However, it was made clear that in order for these bodies to be able to do this, reporting and disclosure standards must improve. This is the purpose of the EU's newly proposed Corporate Sustainability Reporting Directive (CSRD), which requires companies to 'report sustainability information, introduce an audit requirement, promote the digitalisation of sustainability information and make EU reporting standards mandatory' .

"Global regulation that makes a difference, promotes certainty and supports the shipping sector to achieve the energy transformation is needed," says Sbraga. "This has to take the form of a global market-based measure which puts a price on carbon and which is transparent, fair and equitable. A clear message to the members states of the IMO ahead of MEPC77."

Financial targets

Finance was a thread that ran through the body of the conference, with a call to major players to at least double funds in, to support the transition of developing countries. A significant new process for achieving global financial goals in relation to climate change was discussed, with developed countries being urged to deliver on their promise to mobilise $100 billion every year in climate finance. The big news came on 'finance day', when nearly 500 global financial services firms agreed to align $130 trillion, which represents 40% of the world's financial assets, with the Paris Agreement's climate targets. "Financial investment and incentives are required from both the public and private sectors," Sbraga points out. "Private finance is there, it is just a question of access and funnelling it to the right projects, public recognition and significant buy-in is still required at government level across the globe."

Speed and Scale

The announcement during the first week of Cop26 from Mark Carney, chair of the Glasgow Financial Alliance for Net-Zero (GFANZ), that the total assets of combined companies committed to achieving net-zero emissions had skyrocketed from $5 million at the beginning of the year to $130 trillion, set the tone for the future sessions. He urged companies to align lending and investment activities with the net-zero goals of the Paris agreement, and sent a clear message that their commitments to transitioning needs to be accelerated. The GFANZ is a consortium of over 450 global financial firms committed to applying net-zero principles to their businesses.

"The time for action is now," Sbraga explains, "and the shipping sector has answered the call to arms. Shipping is in line to play a pivotal role in society's energy transition as an enabler - a transporter and user of fuel - and given its unique role in global trade. But it cannot do this alone. First movers need to be helped to take these first steps and to mitigate the risks involved."

At the Coal Face

The issue of coal, and its harmful effects as the most polluting fossil fuel, was taken on to a greater extent than ever at this year's conference. This is the first time fossil fuels have been included in COP agreements. While the pledge to 'phase out' coal power was downgraded at the last hour to 'phase down' following interventions from India and China, along with an emotional apology from COP26 president Alok Sharma, it was clear that the battle to reduce the world's usage of coal is well and truly on.

Clarity on Carbon

After several years of debate and discussion, COP26 saw the introduction of a framework of rules for a new global carbon market. The move is expected to underpin a boom in the trading of emissions credits. The system will be made of two parts; one which is open to the public and private sectors, and a separate one which will permit countries to trade credits to support decarbonisation targets. Trading has surged, and is predicted to reach $1 billion by the end of the year .

"Weeks after COP26, MEPC77 [The IMO Marine Environment Protection Committee] took place, but this did not deliver on the MBM [market based measures] and IMO did not change their greenhouse gas strategy. IMO has left this to MEPC78 and 79 in 2022 and this year will be the pivotal year, I believe," Sbraga surmises.

Interview with

Karen Ermel

Director, Responsible Investing, Coutts Asset Management

Coutts is a wealth manager and private bank with three centuries of experience, providing customised solutions for its clients. These include discretionary and advisory investment management services as well as advice on philanthropy, family businesses, succession planning and commercial banking services to corporate clients. Headquartered in London, Coutts is part of the NatWest Group's Wealth Businesses.

As Responsible Investing Director, Karen leads the development of the Asset Management business' climate strategy. She is responsible for the incorporation of ESG considerations into Coutts' investment process and products.

What is Coutts doing to play their part to help tackle climate change?

In 2021, Coutts was one of the first UK private banks and wealth managers to become a certified B Corp, demonstrating our commitment to have a positive impact on society across everything we do. We have committed to align with the 2015 Paris Agreement, for example our own operations are net carbon zero, with the target of becoming climate positive by 2025.

Our impact also lies in our financed emissions, namely our lending and investments. We believe that it's our responsibility to tackle climate change, but also to enable our clients to do so.

Coutts has committed to Net Zero investments by 2050 at the latest, and we are embedding this in the design of our investment products. Instead of launching standalone 'green' funds or portfolios for clients who want to invest sustainably, we embed ESG and set targets across all our investment products, at no additional cost for our clients.

Given the recent letter from the BoE to bank CEOs, is the banking sector doing enough to incorporate climate risk into their business models? If not, what could laggards in the sector do?

As a sector we have a tremendous role to play to ensure capital is distributed in a sustainable manner and we have a responsibility to closely examine who we allocate financing to, through the provision of financing or our assets under management.

The banking sector has undoubtedly identified the opportunities associated with a climate aware approach, but is still, at times, hiding behind the limitations in data availability, comparability, and accuracy.

While exercises such as the CBES are key for banks to understand their exposure to climate risk, their real value is limited until the results are incorporated into business decisions with clear accountability mechanisms.

I believe a leading approach to climate risk would involve transparency about the assumptions and limitations of a banks' analysis and would show how their analysis feeds into strategy, operating models, and risk management.

What do you see as being the biggest challenges and opportunities linked to climate change?

As an asset manager, we know that every company we invest in faces climate-related physical and transition risks, and their future viability depends on how they monitor, disclose and mitigate those risks. It's also our responsibility to understand how different sectors and areas are exposed to a different combination of risks, and to incorporate this into our investment process. One of the big challenges is clarity on when these risks will materialise, and to what extent.

Climate-related data is riddled with inconsistency and estimations, making it challenging to rely on for decision-making purposes. The biggest challenge we face is the lack of clarity on what needs to happen to limit global warming to 1.5C. While we know emissions need to fall as quickly as possible, there is less clarity on the division of responsibilities between governments, financial institutions, companies, and individuals.

How has your emphasis on sustainability been received by clients?

Our purpose and accreditation as a certified B Corp has been received overwhelmingly positively by our clients. I think feedback from clients has been so positive because they see sustainability as part of our brand, whether it's through our roof garden where we grow fresh produce and keep our own bees, or our client events, rather than a standalone marketing campaign.

Coutts' commitments, for example, to reduce the carbon intensity of our equity investments by 25% by 2021, apply across all our investments. This helps us tackle climate risk and strengthen our investment conviction. Combining this with our personal approach where clients can have direct conversations with the responsible investing team, means that they understand why our emphasis on sustainability is in their best interest, as well as the planet's.

What do you see coming in the next few years for Coutts in the sustainability space?

We want to make sure our clients' wealth is having its intended consequences and is growing in a sustainable manner, without compromising future generations' ability to do the same.

Within asset management, our focus will be on putting our net zero commitment into practice, by making it part of our investment product design. For example, we are embedding Net Zero into our Personal Portfolio Funds' legal documents by allocating a minimum of 50% of underlying assets to investments on a Net Zero trajectory (decarbonising at 7% every year, reaching Net Zero by 2050).

Our climate strategy over the next few years will be guided by a sense of urgency. We know that now is the decade of action - today's carbon reductions are exponentially more meaningful than those in 20 years. We have already reduced the carbon intensity of our equity investments by 39% between 2019 and 2021, which shows our clients that we understand the urgency of climate change and are taking measurable steps today to limit our climate impact.

What impact has COP26 had on your plans?

As a principal partner of COP26 through the NatWest Group, we actively took part in the discussions and events taking place in Glasgow last year. Prior to COP26 we set out our expectations for governments as part of the Global Investor Statement to Governments on the Climate Crisis, and while important progress was made at COP26, for example recognition of the need of 1.5C as a target (rather than 2C) and the pledge to shift away from coal, we know this is not enough to limit global warming to 1.5C.

For us, COP26 reaffirmed the climate-related priorities we had already set out:

- A need for collaboration and global cooperation to set out standards, policies and support to reduce emissions as soon as possible
- A recognition of the need for immediate action and that this is the decade of action
- A high level of ambition to achieve Net Zero

What would help you as investors understand the sustainability credentials of the businesses you're investing in as asset managers?

We look to ascertain two considerations:

1. A deep understanding of physical and transition risks and opportunities and a demonstration of how these are incorporated into every relevant business area. Companies who consider this are likely to be in a better position to manage these risks when they arise.
2. Targets that are ambitious, clear, measurable and comparable. This includes clarity on terms without universal definitions, such as "Net Zero", "green" and "Paris Aligned", and on baseline years, scope 3 emissions, and information as to why the target is sufficiently ambitious for that sector.

Thank you to Camilla Hobart-Smith for the introduction to Coutts

Corporate purpose and the journey to sustainability

At HFW's recent webinar focussing on the responsibilities and roles of sustainable finance in a post pandemic, climate challenged world, partner Peter Zaman discusses the issues to have come out of COP26 with Citi Global Insights' Head of Sustainable Finance, Jason Channell.

Given the heady expectations, predictions and scrutiny arising from 2021's COP, it was perhaps unsurprising that there was some disappointment at the outcomes in its immediate wake. While coal wasn't phased out completely and the 1.5 C target wasn't formally locked in, consideration in the weeks following the conference has, on reflection, revealed plenty to be optimistic about.

Nationally determined contributions (NDCs) were improved with public and private sector commitments pledged to attempt to keep the climate change goal of 1.5 C alive, while the $130 trillion to support climate transition announced by financial firms sends a very clear message. "Hype and optimism was somewhat naive because people didn't understand that backdrop," Citi's Jason Channell explains. "We're coming off the back of two extraordinary years and in some ways we're lucky it even happened at all."

The public versus private dynamic

This focus on private sector capital to support the transition was particularly evident, especially given that failure to meet NDCs doesn't necessarily lead to any hugely significant consequences. In this respect, as HFW partner Peter Zaman says, it is more important to get private sector funding to supplement the limited public sector funding available through the formal channels of the Paris Agreement.

"My impression was that there was a lot of collaboration and coordination between the private sector and certain heads of state that wanted to be able to demonstrate that the private sector was dedicated to the case," Zaman reflects. "They wanted to get that message out there in week one and then get down into the nitty-gritty, roll up your sleeves, heavy duty negotiations in week two."

JASON CHANNELL
Head of Sustainable Finance, Citi Global Insights

PETER ZAMAN
Partner, HFW

While undoubtedly positive that "the private sector has picked up the ball and started running with it," as Channell puts it, ambiguity and a lack of granularity when it comes to targets is still a hurdle to overcome. The vast proliferation of these net zero targets is a good sign, but the impetus now has to be on creating clear and consistent metrics to be able to meet 2030 goals.

Carbon Cutting

A significant move was the agreement on the fundamental framework relating to Article 6 on carbon markets, which serves to make the Paris Agreement fully operational. Given the vast amounts of carbon that crosses borders every year, it is a shift which is going to have a substantial impact on trading, but there is still some level of confusion about costing, definitions and scopes.

Categorisation of assets and their carbon content is presenting quite the challenge. While materials such as cement or steel are relatively easy to quantify, the liability of products such as iPads, for example, are more complex. "We are hearing lot of questions from clients who are confused about corporate level accounting principles and how the sovereign accounting systems marry up to that," Zaman says. "It invites a degree of confusion and some of that will play out in the way we try to argue and articulate the carbon content of products. If we are able to overcome that, the only way is through harmonisation of data."

"The double counting for us is a nightmare," Channell agrees. Better reporting standards will no doubt stand to improve the situation, and the more information released by corporates, the more clarity there will be. "We do it with FX, there's no reason we can't do it with carbon if we get aligned. Common definitions help build up a picture." The discrepancies could potentially lead to regulatory arbitrage, with companies relocating HQs to jurisdictions with weaker frameworks. However that would, as Channell points out, send a negative message from a reputational standpoint and could ultimately lead to a reduction in access to capital.

Shipping and Aviation: the challenges

Characterised by long-life, capital intensive assets, the shipping and aviation industries face some difficulties when it comes to transition. While it is too reductive to simply say that shipping is regarded as a necessity and aviation as a luxury, it is true that shipping is further along the journey to carbon neutrality. There is not yet sufficient feedstock or capacity when it comes to sustainable aviation fuel as yet, and developing the technology needed means a massive capital outlay.

The same could be said of the renewables industry of ten years ago. "When that tipping point happens," says Channell, "it happens completely. When that direction of travel becomes abundantly clear, you can't justify the Capex into the old tech because you're essentially building a stranded asset."

There are certainly opportunities to be had for the first movers – those who demonstrate leadership will stand to find the capital needed and customers will follow. The challenge remains that the ecosystem has to be financially viable, and there is a lack of suitable ways to get those funds in place. "The reality of the financing landscape is certainly not that the money isn't here. It's here in spadefuls. The biggest frustration from asset managers is the lack of appropriate vehicles in which to deploy it," Channell adds. Further research and development will, in time, address this issue, but as it stands, adaption finance is still very much in its infancy.

Standards of Reporting

There is increasingly an obligation for corporates to be more transparent about their environmental impact and governance process, but with companies operating across various jurisdictions and reporting regimes which are all asking for slightly different information, there are inefficiencies built into the system as it stands. This can lead to frustration and even inaccuracy.

However, reporting can also lead to a better understanding of the business, and the opportunity to demonstrate the very fabric of the company in a way that both stakeholders and investors will appreciate. If corporates embrace this challenge, a box ticking exercise turns into something that can offer real value and insight.

Roles and Responsibility

Research by the World Bank recently revealed that the impact of the pandemic hit the poorest most significantly, with the average incomes of people in the bottom 40% of the global income distribution 6.7% lower than pre-pandemic projections, while those in the top 40% down just 2.8%. The role of the financial sector in supporting recovery for the most vulnerable is important and has the potential to be hugely impactful.

This responsibility is increasingly being met through a much bigger focus on the social implications of ESG (Environmental, Social, and Corporate Governance) policies, and stakeholder responsibility and corporate values have been brought into stark focus. With that ongoing push from developed markets and private enterprise to further support emerging markets, Channell says the financial community recognises that "we all have a responsibility and we're all in it together".

Markets and regulators face complexities in adjusting to the transition to net zero and a more equal world, but it is clear that they will play a leading role in driving the solutions of the future. As Zaman concludes, "using sustainable development goals (SDGs) as a barometer to follow how and when we focus on these things is highly important."

ESG: the risks and opportunities

Most businesses would agree that even before the pandemic struck, ESG – Environmental, Social and Governance – issues were becoming of increasing importance. In the post-pandemic world, no company wants to be seen as being in any way harmful to either society at large or the environment. ESG is now a critical area for every organisation.

Recent developments, however, illustrate why claims about ESG achievements and intentions should not be exaggerated. False or hyped-up claims can lead to considerable adverse publicity and, of course, the possibility of legal liability. No investee company would welcome either.

HFW recommend companies conduct thorough reviews of their ESG claims and credentials.

While doing so it is important to remember that ESG is not just about environmental risks but also highlights social concerns (the recent #metoo and Black Lives Matter movements being obvious examples) and diversity issues as well as including the more traditional focus on corporate governance more generally).

As with any opportunity, there are potential risks and the recent opening of an investigation into DWS, a subsidiary of Deutsche Bank, in connection with its environmental investing strategy signposts one area of specific risk.

The reported DWS investigation is in its infancy and there are no findings of wrongdoing. The catalyst for the investigation though is all too familiar. A former sustainability officer for DWS turned whistle-blower alleges that DWS ESG activities fell well short of its ESG claims. The Wall Street Journal printed the story and the US Securities and Exchange Commission (DWS is a US issuer) has reportedly opened an investigation to assess whether the company's disclosures to the public around ESG could have been misleading. The story prompted a 13 per cent drop in the stock price in its parent company, Deutsche Bank.

The UK Financial Conduct Authority is following a similar trajectory. In July 2021 it wrote a "Dear Chair" letter to the Fund Management industry setting out findings that "in general, fund applications in this area often do not contain sufficient, clear information explaining their chosen strategy and how this relates to the assets selected for the fund. We would expect applications to contain this level of information at the outset". In particular, the FCA flagged that some applications for authorisation of investments funds with an ESG/sustainability focus fell below its expectations. For example, it stated:

- A proposed passive fund had an ESG-related name that we found misleading as it was looking to track an index that did not hold itself out to be ESG-focused. It also had very limited exclusions from the index, based on high-level ESG criteria.
- A fund application claimed to have a strategy to invest in companies contributing to "positive environmental impact". The fund intended to invest predominantly in companies that, while reporting low carbon emissions, would not obviously contribute to the net-zero transition. We had expected to see a measurable non-financial objective alongside the financial objective or strategy with information on how that impact would be measured and monitored.
- Instances where it was challenging to reconcile the fund's proposed holdings with statements made setting expectations for consumers. One example was a sustainable investment fund containing two "high-carbon emissions" energy companies in its top-10 holdings, without providing obvious context or rationale behind it (eg, a stewardship approach that supports companies moving towards an orderly transition to net zero).

A recent focus for the FCA and its enforcement arm is corporate culture, which also picks up on the social and governance aspects of ESG.

> "It is critical that ESG claims should not be overblown and should be documented and verifiable."

Unsurprisingly much of the commentary surrounding DWS and the FCA "Dear Chair" letter focusses on investment funds and their investment criteria. However, there are important knock on consequences for all businesses whether listed or not.

Potential investee companies should be raising their levels of diligence and being far more rigorous, when assessing their ESG principles, if they wish to access ESG capital from private equity or from listed funds.

It is critical that ESG claims should not be overblown and should be documented and verifiable.

The principle of liability flowing from inaccurate disclosure, whether by an ESG fund or an ESG investee company, are the same under well-established principles of the law of misrepresentation and other related principles.

Likewise, to reduce the risk of stakeholder scrutiny and criticism firms should ensure that ESG claims match ESG reality and ensure that ESG reporting to the Board is not exaggerated.

If problems are identified – whether by whistle-blowers or more routine inspections – Boards should take decisive action to get to the bottom of the allegations and reduce reputational risk by taking control of the issue.

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Planet Mark

For the sixth year in succession, HFW has achieved certification with Planet Mark.

More notable still, we have slashed our CO_2 emissions per person in that time by almost two-thirds (though Covid and working from home have obviously contributed).

The Planet Mark is an independent sustainability certification that requires participating businesses to measure their carbon footprint and to commit to emissions reductions of at least 5 per cent per year.

HFW has been a Planet Mark member since 2015, and in that time, we have been measuring the carbon footprint of our London head office. As you will see from the table below, we have delivered some significant emissions reductions.

The carbon footprint in our London offices in 2020 was just 37 per cent of that measured in 2015, and our emissions per person have similarly dropped more than 60 per cent. These reductions reflect both the strides we have made to improve energy efficiency within our operations (electricity consumption in London has dropped by nearly 40 per cent since 2015 despite the headcount remaining broadly the same) as well as the effects of the ongoing decarbonisation of energy generation in the UK.

These improvements to both energy consumption and carbon emissions are more remarkable when you bear in mind that the range of items expressed by the overall carbon footprint figure has expanded since 2015.

In 2015, our carbon footprint for London included: electricity, gas, water supply and treatment, business travel and paper consumption. In 2020, waste and recycling plus freight and courier services were added to the list.

In other words, despite including more emission sources in 2020 than in 2015, and widening our geographical scope to a global footprint, we've still seen our absolute emissions reduce by 24 per cent since 2015.

It must be admitted, however, that our 2020 carbon footprint also reflects the significant impact that the Covid pandemic and the associated lockdowns have had on our operations. It's fair to say that our 2020 figures do not reflect business as usual, but it does offer a tantalising glimpse of the potential we have to maintain the downward trajectory of our emissions reductions, if we retain some of the habits we've learned through lockdown.

The fact that HFW has shifted to a hybrid working model, with working from home now a permanent feature for most of us, means that the pandemic has changed the shape of our carbon footprint, pushing more of our emissions from the Greenhouse Gas Protocol's Scope 1 (direct emissions) and Scope 2 (indirect emissions linked with purchased electricity) into Scope 3 (all other indirect emissions). Planet Mark describes Scope 3 as the "standard that investors look for".

Perhaps the most exciting opportunity of all, however, is the potential for continuing this reduction effort into the future. Now that we are able to accurately assess our global carbon footprint, we can determine what level of ongoing emissions reductions are required for our decarbonisation to align with the 2015 Paris Agreement and the 2021 Glasgow Pact, to ensure that we are playing our part to reduce our own emissions fast enough to achieve a limit to global warming of less than 1.5 degrees since the beginning of the industrial revolution.

	2015 (London)	2019 (London)	2020 (London)	2020 (global)
GHG emissions (tCO_2e)	2367.1	1522.8	871.8	1799.4
Emissions per person (tCO_2e)	5.7	3.5	2.1	1.8
Headcount	415	437	417	1016