Key takeaways from Freshfields' Sustainability Horizon Scanning webinar

9 May 2024

On 24 April 2024, Freshfields' sustainability experts distilled for our clients the most pertinent global and local developments in key markets including India, Japan, Hong Kong, China and South East Asia. Here are the key takeaways from the webinar.

Clean energy transition trends and opportunities

- **Global decarbonisation requires $12 trillion in capital investment in the power sector.**
- **US** passed the Inflation Reduction Act to support clean energy projects and electric vehicles through tax credits but faces challenges in local permitting, grid connection and supply chain issues.
- **EU** employs the carbon border adjustment mechanism to impose carbon pricing on non-EU products and prevent carbon leakage.
- **Middle East** pursues decarbonisation for energy and industrial diversification through renewables, hydrogen, carbon capture and storage, and emissions trading.
- **China** prioritises decarbonisation on its own terms, while other countries like the **Philippines**, **Indonesia**, **Malaysia**, and **Thailand** offer tax incentives and feed-in-tariff schemes to promote renewables.
- **India** is steadily introducing regulations and incentives in areas such as green hydrogen and carbon credits, and production-linked initiatives in key new energy sectors.
- Currently, US$1tn of public and private funding opportunities are expected to be generated for **Japan'**s green transformation, including in CCS, hydrogen and off-shore wind.

Sustainable and transition finance

- ESG-related financing has rapidly matured with Green Bond issuances increasing year-on-year, and improved sophistication of KPIs for sustainability-linked loan financing.
- Traditional lenders have favoured green financeable transactions, leading to reduced liquidity and increased costs for higher carbon assets and resulting in a greater funding gap sitting with "brown" industries.
- Transition finance focused on decarbonisation efforts has gained prominence, with increased focus on the benefit of transition by high emission companies that may be critical to local economies (e.g. energy providers and heavy industry) in order to achieve net-zero.

Merger control and antitrust considerations

- **No consensus exists yet among antitrust authorities on the role for antitrust in the transition to low-carbon economies. Careful jurisdiction-specific analysis is needed of how collaborative efforts promoting sustainability will be assessed.**
- Several antitrust authorities (including in the EU, UK, Japan, New Zealand and Singapore) have adopted guidelines to provide guidance on how various forms of collaboration will be viewed. No special treatment in US.
- Joint initiatives that may affect competition require robust evidence that collaboration – as opposed to unilateral action – is necessary to achieve the intended goals and that consumer benefits will outweigh the

harm.
- Sustainability considerations are arising in the M&A context affecting how markets are defined, how a deal's impact on green innovation will be assessed and whether sustainability benefits will be considered.
- Governments worldwide are providing subsidies to facilitate the shift towards a sustainable future. These schemes require careful assessment to ensure they do not distort competition.

A global movement in corporate sustainability reporting

- In April 2024, ISSB added two research projects, namely BEES (biodiversity, ecosystems, ecosystem services) and human capital, into its work plan.
- ISSB recently published its digital sustainability taxonomy to help tagging and consumption of sustainability-related financial disclosures for investors and preparers.
- **ISSB Standards, to which Hong Kong is aligned following HKEX's recent announcement will be the 'no-regrets' option for listed companies and investors for sustainability disclosure.**
- China's sustainability reporting guidelines largely aligned with ISSB standards.
- Singapore plans to introduce IFRS S1 and S2, with mandatory scope 3 emissions disclosure starting in 2026.
- US SEC published Final Climate Rules, but stayed pending judicial review.
- European Commission published European Sustainability Reporting Standard (ESRS) with phased scope 3 emissions disclosure requirements. ISSB just published its EU-ISSB interoperability guide to illustrate the high level of alignment achieved between ESRS and ISSB Standards and how a company can apply both sets.
- UK in the process of endorsing ISSB standards, with a decision expected by the end of the year. UK Transition Plan Taskforce Disclosure Framework is designed to be interoperable with ISSB Standards.

Climate litigation and greenwashing

- **It's vital for companies to ensure "green" projects are as green as they claim due to increasing greenwashing disputes and heavier penalties.**
- Obligations and penalties for sustainability disclosure exist in Asia. **South Korea** imposes fines for exaggerating green plans; **Singapore** introduced environmental reporting standards. **Shanghai** Stock Exchange requires green bond proceeds to be invested in green projects. **Japan** seeks corporate sustainability disclosure in securities statements; **Hong Kong** focuses on green and sustainable finance.
- **Arbitration** is a suitable venue for these disputes due to expertise selection, confidentiality, and process flexibility.

Shareholder activism & stakeholder engagement considerations

- **Robust and frequent engagement with investors is an important part of aligning investors with Companies' ESG agendas and can prove an important component of in preparing for, and defending against, activist hedge funds advancing claims ostensibly relying on ESG principles.**
- The level of shareholder activism is high, both publicly and behind the scenes. Passive investors are increasingly voting against directors and company proposals, deviating from historical trends.
- Companies should identify potential issues that activists may raise and consider amending practices accordingly. If changes are deemed unnecessary, companies should prepare justifications to support their stance.

Gender pay gap reporting

- **Voluntary gender pay gap reporting is slowly emerging across the region. Businesses should consider whether to report, how and using what calculation methods.**
- The level of shareholder activism is high, both publicly and behind the scenes. Passive investors are increasingly voting against directors and company proposals, deviating from historical trends.
- Legislation is thin across the region, with some notable exceptions e.g. **Australia** and **Japan** (which introduced gender pay gap reporting in July 2022 for companies with 300+ employees).
- The **EU** Pay Transparency Directive (which will be incorporated into national laws by June 2026) could set a standard for future legislative changes in Asia.
- More clients are considering voluntary gender pay gap reporting as part of ESG efforts, with multinational companies in the region often adopting a consistent global approach. However, without specific regulation, reporting and the approach to calculations will be inconsistent between organisations.