Supporting sustainable futures

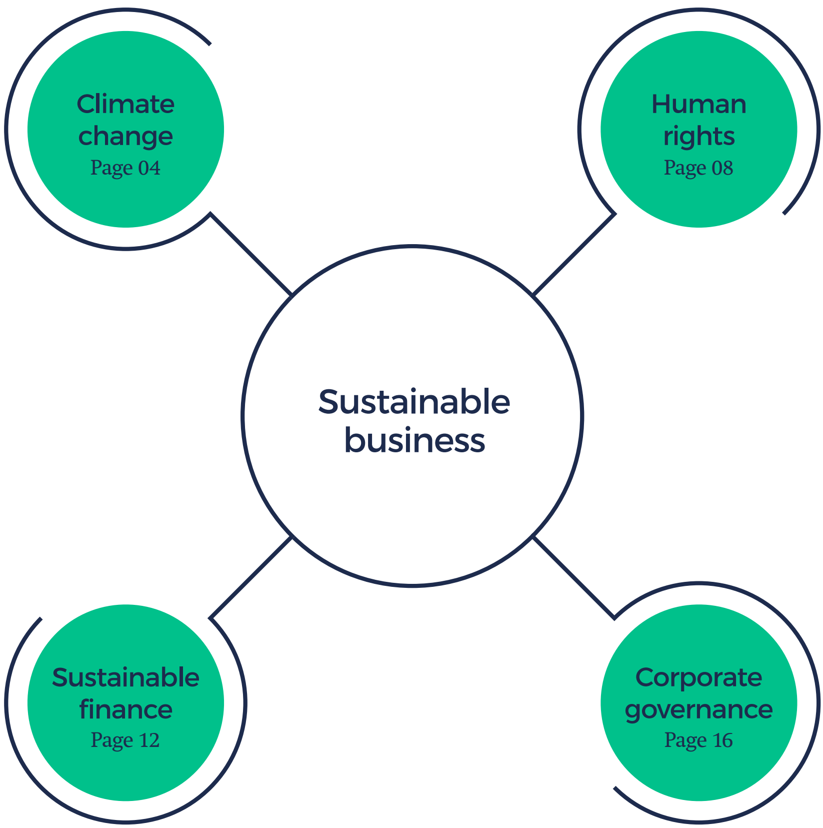
Tackling the world's biggest challenges

Freshfields

Freshfields is committed to sustainability. We see it as part of our role as trusted advisers to support our clients in their transition toward a sustainable and profitable future.

We are working with our clients' senior leaders to help them develop a comprehensive, proactive approach to sustainable business that anticipates risks and regulatory change, but also supports the potential for revenue growth arising from climate adaptation and sustainable infrastructure development.

Our sustainability focus falls into four broad categories: climate change, human rights, sustainable finance and corporate governance.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Climate change

Mitigating risk, revealing opportunity.

The Paris Climate Agreement's aim to substantially cut carbon emissions by 2050 is driving regulatory, investor and market changes.

In a world where international relations are increasingly fragmented, global business will play an essential role in the fight against climate change. Those that take the lead will gain a competitive edge and generate consumer trust. They will open up new markets and build long-term growth. And in a world where the young are increasingly attracted to businesses with purpose, they will position themselves to attract the brightest talent.

Climate change presents both a risk and an opportunity for business. Some of the downsides are obvious, such as the increasing frequency of extreme climate events that damage infrastructure and constrain economic growth. Others are less immediate, such as those inherent in the transition from traditional to renewable energy.

The way in which economic and policy levers are used to drive change must be carefully controlled – respond too slowly and the world will be exposed to even greater climate-related threats, but act too fast and it could trigger an economic shock that could harm our ability to invest in the technologies and infrastructure required.

The courts, too, are emerging as a new area of risk. Litigation is being brought against companies in an attempt to make them pay for adaptation efforts caused by past emissions and to ensure they are transparent about the impact of climate change on their operations.

But climate change also presents attractive commercial opportunities, for example in the significant growth of capital invested according to economic, social and governance (ESG) principles. Investor groups such as Climate Action 100+, which together manage more than $32tn in assets, are using their financial power to drive more sustainable strategies, recognizing both the transition risks and the commercial upside as consumer demand shifts rapidly toward greener products.

Those that take the lead will gain a competitive edge and generate consumer trust.

Our recent climate change work includes:

Representing RWE in a landmark climate case brought by Peruvian farmer Saúl Luciano Lliuya in the German courts. The suit alleges that RWE bears some responsibility for the melting of mountain glaciers near Mr. Lliuya's home town of Huaraz and is obliged to compensate him for the adaptation costs he has to incur.

Representing a major German financial services company in investment arbitration proceedings against Spain under the Energy Charter Treaty arising in connection with investments in the renewable energy sector, which suffered substantial losses due to Spanish regulatory action.

Advising the Asian Development Bank, CGIF and BPI Capital on the project bond financing of Tiwi-Makban geothermal power plant in the Philippines, Asia's first certified climate bond.

Human rights

Beyond corporate responsibility.

Alongside anti-bribery and corruption, human rights is now a strategic and legislative concern and a core element of corporate compliance.

With the legal landscape in relation to business and human rights changing, and human rights increasingly crystallizing into "hard law," global companies are having to evaluate and respond to human rights as a legal obligation.

California's Transparency in Supply Chains Act, the UK's Modern Slavery Act and France's Corporate Duty of Vigilance Law are all evidence of the increased "hardening" of human rights law. Claims are beginning to be brought against multinational parent companies over human rights infringements linked to overseas subsidiaries or global supply chains. Companies are also exposed to quasi-litigation risks through the National Contact Point (NCP) procedure, which hears complaints about corporate human rights compliance in relation to the OECD's Guidelines for Multinational Enterprises.

Human rights issues are also rising up the agenda in relation to corporate transactions, where they are a vital part of M&A due diligence.

Many companies seek to go beyond their strict legal duties by adopting the UN Guiding Principles on Business and Human Rights (Ruggie Principles). Using the Principles to scope and address human rights issues can help businesses assess and mitigate risk in a proportionate, iterative fashion, which in turn protects their reputation and preserves corporate value.

For regular updates on the legal implications of the ever-changing human rights agenda, follow Freshfields' human rights blog.

Many companies seek to go beyond their strict legal duties by adopting the UN Guiding Principles on Business and Human Rights.

Our recent human rights work includes:

Advising a major oil and gas consortium on its responses to a complaint to the UK, US and Italian OECD NCPs by NGOs alleging violations of environmental and human rights provisions of the OECD's Guidelines for Multinational Enterprises (incorporating the Ruggie Principles).

Providing a human rights risk assessment, using Freshfields' Human Rights Toolkit, as part of the acquisition of a regional hotel chain by a global hospitality group.

Advising on designing, drafting and providing training on human rights policies for various major financial institutions to balance the requirements of human rights law.

Helping conduct a global comparative survey to enable the American Bar Association Center for Human Rights to respond to a request from the United Nations Special Rapporteur for a report on the rights to freedom of peaceful assembly and association, and on the legal environment for corporations and civil society. The research will guide the Special Rapporteur's next formal report to the UN General Assembly.

Advising an international private equity investor on target title review across different sites and property formerly acquired in the context of "Aryanization" legacy issues.

Assisting a major European mining company with due diligence in connection with an acquisition.

Sustainable finance

Understanding true value.

Institutional investors are increasingly aware of environmental, social and governance (ESG) factors. But quantifying the benefits remains a challenge.

ESG or “sustainable investing” has come a long way. Many asset managers now include material sustainability criteria in their investment decisions. A recent McKinsey & Company report found that more than one-quarter of assets under management globally are now being invested sustainably, i.e. according to the premise that ESG factors can materially affect a company’s performance and market value.

ESG investing is no longer just a way to meet corporate social responsibility (CSR) aims (often by making a trade-off between impact and profits). Integrating ESG principles can deliver value by identifying hidden risks and opportunities through the analysis of ESG information and trends.

One particular area of opportunity is in relation to the delivery of the UN's Sustainable Development Goals (SDGs). It is estimated that $90tn worth of investment is needed by 2030 to achieve these and the goals of the Paris Climate Agreement. The vast majority of these will require project finance capabilities to deliver the energy, transport and IT infrastructure needed to provide a sustainable future.

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Our recent sustainable finance work includes:

Advising SSE on its €600m 0.875 percent "green bond," the largest-ever green bond issuance by a UK company. The bond will support the development of an active UK market in environmentally friendly capital market products.

Assisting the German impact investing intermediary PHINEO in setting up its impact investing fund, which included advice on corporate, finance, tax and distribution matters, as well as supporting the registration and drafting the funds management company's founding documentation.

Working toward creating an ESG "gold standard" for measuring social impact return for use by social impact investors by analyzing the quantitative (not qualitative) social impact return valuation methodologies used by asset managers and academia.

To do so, we are collaborating with the University of Chicago and London School of Economics, as well as talking directly to asset managers at social impact investment funds about the methodologies that they employ.

Contributing to the EU's High-Level Expert Group on Sustainable Finance, which led to the Commission's Sustainable Finance Action Plan. We help clients understand what implications these actions might have on their business and how they could integrate them into their non-financial, integrated or sustainability reporting.

Corporate governance

Building a **strong** culture.

In a world of greater cooperation between regulators, cyber security threats, increasingly litigious employees and customers and legislation focused on corporate criminal liability, corporate reputations are under threat like never before.

Cultivating a corporate culture where expectations are clear, appropriate behavior is rewarded (and inappropriate behavior punished) and employees are empowered to speak up is now a core part of risk management. We believe that every company's identity and culture should be fully integrated with its strategy and values.

Listed companies and financial services businesses must strive to match the priority given to corporate governance by regulators; and be ready to articulate what their desired culture is, how they are promoting that culture and how success is measured. As rules get stricter, large private companies will also need to define, assess and strengthen their corporate culture.

Activist shareholders have begun to make ESG demands in the past year or so, particularly with regard to climate change. For example, groups like Follow This and Climate Action 100+ are pressuring oil and gas companies to commit to more ambitious emissions targets – and to hold their leadership accountable. In response, Royal Dutch Shell in December 2018 pledged to set carbon emissions targets from 2020 and link these to executive pay. BP agreed to disclose how its spending plans, emissions policies and broader business strategy align with the Paris Climate Agreement.

As activist shareholders gain control of more assets, and as ESG issues become integrated into mainstream investing, the pressure to change business models will continue to increase.

As rules get stricter, large private companies will also need to define, assess and strengthen their corporate culture.

Our corporate governance work typically includes:

Carrying out more than 500 investigations over the past decade, and conducting research into those investigations to identify why things go wrong. We identified 12 key factors, which we use as a flexible governance and risk framework to test clients' values and culture.

Assessing the strength of a company's "speak-up" culture.

Carrying out culture and governance qualitative reviews.

Developing internal human rights compliance mechanisms.

Developing root cause analysis for a financial institution following a regulatory fine and carrying out working environment assessments.

Advising on the response of a US listed company to activist shareholders.

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