A better approach to business growth

Eversheds Sutherland Global ESG Solutions
ESG and climate risk are not just regulatory issues. They are a board level strategic issue - failure to take appropriate steps could leave an organization exposed to material business risks particularly as key stakeholders are now requiring change within companies. Climate risk is getting a lot of attention and understandably so because arguably it has the potential to impact company value the most.

Eversheds Sutherland’s dedicated ESG Solutions Team: advising on ESG and implementing value enhancing risk mitigating solutions.

Our ESG support falls within three broad categories:

1. Reporting, disclosure and compliance
2. Creating contractual frameworks which are ESG fit for purpose and ESG future proofed
3. Implementing ESG solutions to mitigate risk and enhance value
Reporting, disclosure and compliance

We can work with you and your auditors to ensure that your reporting, disclosure and compliance is not only in accordance with regulation but is also able to meet the growing demands of key stakeholders. We have developed playbooks and toolkits to assist with this process.

Companies have come a long way in a short time, with the Financial Sustainability Board reporting an 85 percent increase in climate risk reporting between 2019 and 2020. And, given the trajectory of investor and regulatory pressures, we’ll likely see this metric shift considerably over the next 12 months.

However, it is not just about whether a company reports climate risk, but how it is reported and the details that back up future strategy. Simply presenting a front-end disclosure, rather than providing information that is holistically part of financial reporting, is unlikely to be enough to meet the ever-increasing demands of investors and credit-rating agencies as the market matures.

In the months ahead, companies will come under increasing pressure to not only report on climate risk, but also quantify the climate risks and opportunities their business faces, and document their plans for climate action within the organization and across their supply chains in a proportionate way to the risks they face. Key stakeholders, such as investors, customers, and business partners, will want to see a defined strategy from companies with whom they engage in order to satisfy their own climate risk and decarbonization agenda including whether a particular investment or transaction should be made or whether to exit.

Eversheds Sutherland and KPMG Climate Change and Corporate Value report, 2020

We advise on board and committee composition including board diversity, leadership structures and oversight of risk management, as well as board functions and duties including reviewing bylaws and guidelines, committee charters, codes of ethics and other governance-related materials designed to comply with legal and regulatory requirements and best practices.

Helping you navigate the maze of regulation, voluntary measures and best practice.

- An introduction to TCFD standard for financial institutions and corporates
- The EU Q&A on sustainability-related disclosures in the finance services sector

Maura Hodge Audit Partner, National ESG Assurance Leader for KPMG in the U.S. Eversheds Sutherland and KPMG Climate Change and Corporate Value report, 2020

Importantly our team is comprised of lawyers who understand not only the company position but also that of the investors and funders — our approach is holistic, aligned and aimed at helping compliance create value.
Creating contractual frameworks which are ESG fit for purpose and ESG future proofed

When asked: “Does decarbonizing the business require significant changes to the existing business model?” the largest 500 global companies responded as follows:

- 74%: Yes – significant changes are needed to the business model
- 21%: No – only minor changes are needed to the business model
- 5%: No – no changes are needed

*Eversheds Sutherland and KPMG Climate Change and Corporate Value Report, 2020, November 2020
Your third party contracts and processes should give you:

- access to ESG data
- control over the third party arrangements
- if ESG data is not sufficiently clear or harmful to your business
- ability to exit without cost and flexible options for non compliance

Do your third party contracts:

- include ESG provisions?
- include provisions which are sufficiently robust to protect your business?
- create an openness to value enhancing opportunities?

Implementing ESG solutions to mitigate risk and enhance value

As ESG takes a more prominent place on the corporate agenda, boards and management will necessarily take more aggressive steps to develop an ESG strategy and implementation plan.

We advise across all the key areas of ESG solutions but we are also at the forefront of ESG thought leadership.

“ESG strategies should set out key milestones, the achievement of which should be capable of being verified to a reportable standard and reported on as part of a company’s reporting process. ESG compliance will likely become an important tool in the delivery of an ESG strategy rather than an end in itself.”

We are able to assess existing contractual frameworks and build better to reduce future risk around, and to capitalize on the value in, ESG. Buy-side organizations will need to develop a set of clear and measurable metrics against which they can track and audit the performance of their critical vendors and their progress against future-looking targets. They also need to consider what incentives (or remedies and penalties) will apply.

We can work with you to structure legal and contracting processes and the terms of the documents themselves to ensure that not only do your contracts allow you access to ESG data for disclosure and other risk mitigation purposes but that you are also able to create a legal environment where you are able to have greater control over ESG when engaging with third parties including data and activity monitoring and inbuilt contractual flexibility to take action without cost implications.

We will work with you to create new contractual frameworks which are ESG compliant, fit for purpose and importantly are future proofed.

It has been standard practice in complex, multi-year strategic outsourcing arrangements, to include an obligation on service providers to satisfy a range of policies & procedures of the customer (and to ensure that these requirements are flowed-down through the entire supply chain). These include policies on bribery & corruption, modern slavery, and ethical sourcing.

However this has not been the case (for most industry-segments) in respect of sustainability and decarbonization. The recent shift in focus of regulators, governments, shareholders and consumers mean that climate-related financial disclosures will become part of the fabric of corporate governance and will trigger a shift in procurement practices (and oversight) by both customers and service providers in strategic sourcing arrangements.

We can help you put in place procurement strategies and processes which are ESG fit for purpose.

Working with you to help you identify what ESG means to your organization and putting in place plans to address the priority areas for your business.

**How can we help?**

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**Without doubt the key area of concern and opportunity for many companies is around climate risk and decarbonization strategies. Companies are now able to:**

- Procure renewable heat and power
- Build ESG into remuneration and people development strategies to secure and retain the best people
- Develop ESG resilient litigation plans to reduce cost
- Procure energy efficiency solutions throughout their business processes
- Utilize their own estate to generate clear energy solutions such as rooftops, land adjacent to buildings, and parking spaces
- Convert their transport fleet to clean fuel with the advances made in e-mobility and the expected advances in hydrogen (with CCS and green)
- Reconsider their approach to waste
- Raise green finance
- Invest themselves in energy transition assets
- Form greener ventures or partnerships

*Eversheds Sutherland and KPMG Climate Change and Corporate Value Report, November 2020*
Energy transition solutions
Eversheds Sutherland has advised on climate change for over 20 years and has a team of over 150 lawyers globally dedicated to advising clients on how to navigate the energy transition and remove climate risk.

We advise innovators and providers of decarbonization solutions, companies transitioning to net zero and the banks and funds financing and funding climate solutions.

The team is also helping clients meet their climate reporting obligations and develop the strategies which underpin their transition to net zero including stakeholder due diligence and revised legal models of stakeholder engagement. Our objective is to help our clients achieve theirs in the most valuable and impactful way possible.

Procuring clean energy solutions
We have developed a global clean energy solutions procurement team which is advising companies procure clean energy solutions all over the world including physical, virtual and synthetic renewable power, energy efficiency solutions, solutions which utilize their own real estate assets and clean transport and fuel.

Helping corporates decarbonize
For more information on how we have helped corporates all over the world decarbonize their energy supply access the following:

- Global corporate PPA experience
- Global clean energy experience
- Helping UK corporates switch on to climate risk
Financing clean energy and other ESG solutions

Sustainable finance
Our corporate clients are increasingly embracing sustainability within their financing arrangements, and financial institutions are emphasising ESG requirements when scrutinizing potential opportunities. There has been an exponential growth in ESG, particularly lending linked to specific sustainability targets and we have advised on a large number of sustainability-linked financings with specific performance targets linked to an array of differing areas. These include CO2 output, performance, percentage of recycled product used in manufacturing processes, supply chain sustainability, employee satisfaction, work-ready training and gender diversity in the workplace. As the market evolves, we are seeing an increasing push into social and governance factors, which can now be considered equally important in the area of sustainability as environmental factors.

The legal landscape on green and sustainable investment is constantly evolving, which means considered legal advice is vital. Our ESG lawyers can help you navigate the broad range of opportunities and benefits of including ESG strategies in your finance products and working capital arrangements. We have vast experience in advising on green, social and sustainable finance and can work with you to ensure that your financing product helps deliver your sustainability strategy with significant positive outcomes.

Derivatives
We can help companies hedge risks associated with climate change. For example, weather derivatives are increasingly used by market participants to hedge against the risk of extreme weather. Derivatives also play a key role in the carbon markets. In particular, the market in derivatives referencing emissions certificates continues to expand. Derivatives also play an important role in sustainable finance projects where they are often used to hedge financial risks, including interest rate risk. The market continues to develop in derivatives referencing ESG compliant indexes often used by firms to complement and enhance ESG investment strategies.

Investing in Green and ESG impact opportunities
We can help companies with investments in green and ESG impact opportunities including new innovation, joint ventures and more established energy transition technologies and ESG impact solutions.

Climate and energy transition bonds
Our corporate climate and energy transition bonds team is helping clients secure lower cost finance for clean energy and other infrastructure projects or to fund their transition to a lower carbon position taking advantage of the current availability of capital for climate risk reduction measures. This is a growing area of focus for many companies and we advise on solutions which are either off-balance sheet or which comprise both off-balance sheet and equity finance. We also advise on sustainable supply-chain financing in renewable energy and other infrastructure projects as well as developing standards for products such as green or social bonds and loans.

Asset management and funds
Our asset management and funds team continues its long-held track record as one of the leading advisers to the financial services sector. It has been highly active in the responsible/sustainable investing space for many years and has helped dozens of clients to bring new sustainable investment products to market, as well as assisting others in amending disclosures for existing products in an appropriate way.

We continue to keep our finger on the pulse of new developments, contributing to industry collaborations and maintaining a dialogue with key stakeholders and policymakers such as the FCA and Treasury through our work with trade associations and bilaterally.

Fund launches
As a leading adviser to the asset management industry, we regard the launch, day-to-day operation, organization and termination of funds and their associated regulation as part of our “business as usual” work. We work across geographies, across fund structures and across asset classes. Recent years have been some of busiest for ESG funds and we have an outstanding track record working in new, innovative structures and strategies on the responsible/sustainable spectrum.

Assistance with forthcoming regulatory change
We can assist you to establish the scope and impact of forthcoming regimes such as the FCA Guiding Principles or UK Sustainable Disclosure Requirements (SDRs). Our broad view of the market means we are well positioned to explain not only black letter law but also market trends and consensus. We maintain a variety of tools to guide your projects and help with your deliverables.

Crafting disclosures
We have hundreds of hours of experience working on ESG product disclosures and are well placed to help you prepare product descriptions that will satisfy a variety of stakeholders.

Training
We offer a series of training sessions covering broad, wide-ranging discussions to ‘deep dives’ into specific regimes. These can be structured as discrete, discursive workshops or used as part of your internal education and awareness campaign.

International regulatory monitoring
Our RegNet team has been monitoring ESG developments closely throughout Europe and beyond and is working with various stakeholders to develop helpful tools and trackers for clients. We also maintain a database of essential reading, including mandatory local laws, policy frameworks and guidance, for these jurisdictions.
The people factor

People governance and social responsibility

It is difficult to keep up with the ever-evolving regulatory landscape. Even more so when you operate in multiple jurisdictions. Our ESG employment and labor lawyers are connected globally. They work together daily to help our clients identify the people governance risks they face within the jurisdictions they operate. They then find the practical solutions which can be implemented to mitigate against those risks to protect their reputation. Whether it be global issues such as modern slavery/human rights compliance, potential bribery and corruption risks, or the effectiveness of whistleblowing reporting procedures and protections; or more local governance issues such as IR35 and national minimum wage compliance (even large, well-paying organizations often get ‘caught out’ by the overly technical approach that HMRC takes to minimum wage compliance) we have expert lawyers who can help you. This may be on a one-off basis, or an ongoing basis with regular reviews of compliance and horizon scanning at certain points throughout the year.

We have developed a number of audit and due diligence tools which we use to get to know your business, the level of compliance you want to achieve, and to identify and ‘RAG’ rate your potential issues/risks. We then work with you to develop an action plan to address any compliance issues (or to achieve the higher standards of governance you want to achieve), and will help you with implementing those plans. This may be by way of ongoing legal and practical advice, tailoring one of our many precedent documents to meet your business needs or creating a new one just for you (for example, a modern slavery compliance statement, or a user-friendly whistleblowing procedure), providing you with a tailored training package to roll out to your workforce, or providing you with an HR Consultant to implement your plan. We will be involved as much, or as little as you like. We also help you to put contingency plans in place should any risk materialize in the interim period.

We also have a team of specialist benefits and incentives lawyers who work closely with our corporate teams, who can advise you on issues such as CEO and employee pay ratio reporting, and compliance with your regulatory (and ethical) duties as regards senior pay and reward.

Improving diversity and inclusion (‘D&I’), and tapping into talent in a socially responsible way

We are recognized as a leader in the field of discrimination and inclusion law, and have won a number of awards demonstrating our own commitment to furthering this important matter within our own workforce and within the communities that we work. We also have a number of eminent lawyers who have received personal awards for their own commitment to D&I, who have helped shape not just the services we offer to our clients and which we can offer to you, but also legal and policy matters more generally.

With expert D&I lawyers all over the globe, we can help you understand the legal and social situation within each of the jurisdictions you operate. We can work with you to identify the steps you can take to improve D&I within those jurisdictions in a responsible and courteous manner, and in the context of local laws and social attitudes. We can also help you to develop D&I policies, respect at work policies, complaints/redress procedures and practical development/training programs which you (or we) can deliver to your employees and directors. There don’t just focus on the law, but also what is socially and morally acceptable (and what is not).

We have also developed a number of audit tools which we use to assess compliance with equal pay law, and to identify gender and ethnicity pay gaps. under legal privilege. We can work with you to help explain pay gaps, and find practical solutions to reduce any disparities.

Our ESG employment lawyers are also innovative, particularly when it comes to D&I. We can help you justify positive action schemes that you may want to introduce to improve D&I and access to opportunities within your organization, and to help you formulate objective justifications for certain policies or practices where business needs dictate.

Sometimes the talent that you need isn’t always immediately available, or is only available in a different jurisdiction. Our specialist immigration lawyers can help you to secure visas for prospective employees in any jurisdiction, or, if you want to keep them where they are, our team of international lawyers can advise you on what you need to do to comply with local laws in respect of their employment. Further, our employment lawyers can draft/review apprentice agreements and employment processes, apprentice funding agreements, training agreements and agreements for people employed under other schemes (such as the UK’s Government Kickstart scheme) to help you bring people from underrepresented groups into your workforce.

Workforce engagement

Engaging employees is the key to business success. Not only will an engaged employee be your biggest advocate, it is also important to have their input into matters that touch on environmental, governance and social issues that impact your business. However, it is not always easy to work with trade union or employee representatives, which is often the conduit for such input in larger organizations. Our specialist labor lawyers, who have practical experience of managing relationships with representatives, can help you to review your relationships and the agreements that underpin them. They can provide you with advice on how to improve your agreements to get the best out of them for your business and employees, and also give you practical advice and tactics to help develop constructive relationships with representatives. Having acted in many high-profile collective workforce disputes, they can also help you to de-escalate collective disputes quickly and resolve disagreements when things go wrong.

For those without employee representatives, we can help you to establish appropriate information and consultation mechanisms within your workforce nationally, and globally, should you want to, so that employees have a voice on matters concerning environmental impact, governance and social responsibility. Having also assisted with many employee and trade union led recognition processes, our labor lawyers can also help you to navigate such processes, should one be instigated within your organization, in a responsible manner.
Pensions

Disclosure, compliance and communications
We advise trustees and employers on developing governance structures and a robust framework to address how greater transparency on climate change and other socio-governance issues which affect pension schemes could affect wider communications with members and scrutiny from industry groups and trade unions. We also have extensive experience reviewing scheme documents to ensure compliance with ever evolving disclosure rules.

In the UK, the new climate change regime under the Pension Schemes Act 2021 will require trustees of certain pension schemes to publish an annual report setting out how the scheme has complied with the recommendations made by the Task Force on Climate-related Financial Disclosures ("TCFD"). The report will need to be made freely available on the trustees’ (or the scheme sponsor’s) website and members will need to be told about it in various documents.

The new rules will initially apply to trustees of larger occupational pension schemes (with net assets exceeding £5bn), authorized master trusts and authorized schemes providing collective money purchase benefits, with effect from October 2021, and to schemes with net assets between £5bn and £1bn the following year.

We are already advising pension schemes on complying with the TCFD regime and have already been advising some schemes on preparing their first reports on a voluntary basis.

Governance and risk management
We can help trustees address the risks and opportunities arising from climate change by reviewing, assessing and, if necessary, updating:

- their scheme’s decision-making processes and sub-committee structure
- the remit and terms of reference and delegations of the scheme’s sub-committees, and delegations to third parties
- the scheme’s reporting and monitoring procedures (e.g. for sub-committees)
- the scheme’s risk register and process for monitoring and reviewing risks
- the scheme’s contracts with investment counterparties

We can also provide independent advice to trustees on their rights and obligations concerning their existing managers and investment consultants, including how to manage any conflicts arising where managers or advisers may have recommended investments which raise issues under the new climate change regime.

In addition, the Pension Regulator’s new draft single code of practice (expected to enter into force in summer 2022) will require pension schemes to include consideration of environmental factors in their governance systems. We can help trustees engage with their investment advisers to understand how climate change is built into their advice and what measures are being taken to reflect climate change risk in investment portfolios, and to consider the possible short, medium and long-term effects of climate change on the pension scheme.
Trustee training

We can offer bespoke training tailored to your scheme on how you will be affected by the new rules, and your wider legal and fiduciary duties relating to investment, funding and climate change.

Trustees will need to consider if their training program meets the latest training requirements of their jurisdiction.

For instance, the UK Government proposes that trustees of in-scope schemes should have a knowledge and understanding of the principles relating to the identification, assessment and management of risks and opportunities arising from climate change – including steps taken in response to climate change (e.g. from governments).

Trustees who fall outside the scope of the new rules may still wish to ensure that they understand the potential risks posed by climate change. The UK Pensions Regulator has already advised trustees to build capacity in this area and says that if “trustees don’t consider climate change risks and opportunities or exercise effective stewardship, investment performance may suffer”.

Creating contractual frameworks with investment managers which enable trustees to comply with their ESG duties

New climate change regimes may mean trustees need enhanced rights to data from asset managers – particularly when calculating metrics, assessing compliance with targets and undertaking scenario analysis i.e. analyzing the resilience of the scheme’s assets and liabilities and investment and funding strategies in at least two scenarios where there is an increase in the global average temperatures.

The legal landscape is evolving in a way that will give trustees greater access to this information and we can advise you on how to take these into account when setting your investment strategy and engaging with your managers.

Trustees should also consider whether they need additional contractual rights to implement their climate change strategy – whether in relation to existing investment managers, or when engaging new managers. We can help you negotiate and draft these.

What makes the Eversheds Sutherland Pensions Investment team stand out is our strength and depth of experience in advising pension schemes on their investments, including segregated mandates, regulated funds and investment linked life policies.

We can ensure you have the right lawyers on your team to advise you on new and existing investment contracts to help you achieve your aims, comply with your new duties and ensure you have appropriate remedies where needed.

Covenant analysis

In the case of regimes where schemes are funded by an employer sponsor, new climate change requirements may require trustees to assess the employer’s exposure to climate change risks.

In these cases, trustees may need to access commercially sensitive and confidential information from their employer. We can advise on employers and trustees on an appropriate legal framework to protect such information.

Trustees may also need to consider changing their long-term funding objective, and/or incorporating climate-related triggers into the scheme’s contingency planning framework or funding strategy.

We have extensive experience advising both employers and trustees on legal issues arising from covenant analysis, conducting funding negotiations and documenting contingency frameworks.

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Climate risk
Regulators and law makers are increasing their focus on ESG related compliance, disclosure and reporting issues. In addition, investors, customers and the wider public are paying attention to company performance in relation to decarbonization, sustainability and related health and climate risks. These factors together with climate activists calling for companies to be held to account and the growth of funded group claims, make regulatory enforcement action and litigation a real risk.

Many companies are now required or expected to state in their annual financial report whether they have made disclosures consistent with the recommendations of the Taskforce on Climate related Financial Disclosure (TCFD) or explain if they have not done so. Companies without specific reporting obligations are facing increasing scrutiny in this area from investors, customers and their own employees.

While developing and implementing a successful ESG strategy will be essential to managing these risks, we can also provide a multi-disciplinary approach to litigation risk management; our ESG litigation/enforcement team combines experience across all key areas, including group litigation in respect of securities and mis-selling claims, regulatory investigations relating to financial reporting, market abuse and financial products, ‘greenwashing’ claims and environmental law and regulation.

We can assist clients in identifying what aspects of their business expose them to ESG related regulatory enforcement and litigation risks and the steps they should be taking to mitigate them.

Greenwashing
In its most basic form, Greenwashing is any act which conveys a false impression about the green credentials of a company or the services or products that it provides. As consumers, investors, governments and the wider public become more aware of the risks presented by climate change and the need for wider sustainability, the pressure for companies to portray themselves as being “green” has grown and will continue to do so. This presents a real risk for companies and litigation and regulatory action are being used as tools to challenge behaviour seen as greenwashing. Avoiding greenwashing can be challenging particularly as the data companies need to assess green credentials and draw comparisons is often not readily available, accessible or easily comparable.

Due diligence, verification and disclosure
ESG should now be a part of any due diligence, verification or disclosure process. The challenge is knowing what to look for. Understanding which ESG factors have the potential to impact risk or value in the target business is key and this is what our global ESG Solutions Team is able to do and then advise you on how to process and act on this.

Warranties
Whilst existing standard warranties will no doubt cover many areas of ESG concern, in our view the better approach is to be specific and to consider going beyond a focus on compliance. This is because:

- a company’s ESG position has the potential to impact a company’s value notwithstanding ESG compliance
- key stakeholder engagement will likely be linked to a strong ESG position
- ESG is not just about risk. ESG can create value enhancing opportunities and these need to be understood

Integration provisions
These will need to:

- align the target’s ESG policies and procedures
- post-completion ESG compliance audit
- address and manage ongoing ESG risks
- prepare for enhanced ESG disclosures

Ongoing obligations
ESG coverage should be sought:

- in relation to existing and ongoing compliance with ESG law and ESG regulation
- to disclose any circumstances that could impact the ESG position of the company
- to protect against ESG driven value deterioration and to focus on ESG driven value enhancement on an ongoing basis
- to establish appropriate access to ESG data and establish appropriate due diligence, monitoring and disclosure protocols
- to share ESG best practices
- to cover the reputational risks of breach

Corporate transactions
The key ESG objective in corporate transactions is to ensure that our clients have full visibility of ESG risk areas, are able to evaluate these and assess the impact they should have if any on the transaction structure, terms and pricing. This applies across M&A, joint ventures and shareholders agreements as well as fundraising including Stock Exchange listings.

It is true that some existing standard provisions will by their nature cover ESG but they need to go further to ensure that the modelling, structure and documents are ESG fit for purpose and, so far as possible, ESG future proofed.

In addition, ESG has the potential to create value enhancement which may not have been captured at the time of the transaction. Corporate transactional models need to be capable of identifying this and capturing it for future value enhancement. We believe that this is a huge opportunity and one which must not be missed.

We aim to bring you the 3 Cs when it comes to ESG in corporate transactions:

- Certainty
  You can rely on the ESG data and have captured all ESG risk and opportunity.
- Clarity
  You are clear that the modelling, structure and provisions relating to ESG are correct, understood and have been properly implemented.
- Comfort
  From knowing that this transaction is aligned with your ESG strategy and will enable your business to continue to grow.
Other areas we can help with

**Insurance:** advising on the use of innovative risk transfer products such as catastrophe bonds and parametric (or trigger based) insurance, which insure against drought, windstorm or rainfall, whereby insurers make payment based upon objective measurement methods, and advising in relation to the establishment of public-private partnerships such as FloodRe in the UK, aimed at making the insurance of climate related risks more affordable.

**Utilization of your own estate:** helping you assess the opportunity to utilize decarbonized solutions on your own estate to create an additional income stream eg roof top solar, batteries, e-mobility infrastructure.

**Green leases**

ESG is rocketing up the agenda for all real estate stakeholders (be they developer, investor, occupier or lender) and so it’s an inevitable consequence that ESG considerations are becoming a more visible and integral feature of commercial leases.

The “green lease” is evolving as a result, whereby landlord and tenant agree to move beyond the usual full-repairing- and-insuring model and introduce additional lease provisions covering the likes of: energy efficiency, waste management, data sharing and even controls on repair, alteration and reinstatement that are linked to environmental and sustainability standards.

We are acutely aware that there isn’t a one size fits all approach to ESG in real estate and so we can work with clients to tailor our advice, drafting and due diligence to their particular environmental and sustainability ambitions also with regard to the nature of the land and buildings concerned.

The “green lease” is an ever-evolving concept and so let us keep you up to speed on the latest trends and developments in this field.

**Competition/antitrust law compliance**

We are keenly aware that companies across industries are stepping up efforts to run their businesses sustainably. Collective industry action can be a vital tool to achieving ESG goals, as it can help companies to share best practices and innovate more quickly and efficiently.

Companies in many industries are also choosing to cooperate with industry peers to set green standards, filling the gaps left by regulation, or to work together in arrangements aimed at delivering beneficial ESG change outcomes. Entering into agreements to this effect, commonly known as ‘standardisation’ or ‘sustainability’ agreements, falls within the remit of competition law, as do other forms of collaboration between businesses, because coordinated action can lead to anti-competitive outcomes if not managed carefully. Agreements which are caught by the competition rules will need to be carefully self-assessed to determine whether or not they would benefit from exemption from the law.

Our competition team is well-placed to advise businesses considering entering into these standardisation agreements, or other forms of collaboration, as we have an expert understanding of the relevant competition law issues. The relationship between competition law and sustainability is under intense discussion on the international stage – our lawyers are engaged in the debate and can help you navigate the changing landscape to manage any regulatory risks.

In addition, as part of this debate, the EU’s State aid regime is under review, to encourage green investment. We advise on State aid compliance and are ideally placed to advise clients on publicly funded projects in the renewables sector. We also have a vibrant international merger control practice and understand the sustainability considerations that regulators will bear in mind when assessing the effects of a merger.

**Carbon Trading**

With a deep understanding of the environmental credit markets, Eversheds Sutherland advise project developers, voluntary corporate purchasers, traders, regulated parties, carbon funds, and financial institutions, on every aspect of their credit trading needs.

We have assisted clients, ranging from small market participants to some of the world’s largest credit generators and traders, in maximising business opportunities and complying with the legal or voluntary regimes applicable to the generation, trade and use of environmental credits, including EU/UK ETS, CERs, VERs and other carbon allowances and offsets. This includes advising on end-uses/claims that can be made off the back of such credits, which is increasingly relevant as greenwashing and climate litigation risks expand.
We are here to help your business grow better

ESG has the ability to impact value negatively. Not understanding and actioning ESG is a business risk. ESG is also an opportunity for value enhancement. Our Global ESG Solutions Team is expert not only in helping remove and manage risk but also in helping you access growth opportunities through ESG strategies and their implementation. We look forward to helping you build your business better!

For further information please visit our Climate Resilience webpage.