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REPORT

THE FUTURE OF CLIMATE-RELATED DISCLOSURES FOR MULTINATIONAL COMPANIES

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Climate change has become a top priority on the global agenda, prompting governments, businesses, and investors to take decisive action. Central to these efforts is the disclosure of sustainability risks—particularly climate-related risks and opportunities—by companies in the areas of environmental, social, and governance (ESG). This practice has evolved significantly in response to mounting regulatory pressures, investor demands, and societal expectations.

As the landscape of ESG and climate disclosures continues to shift, companies must remain vigilant and adapt their strategies to stay ahead of the curve. Navigating this new regulatory landscape presents challenges to multinational companies. This report focuses on the most important aspects of several such global climate regulations to help inform the way companies track, measure, and report climate-related risks and opportunities.

THE UNITED STATES

The US Securities and Exchange Commission

After nearly two years of debate and delay, on March 6, 2024, the US Securities and Exchange Commission (SEC) adopted rules that require public companies to disclose certain climate-related information in registration statements and annual reports. The final rules include extensive disclosure requirements for public companies to identify, assess, and report material climate-related risks.

The final rules were scaled back from the proposed version; for example, the SEC removed the proposed requirements that companies report Scope 3 emissions and instead only require that larger public companies provide material Scope 1 and Scope 2 emissions disclosures. In addition, the SEC acknowledged the administrative burden of compliance with the new rules and provided a phased compliance runway based on a public company's filer status and the content of the disclosure.

Almost immediately, multiple legal claims were filed across various federal forums, challenging the rulemaking as either too burdensome or too scaled back from the initial proposal. Following the SEC's request for consolidation, the US Judicial Panel on Multidistrict Litigation consolidated all pending cases and appointed the US Court of Appeals for the Eighth Circuit to hear all the petitions. On April 4, 2024, the SEC voluntarily stayed implementation of the rules pending completion of the Eighth Circuit's review but noted that such action should not be viewed as capitulation. It reiterated its stance that the final rules are within its authority and reflect material disclosure necessary to make an informed investment decision.

While these legal challenges create uncertainty about the future of these new disclosure rules and may take years to settle, many companies are acting now to prepare for these and other climate disclosure rules that may impact their business.

For more details on how to prepare for the SEC's climate disclosure rules:

- SEC's Climate Disclosure Rules: Balancing Compliance Amid Legal Uncertainty

California Carbon and Climate Disclosure Requirements

Effective January 1, 2024, the Voluntary Carbon Market Disclosures Act enacted new disclosure obligations for any business operating in California that claims it is "carbon neutral" or that it has significantly reduced its greenhouse gas emissions, or that purchases, sells, or markets voluntary carbon offsets. The law is broad and could also affect clients with customers or employees in California.

Two other California climate laws—the Climate Corporate Data Accountability Act and the Climate-Related Financial Risk Act—will require any company in virtually any industry that meets certain revenue thresholds and does any business in California to make climate-related disclosures starting in 2026, regardless of their emissions levels and whether they predominantly do business outside California. On January 30, the first legal challenge was filed by a coalition of business groups on First Amendment grounds.

For more details on these three laws and how they interplay with the SEC rules:

- California Requires Companies to Disclose Climate Change Risks, GHG Emissions
- New Disclosure Obligations for Businesses Transacting Carbon Offsets in California

EUROPE

Corporate Sustainability Reporting Directive and European Sustainability Reporting Standards

Under the phased-in rules, starting in 2025, large private EU companies must comply with the EU Corporate Sustainability Reporting Directive (CSRD). The CSRD requires companies to incorporate sustainability data into their management reports, adhering to the comprehensive European Sustainability Reporting Standards (ESRS) developed by the European Financial Reporting Advisory Group.

The ESRS encompasses two cross-cutting standards, as well as 10 ESG reporting standards. The CSRD necessitates the "assurance" of this data and entails a "double materiality" evaluation, meaning companies must report on sustainability issues if they are deemed significant from either a financial and/or impact standpoint.

Although multinational companies will not be subject to the new EU reporting requirements until 2025, and global reporting until 2028, US companies should begin preparing for the CSRD now by conducting an analysis to determine whether—and if so, when—they will be subject to the CSRD reporting requirements, as well as prepare for a double materiality assessment.

For more on this topic:

- Corporate Sustainability Reporting Obligations in the EU and UK

Corporate Sustainability Due Diligence Directive

The European Union's intensely debated Corporate Sustainability Due Diligence Directive (commonly referred to as CS3D) received final approval on May 24, putting an end to the legislative process. Once the directive is implemented into national law by the EU Member States, the provisions will be phased-in starting in 2027.

EU companies and non-EU companies doing business in the EU will be in the scope of CS3D. Companies will be obligated to identify, prevent, terminate, and/or mitigate the actual and potential impacts of their activities on the environment and on human rights abuses. Additionally, in-scope companies will have to adopt climate transition plans to ensure their business models and strategies are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C, in line with the Paris Agreement's objective of achieving climate neutrality. Failure to do so will expose such companies to civil liability and possible damages claims. While CS3D also contains a reporting obligation, this can be met by reporting under CSRD.

CS3D will bring far-reaching new obligations for many companies doing business in the European Union. Companies subject to national supply chain laws must adapt, as national laws will be superseded by the provisions of the CS3D.

For more on CS3D:

- Corporate Due Diligence: EU Supply Chain Directive Adopted Against All Odds

International Sustainability Standards Board

When the International Sustainability Standards Board (ISSB) issued its first set of sustainability disclosure standards, International Financial Reporting Standards (IFRS) S1 and S2, it sought to create a globally consistent baseline for disclosing the effect of climate-related risks and opportunities on a company's projects.

IFRS S1 requires an entity to disclose information about all sustainability-related risks and opportunities that could reasonably be expected to affect its cash flows, access to finance, or cost of capital. IFRS S2 focuses on the disclosure of material information about climate-related risks and opportunities that could impact the company's prospects, which aligns with the scope and purpose of the Task Force on Climate-Related Financial Disclosures, which is widely accepted as a standard for climate financial reporting.

Under the ISSB, a company is required to disclose "material" information about such risks and opportunities that could reasonably be expected to affect its prospects. This contrasts with the EU double materiality approach under CSRD and ESRS and more closely aligns with US disclosure requirements. The ISSB standards are effective for annual reporting periods beginning on or after January 1, 2024, so investors, lenders, and other creditors will be able to use information starting in 2025. The UK government is expected to announce its own standards for company sustainability disclosures based on the ISSB in the first quarter of 2025.

For more on the evolution of sustainability disclosures:

- Sustainability Disclosure Enters a New Era for Global Business

Next Steps for Companies

Comply with Regulatory Frameworks

Companies operating in multiple jurisdictions should familiarize themselves with the climate disclosure regulations applicable to each region. This requires a thorough understanding of the requirements set forth by the regulatory bodies discussed above, as well as emerging rules.

Assess Reporting Options

Based on the regulations that apply to a company and/or group, entities should analyze the reporting options while taking into consideration which entity should report, how different reporting requirements may be fulfilled using a certain reporting standard, and how data availability and resilience can be ensured.

Conduct (Double) Materiality Assessment

Companies will need to identify and assess ESG-related risks and opportunities that are material to their business. This involves analyzing the potential impacts of climate change on various aspects of the company's operations, including supply chains and financial performance. If a company or group is in the scope of CSRD, a double materiality assessment must be done.

Ensure Stakeholder Engagement

Companies should engage with stakeholders, including investors, customers, employees, and regulators, to understand expectations regarding climate disclosures and demonstrate its commitment to addressing climate change.

Implement Governance and Sustainability Policies

ESG reporting obligations cannot be fulfilled without sustainability forming part of the governance of a company. Companies should assess the legal requirements and implement (additional) governance structures and policies to address these mounting obligations.

Data Accuracy and Consistency

Reliable and consistent data is the foundation of meaningful ESG disclosures. Many companies are investing in robust data collection, monitoring, and reporting systems to ensure the accuracy and reliability of the information disclosed. Certain legislations, such as CSRD, require (limited) assurances on ESG data.

CONCLUSION

The climate disclosure landscape is constantly evolving, with new standards, guidelines, and best practices frequently emerging. Companies must keep abreast of these developments and regularly update their disclosure processes to ensure compliance.

CONTACTS

If you have any questions or would like more information on the issues discussed in this report, please contact any of the following:

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