

# ALLEN & OVERY

## Environmental, Social and Governance (ESG)

*Managing risks and enhancing value*

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2019



# Introduction

Today's investors are looking for ways to put their capital to work in a sustainable way, one focused on avoiding harm to people and the planet and creating long-term value through socially desirable activities. Financial services, insurance and other professionals now must find their way around a rapidly evolving landscape of environmental, social and governance (ESG) factors and assess businesses according to their ESG characteristics in order to support investors who wish to make socially responsible investment decisions.

Allen & Overy has the subject matter expertise to guide you safely through the increasingly legal ESG landscape. Our ESG Team's advice is informed by decades of collective experience in environmental, social and governance matters, and by tracking the latest developments in ESG-related regulation and litigation around the world.

## ESG is good business

A growing body of empirical evidence shows that sustainable investment goals can be aligned with – and can advance – financial objectives. When a company performs well on ESG criteria, it is often a key indicator that it is well managed overall, prepared to manage volatility and likely to perform better financially over time. Thus ESG characteristics increasingly are used to assess the financial soundness of funds and companies, as well as how prepared or ‘resilient’ those investments are to longer-term challenges. Some socially responsible investors also want to use their wealth to further sustainable development goals and make a positive impact.

We can support you take advantage of such ESG-related business opportunities by helping you find ways to integrate ESG factors into your due diligence practices, portfolio analysis and investment decisions; design and roll out financial products that have a positive social or environmental impact; and monitor and report on your successes in a manner that meets regulatory requirements.

## ESG is good legal practice

Legal risk mitigation objectives and sustainable investment strategies also go hand in hand. It is now common ground that investors' duties around the world not only permit, but increasingly require, investors to embed ESG factors into investment processes. New regulatory risks also are emerging for investors and financial institutions, as governments respond to the international commitments States have made to address adverse ESG impacts – including with respect to climate change – by companies within their jurisdiction. Governments are employing ESG regulatory techniques that increase the legal, as well as reputational and financial risks, for businesses that fail to manage ESG issues effectively and for their investors and financial services providers. Private actors also

are deploying a diverse array of litigation strategies regarding ESG issues, including against company directors and financial institutions.

We can provide you a map of this treacherous terrain and help you find ways to identify risks across your portfolio; avoid involvement in adverse ESG impacts; assess the ESG related credit and other risks of your potential clients; gain a competitive advantage as regulation and litigation develops; design and roll out compliance processes and contractual mechanisms to mitigate risks; and obtain assurance and develop reports on your ESG performance.

## ESG involves complex challenges

ESG is increasingly becoming a complex form of corporate governance involving significant legal issues. As the framework becomes underpinned by legal requirements, advice is required to head off the risks and take advantage of the opportunities this new investment environment presents.

We recognise that different clients are at different stages with respect to ESG issues, and confront different ESG issues, and we tailor our advice accordingly.



# How can we help?

## Achieving your sustainable investment goals

- We can provide you practical advice to implement ESG considerations across your investments and help you meet your sustainable investment goals. While approaches to ESG vary depending on the particular asset class and its corresponding risks and opportunities, a few high-level ESG approaches apply across equities, fixed income, private equity, hedge funds, infrastructure investment, real estate and other investments and asset classes:
- Negative and positive screening: incorporating an investor's principles by excluding or involving companies involved in certain activities or industries.
  - Thematic: focusing on specific trends and themes such as human rights, the environment, diversity or demographics.
  - ESG governance: ensuring that internal risk governance systems are capable of fully understanding and mitigating ESG risks.
  - Engagement with portfolio companies: implementing meaningful ESG programmes (including KPIs) into the day-to-day operations of your portfolio investments.
  - Devising sustainable investments, such as social impact or green loans.
  - Integration: looking at investment decisions in a wider context than traditional financial analysis and including analysis of a range of risks and opportunities related to ESG drivers.
  - Active ownership & voting: actively engaging with the managers and boards of directors of investee companies on business strategy and execution, including specific sustainability issues and policies.

## Achieving your sustainable finance goals

Allen & Overy has extensive experience of working with clients in both the private and public sectors on sustainable financing, from corporate green loans or bonds, sustainable supply chain financing to financing renewable projects.

Management of reputational risk is currently a key driver for most clients but regulatory changes will be transformational for the market when they come into force. Certain borrowers may be required to disclose information on sustainability issues as part of their annual non-financial reporting obligations.

Across the sustainable bond and more nascent sustainable loan markets, Allen & Overy can navigate you through this fast-changing market and its evolving standards.

We have the depth of resources through our international network of lawyers to help our clients, wherever they are in the world, achieve their commercial aims across the sector.

We want to prepare our clients for the next step in the ESG evolution – enabling them to stay one step ahead and navigate the ever-changing ESG landscape. We also see significant opportunities for those clients who are adapting to these new challenges.

Examples of A&O advisory support to financial institutions to mitigate ESG risk and capitalise on ESG opportunities:



- Risk management & strategy**
  - Assist in developing ESG policies and practices
  - Draft ESG management plans and codes of conduct for projects and transactions
  - Design bespoke contractual mechanisms and dispute resolution clauses to permit leverage and exit
  - Advise Board and C-Suite on regulatory landscape and litigation risks
- Due Diligence**
  - Scan transactions and lending to identify potential ESG impacts throughout value/supply chain
  - Conduct structured ESG due diligence and impact assessments on high-risk projects, transactions and lending
  - Draft strategic reports, sustainability and modern slavery reports
- Reporting**
  - Assess effectiveness of responses to ESG impacts, provide metrics and analysis, and design alternative strategies
  - Design grievance mechanisms as early warning systems and remediation processes
- Dispute resolution**
  - Dispute resolution: we represent clients before courts and tribunals, where they face claims involving alleged environmental, social and governance abuses
- Sustainable finance**
  - Advise on all aspects of sustainable finance, from corporate green loans or bonds, sustainable supply chain financing to financing renewable energy projects
  - Develop standards for products such as green or social impact bonds and loans

### Top motivations for ESG investing



### Top barriers to ESG integration



Source: The BNP Paribas ESG Global Survey 2019

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# A leading firm in ESG risk management

## Numerous clients in the financial services and other sectors

on their obligations to report on human rights issues under the Modern Slavery Act.

## A global investment bank

on an ESG review in respect of its proposed role in connection with the acquisition of a West African mining company.

## A global infrastructure fund

on anti-bribery, AML and governance reviews in the context of a proposed acquisition of a portfolio of storage and port assets.

## A natural resource company

on reforming an operational level grievance mechanism and revising security and human rights policies and practices in relation to police and private security.

## A major international hedge fund

in relation to the hacking and theft of highly valuable confidential information and trading strategies by a rogue employee. This was a critical case for the client and involved civil and criminal proceedings in multiple jurisdictions to ensure that the breach was controlled and the employee extradited for criminal trial.

## Numerous multinational corporates and a conglomerate

on the management of supply chain risks including compliance with the UN Guiding Principles on Business and Human Rights and carrying out human rights due diligence.

## A number of private equity clients

on ESG reviews in the context of proposed acquisitions, including in respect of the target companies' compliance with the Voluntary Principles on Security and Human Rights and domestic environmental regulation.

## The sponsor of an African energy project

on the management of the project's bribery and money laundering risks and related mitigation measures.

## A State-owned development finance institution

on its responsibilities under the United Nations Guiding Principles on Business and Human Rights with respect to its lending and investment activities.

## A European company

## Corporate clients

on reviews of their emergency plans and procedures to deal with major health and safety and environmental events. This also included numerous presentations to boards and management on the development of policies and the implementation of appropriate procedures.

## An oil major

on the management of its international climate litigation.

## A mining company

on transnational tort litigation with respect to human rights issues and state security forces.

## A major telecommunications company

on joining the Global Compact and other multi stakeholder initiatives, its own code of conduct and related legal risks.

## A renewable energy company

in conducting an assessment of the company's approach to security and human rights, including in relation to its memorandum of understanding with State security forces, and implementing reforms.

## One of the world's largest mining companies

on a range of human rights related risks in Africa and Australasia.

## Numerous banks and fintechs

on the implementation of AML policies and procedures.

## A major American company

with a vast and complex supply chain, in designing human rights compliance systems.



*Tier One  
for Environment*

Legal 500 UK 2019



*Tier One for  
Dispute Resolution*

Chambers Global 2018

# Our select green finance experience

## ING and ABN AMRO

the arrangers on a EUR550m green facility for Renewi plc. The first UK Green revolving credit facility to be used for general corporate purposes.

## Stora Enso

the Finish pulp and paper company on a EUR600m sustainability linked revolving credit facility.

## Pennon Group

on a GBP30m bilateral impact loan revolving credit facility.

## South West Water

on a GBP20m and GBP30m bilateral impact loan revolving credit facilities provided by Société Générale and Natwest respectively. The loans are linked to better environmental performance and cleaner beaches and is a first of its kind in the UK.

## Export-Import Bank of India (EXIM Bank)

the lead managers on the issue of USD500m Green Bonds.

## Alpha Trains

certified EUR250m bonds issued to finance acquisition of energy efficient electric passenger train sets, the world first green U.S. private placement in the rolling stock sector (A&O advised investors)

## IDBI Bank

ANZ, BNP Paribas, Citi, HSBC, J.P. Morgan and Standard Chartered Bank as joint lead managers on the inaugural issue of USD350m Reg S green bonds by IDBI Bank Limited, the second Indian bank to issue green bonds.

## NTPC Limited

the lead managers on the issue of INR20bn green masala bonds by NTPC Limited, the first of its kind and is dual listed on the London and Singapore Stock Exchanges. The green bond is certified by the Climate Bond Initiative.

## Japan Bank for International Cooperation and BTMU

on a USD1bn Green loan to Petrobras which will be used for a co-generation project at Comperj oil refinery, and for a flaring gas 2 reduction project at multiple offshore oil concessions in the Campos Basin.

## Nederlandse Waterschapsbank N.V.

the lead manager on the issue of EUR1bn and EUR500m Green Bonds.

## HSBC France

the lead manager on the issue of EUR500m Green Bonds.

## Industrial and Commercial Bank of China

A syndicate of 11 banks, with Crédit Agricole Corporate and Investment Bank, HSBC, Industrial and Commercial Bank of China (Asia) Limited and Merrill Lynch International as joint global co-ordinators, on the inaugural, multi-tranche green bond issuance by **Industrial and Commercial Bank of China Limited (acting through its Luxembourg Branch)** of EUR1.1bn floating rate notes due 2020, USD450m floating rate notes due 2020 and USD400m 2.87% notes due 2020 under its EUR8bn MTN programme.

## Neerg Energy Ltd.

Bank of America Merrill Lynch, Goldman Sachs, HSBC, J.P. Morgan and UBS as joint bookrunners on the Rule 144A/Reg S debut high yield offering of USD475m of 6.00% senior secured notes due 2022 by Neerg Energy Ltd. The bond was certified as green by the Climate Bonds Initiative and verified by an independent assurance statement.

## Rural Electrification Corporation Limited

The lead banks in connection with the Regulation S green bond offering of USD450m 3.875% senior unsecured notes due 2027 by Rural Electrification Corporation Limited. The green bond issue was certified by the Climate Bonds Initiative and verified by an independent assurance statement and dual listed in London and Singapore.

## Anglian Water

on a credit facility containing sustainable standards.

*“Their service is exemplary. It’s a very good, high-quality law firm and their entire team is very good to work with.”*

Chambers UK 2019



*Debt & Equity-linked Team of the Year*

IFLR Asia Awards 2016

# Our experts



## Matt Townsend

Partner, Global Co-Head of the Environmental Law and International Trade Groups

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Matt Townsend specialises in a range of compliance and trade related issues including environmental and health and safety matters; supply chain management; climate change/carbon; corporate reporting; risk governance frameworks; anti-bribery/AML compliance; Brexit and trade related matters. He acts for a range of cross sector corporates and financial investors on these issues and has, for a number of years, supported clients in the implementation of their ESG programmes.

He is widely recognised as one of Europe's leading regulatory compliance lawyers.

*“If I was putting together a dream team, it would have him in it.”*

Chambers UK 2018

*“Very experienced, knowledgeable, and client and business-focused.”*

Chambers Europe 2018



## Suzanne Spears

Partner, Litigation and Arbitration, Global Co-Head Business and Human Rights Group

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Suzanne is a partner in the International Arbitration Group and co-head of the firm's Business and Human Rights (BHR) Group. She is recognised by Chambers Global as one of the world's leading lawyers in BHR. She is an experienced public international lawyer who advises on a wide range of contentious and non-contentious matters arising under public international law. Suzanne advises clients on risk management, compliance and corporate governance in relation to the regulation of BHR, and on dispute resolution planning and prevention. She is a highly-regarded advocate in the resolution of complex, high-value cross-border disputes. Suzanne is often instructed to advise on highly sensitive issues, such as relationships with host governments and security forces, human rights grievance mechanisms, human rights due diligence and compliance, dispute resolution with local communities and transnational litigation involving BHR issues.

*“...recognised for her knowledge of the [Guiding Principles] and the UK's Modern Slavery Act”*

*Sources report being “highly impressed” with her knowledge and long-term commitment to this area.*

Chambers Global Business and Human Rights Law 2018 and 2019



## Tom Lodder

EMEA Head  
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Tom Lodder is a Managing Director of Allen & Overy's new consulting and regulatory advisory practice, based in London, covering EMEA.

Prior to joining A&O Consulting, Tom was Managing Director, Head of Regulatory Policy for the Barclays Group globally, where he was responsible for leading policy on key strategic regulatory developments in areas such as Brexit, US. Regulatory recalibration, bank structural reform, IFRS9, capital, resolvability, data privacy, and market infrastructure (including MiFID2 and EMIR). Previous to his London role, Tom spent over ten years in senior in-house legal roles based in Singapore.

**Tim Conduit**

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Tim has significant experience of sustainable finance products, across the bank, bond, private placement and structured finance markets. He has specific expertise in infrastructure and energy financings in the renewable energy space, including onshore and offshore wind and PV/solar projects. Tim is an expert in non-bank financing techniques for infrastructure and energy, including project bonds. For example, Tim was involved in most of the transactions to close using the EIB's Project Bond Credit Enhancement product, as well as on the development of that product and similar products designed to facilitate the use of non-bank financing in the capital markets. More recently, Tim has been involved in initiatives with the World Bank and Global Infrastructure Hub to provide guidance on public private partnerships to governmental authorities in emerging markets, including on sustainability and climate change-related issues.

*"Tim Conduit receives plaudits... garnering praise from interviewees who note that "he is very good and he really knows his stuff in that area."*

Chambers UK 2018

David is a partner in A&O's banking department and has a wide range of expertise which includes investment grade and leveraged finance, restructurings and distressed refinancings, trade finance, and acquisition finance for public and private bids in the UK, US, Europe and Australia. He has acted for most major banks and his corporate relationships include several FTSE-100 and FTSE-250 companies. Among David's recent transactions are a sustainable financing for a leading European renewables group.

*"Looks to get the deal done but never loses sight of his client in the process.'... 'Someone who manages to deliver for the banks and the borrowers in the same breath.'*

Chambers UK – Banking & Finance 2016

**David Campbell**

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**Greg Brown**

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Greg has experience acting for both lenders and borrowers with work covering a wide range of debt financing practice areas, including corporate lending, fund finance, trade and commodity finance and acquisition finance.

Greg is also the head of Allen & Overy's Social Finance and Impact Investment Group. Greg has been involved in structuring sustainable and other impact investments for over a decade, acting both for borrowers and funders in that sector.

Greg is ranked as a leading individual in Trade Finance by Legal 500: "Stand out on high-end and complex deals." Legal 500 UK 2014: Finance: Trade Finance

*"Greg Brown is pragmatic, very user-friendly and sensible"*

Chambers UK

**Melissa Samuel**

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Melissa has been a Partner at Allen & Overy for 10 years, advising on a broad range of financing matters. Her experience includes acting on a variety of sustainable financing facilities – from those which specify a purpose which meets the LMA's Green Loan Principles or include a requirement to hold a minimum level of sustainable assets, to those where the margin ratchet reflects the borrower's compliance with defined sustainability criteria (which frequently require certification or verification by third party experts). For example, she acted for Stora Enso OYJ on their 2017 ESG Indexed loan for general corporate purposes.

*"Melissa Samuel is... tipped for the top and is 'competent, calm and a delight to deal with on complex, high-value deals'."*

Chambers UK

**Catherine Lang-Anderson**

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Catherine is a Partner in the banking practice at Allen & Overy. Catherine is a key member of our global trade, commodities and supply chain finance practice and regularly acts on deals involving commodities traders and other industry players. She advises UK and global industry bodies on legal and regulatory issues affecting the trade and commodity finance community and is a regular contributor to trade finance publications. Catherine regularly speaks at industry events on sustainability in trade and supply chain finance.

Catherine Lang-Anderson was recently listed in the FT & HERoes 50 Female Future Leaders list 2018.

**James Roe**

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James is a corporate and equity capital markets partner based in the London office. Through his experience acting on public offerings and corporate transactions by public companies in multiple jurisdictions, and regularly providing advice to boards, senior executives and members of the investment and advisory community, he has built a wealth of knowledge and practical experience of corporate governance and an understanding of the myriad of ESG related issues that organisations face. James is recognised by both Chambers and Legal 500 as a leading individual for ECM.

*"He is brilliant...he is very knowledgeable and has expertise in emerging market work"*

Chambers UK – Equity Capital Markets 2019

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## GLOBAL PRESENCE

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Allen & Overy is an international legal practice with approximately 5,500 people, including some 550 partners, working in 44 offices worldwide. Allen & Overy LLP or an affiliated undertaking has an office in each of:

Abu Dhabi	Bucharest (associated office)	Ho Chi Minh City	Moscow	Seoul
Amsterdam	Budapest	Hong Kong	Munich	Shanghai
Antwerp	Casablanca	Istanbul	New York	Singapore
Bangkok	Doha	Jakarta (associated office)	Paris	Sydney
Barcelona	Dubai	Johannesburg	Perth	Tokyo
Beijing	Düsseldorf	London	Prague	Warsaw
Belfast	Frankfurt	Luxembourg	Riyadh (cooperation office)	Washington, D.C.
Bratislava	Hamburg	Madrid	Rome	Yangon
Brussels	Hanoi	Milan	São Paulo	

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