LEGAL NEWS, INDUSTRY INSIGHT AND SUSTAINABLE INNOVATION EVERY QUARTER

HFW

SQ

Sustainability Quarterly

Right on the money

The growth in climate finance and the positive effects it can have

Andrew Herring

An interview with the CEO of Marsh Energy & Power

Shape up or ship out

The path to decarbonisation in the shipping industry

Climate litigation: Turning up the heat

it is critical to be alert to environmental liability risks

HFW Community Carbon Challenge

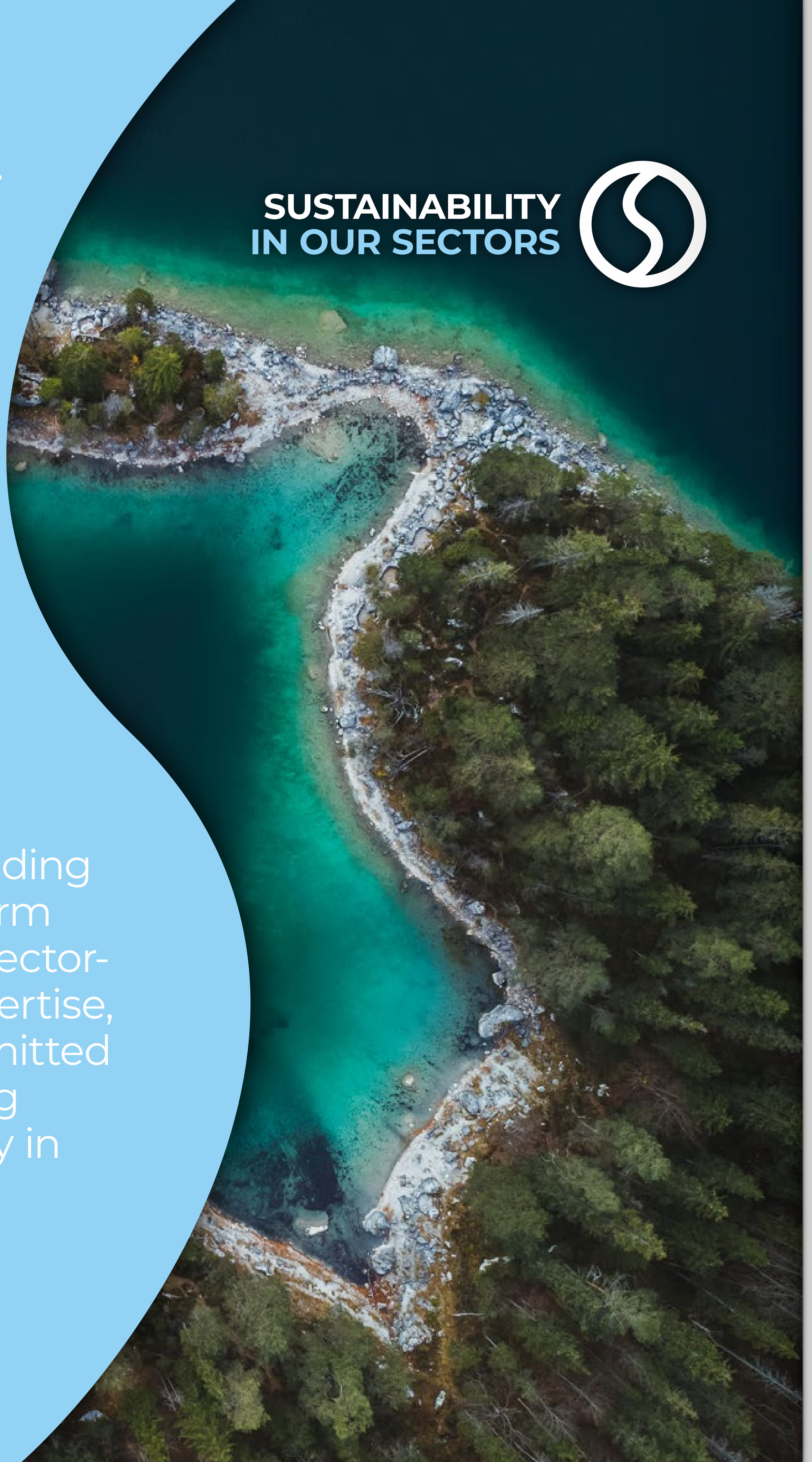
A firm-wide challenge designed to embed environmentally friendly behaviours into everyday lives

SUSTAINABILITY IN OUR SECTORS

SUMMER 2021

HFW

SUSTAINABILITY IN OUR SECTORS



HFW is a leading global law firm with deep, sector-focused expertise, that is committed to promoting sustainability in its sectors.

We are delighted to bring you the second edition of Sustainability Quarterly.

In this issue we smell the coffee, as HFW acts for Geneva-based, Sucafina on a high-value, sustainability-linked facility involving 16 European, US and Asian banks led by ING.

Andrew Herring, Marsh's CEO for Energy & Power, tells us how the insurance industry is reacting to climate change, from pricing coverage to product development.

HFW partners Olivier Bazin and Peter Zaman outline the latest developments in climate finance, while Alessio Sbraga explains how recent regulatory changes are affecting the shipping sector's approach to sustainability.

We share details of the HFW Community Carbon Challenge, which supports colleagues across our global network in introducing more sustainable behaviours into their everyday lives. At HFW, we are committed to making a positive difference.

In the next edition, we will be taking a deep dive into what we can expect from the much-anticipated COP 26, taking place 1 to 12 November in Glasgow, UK.

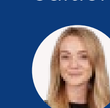
Until then, if you would like to share your feedback or request further information, please do get in touch..

Giles

GILES KAVANAGH
Sustainability Partner
giles.kavanagh@hfw.com

Contents

If you would like to share feedback on this publication, or be involved in future editions, please contact the editor:



ANNIE MADDOCK
T +44 (0)20 7264 8857
E annie.maddock@hfw.com

Legal Updates

Edited by Nicola Gare, HFW Disputes Professional Support Lawyer

Sustainable Finance

As part of a modelling exercise on behalf of key Australian banks, an Australian financial regulator, Prudential Regulation Authority (**APRA**), is analysing what would happen to the Australian economy if climate change increased temperatures by more than three degrees higher than the Earth's current average, and created a so called 'hot house world'.

The APRA's 'Climate Vulnerability Assessment' will initially calculate the banks' exposure to climate risk by assessing the physical risk to 50 of Australia's largest non-finance businesses, and then roll out to include the top 500 companies.

To read more, please click **here**

Sustainable Transport

As a follow up to the report in our **Spring Sustainability Quarterly**, the environmental impact of the shipping industry was discussed at the recent 76th meeting of the International Maritime Organization's Marine Environment Protection Committee (MEPC). Mandatory global technical and operational measures (Energy Efficiency Existing Ship Index (EEXI) and Carbon Intensity Indicator (CII)) aimed at reducing the carbon intensity of vessels were adopted, and will become effective on 1 January 2023. Despite some welcome clarification on how these measures will operate, criticism was voiced at the lack of any sanctions regime for non-compliance, and the smaller initial carbon intensity reduction target agreed (11% reduction by 2026, instead of 22%).

Consequently, regional/national initiatives to decarbonise shipping (e.g. the EU's emissions trading system) remain a distinct likelihood. Discussion of '**market based measures**' to put a price on carbon emissions was pushed back to MEPC's next meeting in November 2021. A ban on the use and carriage of heavy fuel oil in Arctic waters after 1 July 2024 was also agreed.

To read more, please click **here**.

Please see our related briefings on:

- **EEXI and CII**;
- **'The Multifaceted Approach Towards Regulating Carbon Emissions In International Shipping: Global, Regional And National Measures'**;
- **The EU's emissions trading system**.

In support of the French government's steps to reduce carbon emissions by 40% in 2030, the French National Assembly has voted in plans to end internal flights on routes where there is the option of a train journey of under two and a half hours, which could include by way of example, travel between Paris and Lyon and Bordeaux. The measures are part of the **Climate Change Bill**. It has yet to be seen whether the Bill will become law.

The French action is not the first of its kind. The Netherlands has tried to introduce similar measures aimed at ending short flights, and in 2019 nearly succeeded when Dutch MPs voted to end flights to an airport in Brussels some 93 miles away. However, due to concerns over European free-movement regulations it did not proceed.

To read more, please click **here**.

The UK government has enacted legislation, which grants the UK Transport Secretary a range of additional powers to help enhance and decarbonise the country's aviation infrastructure.

The **Air Traffic Management and Unmanned Aircraft Act 2021**, which received Royal Assent on 29 April 2021, grants the government a range of powers aimed at improving and decarbonising the country's aviation infrastructure. Significantly, the new powers include an option to waive the current rule requiring airlines to operate a certain volume of flights (80%) in order to keep their airport slots. If the rule is waived airlines will be able to cancel flights that have very limited passenger numbers, avoiding so called 'ghost flights'.

To read more, please click **here**.

Carbon Neutrality by 2050

The UK government has announced its sixth Carbon Budget aimed at reducing carbon emissions by 78% by year 2035 compared to 1990 levels.

The carbon budget seeks to limit the volume of greenhouse gases emitted over a 5-year period from 2033 to 2037, and will for the first time include the UK's share of international aviation and shipping emissions. If the UK adopts the 78% reduction, it will be more than three quarters of the way towards the 2050 net zero target, and consistent with the Paris Agreement temperature goal to limit global warming to below 2°C.

To read more, please click **here**.

The Hong Kong government has announced that it will strive to achieve carbon neutrality before 2050, and is moving towards the 2030 target of reducing carbon intensity by 65% to 70% compared to 2005 based on Hong Kong's Climate Action Plan 2030+.

To read more, please click **here**

Climate Disputes

As reported in the **HFW weekly climate and de-carbonisation update**, and in what is believed to be the first lawsuit of its kind against the Italian government, 203 claimants have issued proceedings in the Rome court seeking an order that the Italian government increases the target for cutting emissions to protect residents.

To read more, please see the click **here**.

In its judgment in Sharma and others v Minister for the Environment [2021] FCA 560, the Federal Court of Australia held that the Minister for the Environment has a duty to take reasonable care to avoid causing personal injury to the claimant children when granting permission to on certain projects coal extension projects. However, the court declined to order the injunction they sought.

To read more, please click **here**.

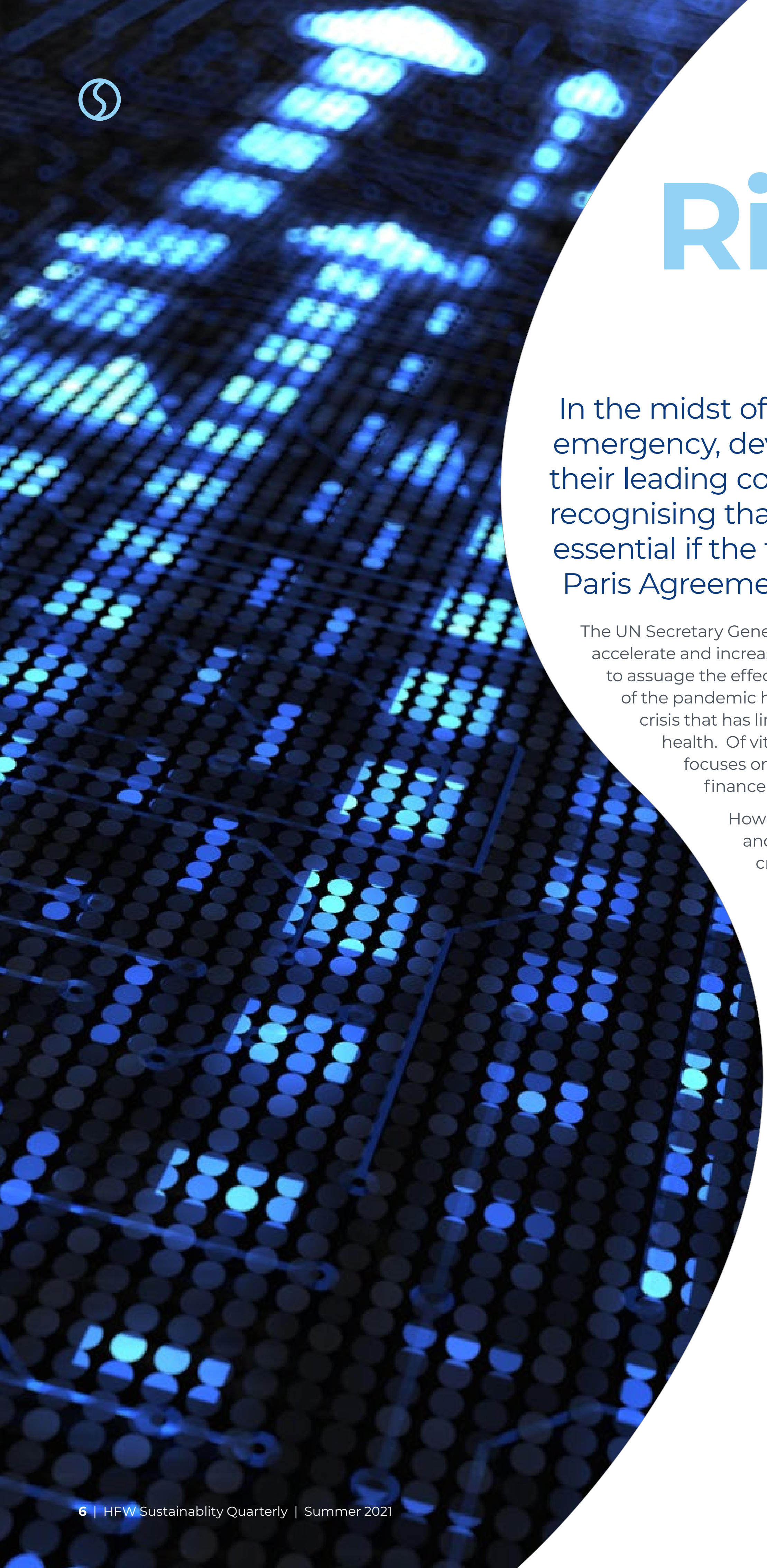
Norway is being taken to the European Court of Human Rights (**ECHR**) by six climate activists and two environmental NGOs, who argue that Oslo's 2016 decision allowing 10 Barents Sea oil exploration licences was in breach if the Norway constitution, which guarantees the right to a healthy environment

The ECHR proceedings follow several unsuccessful attempts by the campaigners in the Norwegian courts, which concluded with the Norwegian Supreme Court ruling that the granting of oil permits was not contrary to the ECHR because it did not represent *"a real and immediate risk"* to life and physical integrity.

To read more, please click **here**.

A federal judge in New Orleans has blocked the Biden administration's suspension of new oil and gas leases on federal land and water. President Biden previously issued an executive order, which included a call for Department of Interior officials to commence a review if the leasing program unfairly benefits companies at the expense of taxpayers, as well as the program's impact on climate change. 13 US States sued the administration arguing, among other things, that their economies could be irreparably harmed by the pause on drilling. The New Orleans court agreed, granting a nationwide preliminary injunction temporarily halting the suspension pending further arguments on the merits of the case, and finding a lack of any rational explanation in cancelling the lease sales.

To read more, please **click here**.



Right on the money

In the midst of the current climate emergency, developed countries and their leading corporates are increasingly recognising that climate finance is essential if the targets set out by the Paris Agreement are to be met.

The UN Secretary General recently highlighted the urgent need to accelerate and increase the scale of international finance in order to assuage the effects of climate change, while the emergence of the pandemic has created a humanitarian and economic crisis that has linked environmental issues and public health. Of vital importance now is recovery, which focuses on sustainability. The growth in climate finance is key.

However, some challenges remain in accessing and deploying private finance to address the critical climate situation, including successful collaboration between public and private sectors, introducing vital standardisation across the board, developing disclosure frameworks and allocating funds in an effective and meaningful way.

Sustainability Quarterly speaks to HFW climate finance partners Olivier Bazin and Peter Zaman about the growth in this form of funding, the positive effects it can have, and what trends we can expect to see in the future.

PETER ZAMAN
T +65 6411 5305
E peter.zaman@hfw.com

OLIVIER BAZIN
T +41 (0)22 322 4814
E olivier.bazin@hfw.com

Climate finance increased by $43.6bn from 2009 to 2018 and has now reached $78.9bn

Climate finance is essentially a financing activity where the underlying objective is to achieve a positive climatic outcome. That can be funding in greenhouse gas reduction projects, for example, or in businesses seeking energy transition to be in line with the Paris Agreement. It applies to all segments of finance including to capital markets, debt markets, projects and asset finance. It has been important for a very long time but regulators and financiers haven't prioritised it. The Paris Agreement came into force in 2016, but the participating countries' accounting and legal obligations really only started from the first nationally determined contribution period in January 2021. What we're seeing now is the recognition that we need to accelerate progress because we've wasted a lot of time since 2008 when the world was distracted by the global financial crisis. **PZ**

Climate finance is about the 'E' of ESG, and the responsibility of banks in supporting and reducing the impact of climate change. They're under the most pressure. The corporate clients of the banks are also feeling it – the commodity producers, the shipping companies, oil companies, the industrials and production firms, essentially the polluters. However, they can't survive without the banks. Finance is the lifeblood of business. There is increased consciousness from developed nations that something needs to be done. **OB**

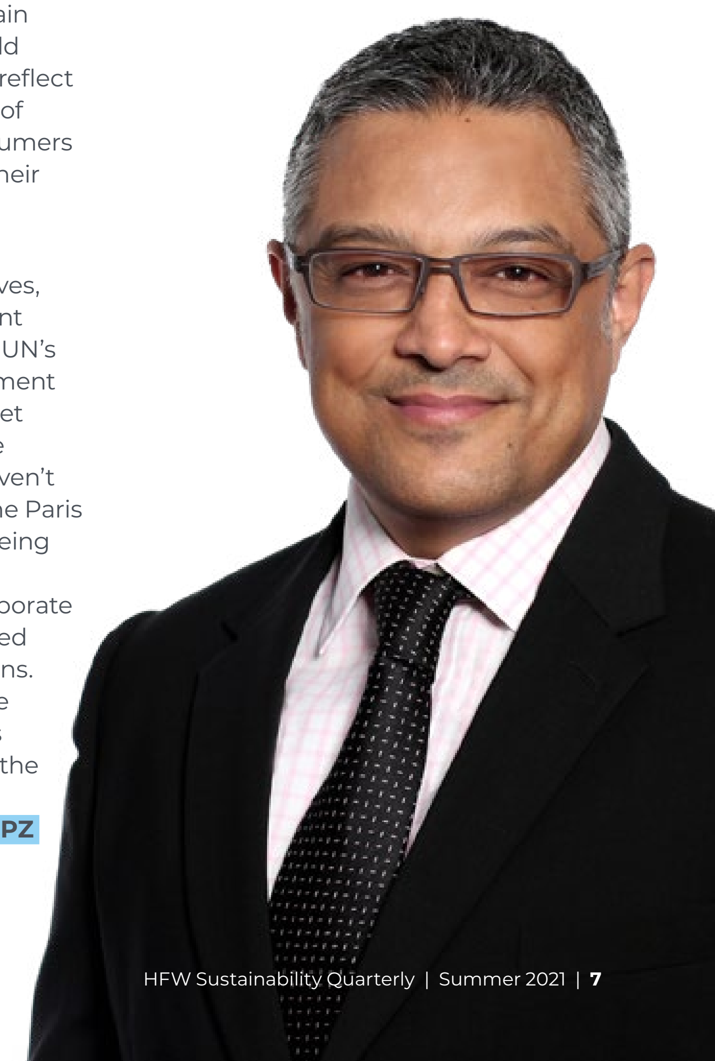
The UN Environment Program estimates that developing countries could need $300 billion per year by 2030 to cope with climate change

Ultimately climate finance is a political issue, and consumers, pressure groups, and lobbyists are helping shape to policy by pressuring politicians. We see what is happening to our dear planet and the science is pretty clear that we need to change. Consumers in the richest nations are driving the politics and in turn shaping the regulation, which demands disclosure of environmental impacts and sustainability criteria. It must result in increased prices for certain commodities, which the rich world needs to agree to pay in order to reflect more fairly the cost to the planet of what they're actually using. Consumers need to put their money where their mouths are. **OB**

There are three main drivers- the Paris Agreement's overall objectives, the UN's Sustainable Development Goals, and most importantly, the UN's Principles for Responsible Investment (PRI) framework. Professional asset managers and asset owners have recognised that governments haven't been doing enough to address the Paris Agreement objectives since agreeing to it in 2015. Under pressure from professional asset managers, corporate entities have voluntarily committed themselves to net zero declarations. Professional asset managers have trillions of dollars to invest and, as signatories to the PRI, are asking the companies they will potentially i nvest in about ESG compliance. **PZ**

"Professional asset managers and asset owners have recognised that governments haven't been doing enough to address the Paris Agreement objectives since agreeing to it in 2015."

PETER ZAMAN



The UN Environment Programme estimates that the global cost of adapting to climate impacts is expected to grow to $140-300 billion per year by 2030 and $280-500 billion per year by 2050

Banks have a major responsibility in allocating their capital to the "right" projects and the UN plays an extremely important role – it sets the tone and the expectations of the global community. In terms of human rights, there is growing pressure on businesses to respect these globally, not just in their HQ jurisdiction but also across their supply chain. Look at the recent Shell case. The result is encouraging more good behaviour and putting stakeholder pressure on the banks. **OB**

The problem is that everybody responds to investor sustainability queries with a different format and it becomes impossible for an asset manager to determine which company is fulfilling compliance. A degree of standardisation in disclosure frameworks is needed and this is beginning to happen. However, for a multinational company whose activities span multiple jurisdictions, this can result in a heavy compliance obligation as it seeks to meet different requirements in different countries or of different investors. The cost of doing business therefore becomes inefficient and is ultimately borne by the consumer. Right now, we hear announcements from a new country every day that they will develop their own green taxonomy. This plethora of frameworks, whilst perhaps necessary in the developmental stage of a new market, needs to rapidly move to standardisation and harmonisation. **PZ**

More than 100 million additional people will be pushed into extreme poverty with the World Bank identifying the '3 Cs' as the cause; COVID-19, conflict and climate change

Covid has had an impact on climate regulation by raising the profile and urgency of the global impact of climate change in a material way. It has emboldened the European Commission to push through the EU's Green Deal when otherwise, to do so would have met with greater political resistance. The pandemic has demonstrated what can happen if you ignore something that has global consequences, and shown that if you don't have a framework at a global level and a harmonised response, we're left with chaos. That awareness is driving people to face climate issues. **PZ**

Following Covid, people have become more aware of climate, supply chains and where their goods are produced. In certain areas, there will inevitably be shorter supply chains in the future with a growing preference for "local" chains of production and a focus on reducing our carbon footprint. **OB**

The Committee on Climate Change estimates that completely decarbonising the UK economy by 2050 can be met at an annual cost of 1-2% of GDP to 2050

There is a growing moral pressure in commodities banking– if you're not having a sustainability conversation with your bank, you're probably working with the wrong bank. In the commodities world there will always be better performers, improving baseline ESG requirements, and banks and companies that'll want to do even better than the minimum requirements. It creates a virtuous circle. **OB**

Climate finance will go through huge changes. Going forward we're looking at new regulatory frameworks which define and set criteria for financing requirements. That criteria is going to continue to evolve very regularly – the KPIs against which different criteria will have to be set don't even exist yet. This evolution has only just started. **PZ**

"Following Covid, people have become more aware of climate, supply chains and where their goods are produced."

OLIVIER BAZIN

The Sucafina deal

Who? HFW advised Geneva-based coffee company Sucafina on a high-value sustainability-linked senior secured borrowing base facility.

How much? The two-year revolving credit facility was significantly oversubscribed and subsequently upsized from an initial US$400 million to US$500 million. It involved a group of 16 European, American and Asian banks, led by ING Bank.

Why is it significant? This transaction is remarkable for its progress towards reduced carbon emissions and deforestation. It had a number of sustainability-related Key Performance Indicators (KPIs), including reducing the carbon footprint and deforestation in coffee-producing countries.

'I was able to visit the coffee plantations in the highlands of Kenya and meet some of the farmers supplying Sucafina,' says lead partner Olivier Bazin. 'They are training smallholder farmers how to manage the effects of climate change, soil erosion and irrigation and how to manage their cash-flows through banks and cooperatives – the international market price for the crop fluctuates, which can seriously impact livelihoods. They take the impact on the ground very seriously.'

Interview with

Andrew Herring

CEO, Energy & Power, Marsh UK

As UK CEO for Energy & Power at leading insurance broker and risk advisor Marsh, Andrew understands what the global drive for sustainability means for both insurers and clients.

In this interview, HFW partner Jonathan Bruce speaks to Andrew about how the insurance industry is adapting to climate change, from advances in technology to extreme weather events, and about how it might operate more sustainably going forward.

What sustainability-related trends are you seeing within the insurance industry?

Insurers are coming under increasing pressure to address sustainability in their approach to underwriting, and are balancing the portfolios that they underwrite accordingly. The immediate impact of this has been a withdrawal of some support for the coal industry, echoed across other energy-intensive and carbon-intensive industries.

What impact are sustainability and climate change having on insurance policies and products?

One of the most successful initiatives Marsh has introduced to date is the move away from a traditional policy of indemnity, to a position where lost assets are replaced with a less carbon-intensive asset, even if it is more expensive. This requires a significant change in the industry's historic approach to fair indemnity, but it is important for insurers to adapt and support efforts to address decarbonisation. Some parameters can be imposed around the additional costs incurred, such as sub-limits or perhaps co-insurance.

What does this mean for clients?

Put simply, the availability of insurance for carbon intensive industries will become increasingly constrained. However a sudden withdrawal of capacity for businesses that are in transition or in developing economies where the community has no alternative reliable energy supply could lead to a disorderly transition and negative social outcomes resulting from a lack of energy security for some. The challenge is to accelerate the global transition to less carbon-intensive energy sources in a just way.

How do insurers assess clients' sustainability credentials? What are the benefits?

ESG performance covers many varied elements in a business; some of them are already part of insurers' risk assessments.

The team at Marsh are developing methodologies to differentiate clients, which will help both insurers and clients to meet their sustainability goals. In return for having good credentials, clients could rightly expect to see a cost benefit. We are certainly keen to support the provision of more favourable terms to clients that perform well in these areas.

Will insurers use sustainability as a justification to increase their prices?

The aim is not to charge clients more if it is avoidable, although insurers are now very wary of potential liabilities arising from climate change litigation. There are a number of well-documented lawsuits out there, particularly against big oil companies, and in some cases could result in attempts by markets to restrict future indemnities under liability policies.

To what extent is new technology a challenge for the insurance industry, specifically in terms of renewables?

Insurers need to have a strong technical understanding of the associated risks in order to price correctly, and to support the terms and conditions for clients, therefore they will have to come to terms with the new technologies that are being developed. Marsh's global team of risk engineers have historically focused on the oil and gas industries, but this has quickly shifted toward renewables. Many of these engineers have an industry background, so they are well prepared to help clients and insurers understand the challenges.

Our clients are changing too; new investors, including private equity and venture capital groups see the renewable energy industry as a huge opportunity. Our existing oil and gas clients also know that they need to invest heavily in these new technologies in order to support energy transition and will expect the insurers with whom they have existing relationships to support them in these developments.

How is the insurance industry supporting its clients to prepare for the effects of climate change?

A huge amount of research is underway to help us navigate this challenge. Insurers must be poised to manage the growing threat of exposure to the elements. Brokers play a key role here too, and can help clients to become more resilient by monitoring, measuring and managing risk.

Could losses arising from extreme weather events eventually become too large for the industry to sustain?

In a worst-case scenario, yes, but we are not there yet. There is plenty of capital in the insurance industry to support the projected losses at the current time. What we urgently need is for insurers to support energy transition, which requires them to be more flexible than they have previously been.

Insurers will have to accept new technologies and new exposures associated with transition industries in order to meet carbon reduction targets. A good example of this is the offshore wind industry; in places like Japan and Taiwan, the need for offshore wind is very strong, but the risk of natural disaster is high. These challenges are really pushing the industry and in many cases, we are slow to adapt.

To what extent has COVID-19 been a factor in accelerating the drive towards sustainability?

Sustainability has gathered real momentum over the past 18 months. The change in people's attitudes is very apparent. I think the pandemic reminded us all how important it is to look after ourselves, each other, and our environment.

What is the future for sustainability within the insurance sector? What do you expect to see over the next few years?

There is a strong view that hydrogen will need to make up a significant proportion of future energy sources. It has many advantages and is used across several key industries, including power generation, transportation, and the production of fertilizer. Its energy to weight ratio is actually the highest of any element.

Although there are lots of new uses for hydrogen, the principles remain the same and insurers should be familiar with many of the technologies. Of course policies will need to be adapted to reflect newer exposures, but it really is not a big change from the underwriting norms. Supporting hydrogen initiatives supports insurers' existing client bases, and reassures investors that they are committed to the low carbon economy.

Are insurers committed to sustainability in their own operations?

There is a lot of pressure from investors for insurers to be more sustainable. Most have adapted accordingly, and the outliers that are yet to take a firm position are being strongly encouraged to follow the example set by others.

Investors scrutinise not only what companies underwrite, but also where they invest their premiums. The expectation is that insurers should support clean energy technologies from both an investment and an underwriting perspective.

How does Marsh's Energy & Power business approach sustainability?

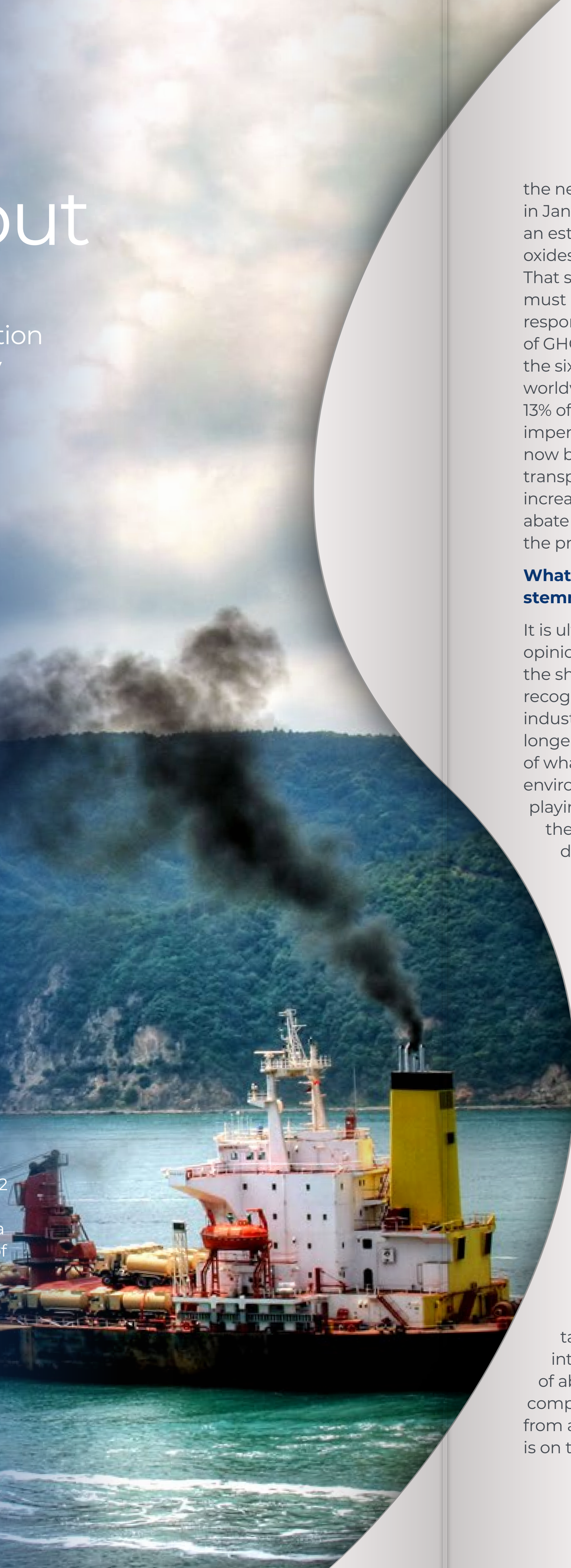
We have combined energy, power and renewables into a single global operating practice, allowing us to single source solutions for the energy transition. For example, we are supporting an increasing number of hydrogen projects, including one in Saudi Arabia that will use wind and solar power associated with battery storage for hydrogen and ammonia production.

To support the investment that this type of project requires, we are developing a number of products, including insuring the associated revenue. The amounts insured may need to factor in carbon credits, because in the event that the projects are not able to meet their CO2 reduction targets, the loss of carbon credits could be the clients' biggest exposure. The future cost of carbon credits may be unknown, and so insuring that uncertainty is a new challenge for insurers.

Ultimately, we need to work together to make the insurance solutions as simple and effective as possible to support the energy transition; our industry has been polarised in small industry subsets with narrow coverage forms for too long.

Shape up or ship out

We speak to HFW shipping partner **Alessio Sbraga** about the challenges, incentives and the role of regulation in the path to decarbonisation in the shipping industry



The transport sector is currently under the spotlight for its harmful greenhouse gas (GHG) emissions. It is the fastest growing contributor to global climate change, accounting for around one-fifth of global CO_2 emissions and 23% of the energy-related CO_2 that feeds global warming. This figure has grown steadily over the past half a century, and without decisive and immediate action to remedy it, could reach 40% by 2030 .

While shipping is a comparatively energy-efficient mode of global transport, it is still a substantial contributor to GHG emissions. The introduction of sustainable practices with a future goal of achieving decarbonisation has begun at scale, and in a bid to mitigate damaging effects, global shipping is becoming the subject of policy and regulatory intervention across the board. This stands to have wide-reaching practical and legal implications.

Despite not previously being included in significant international climate change treaties such as the Paris Agreement, there have recently been some ambitious targets introduced, and the regulatory landscape is in a state of transition. Given that there is a lot to achieve, and very little time to do it, the efforts of the global shipping industry to reduce GHG emissions are under ever-increasing scrutiny. Alessio Sbraga tells us more...

ALESSIO SBRAGA
T +44 (0)20 7264 8768
E alessio.sbraga@hfw.com

When were you first aware of people talking about decarbonisation in terms of a climate commitment in shipping?

Over the last five to ten years, I have noticed a gradual transition in the way the shipping industry views the necessity of decarbonisation. In the past, there was a tendency to pay lip service to green initiatives with little commercial incentive to follow through. However, those times have now changed because it is widely appreciated that we are in a climate emergency. Reducing GHG emissions and enhancing vessel energy efficiency are key and these issues are now starting to filter through into our clients' commercial agendas. Consumer and commercial pressure has, in part, helped. Together with policy intervention, regulations and investment there is a melting pot of factors needed to achieve decarbonisation as well as more sustainable practices.

There has been a rise in regulation and policy with regard to GHG emissions. Why now?

As a mode of transport, it is probably the most energy efficient way to transport goods globally. A large vessel, for example, emits around just 1% of CO_2 per ton-km of that which is emitted by a plane and 14% of the CO_2 emitted by a cargo train. Since the implementation of the new sulphur emissions regulations in January 2020, we have already seen an estimated 70% reduction in sulphur oxides emissions from global shipping. That said, the simple truth is that it must do much more – global shipping is responsible at the moment for about 3% of GHG emissions, which is equivalent to the six largest GHG emitting countries worldwide. It also represents around 13% of the EU's total GHG emissions. It is imperative that this issue be addressed now because the demand for global transport is predicted to continue to increase significantly. Whilst we can't abate the demand, we must try to make the process more efficient.

What is driving the change – is it stemming largely from regulation?

It is ultimately being driven by public opinion and a change in attitudes in the shipping industry. There is gradual recognition from within the shipping industry that decarbonisation is no longer an aspirational topic, but part of what is needed to protect the environment. I think the regulators are playing catch up, although admittedly, there is no obvious way to achieve decarbonisation. It is important to have the right kind of policies, regulations and intervention in place. As matters stand, we have different international, regional and national incentives and approaches to regulation, which all have varying GHG targets. We are helping clients navigate their way through this.

How far is this disparity in regulatory standards across the board presenting a challenge?

In terms of total decarbonisation, there are different yardsticks at play around the world. The International Maritime Organization (IMO) has set a target of a 40% reduction in carbon intensity by 2030 and 50% reduction of absolute GHG emissions by 2050 compared to 2008 levels. However, from a US perspective, US shipping is on the pathway to achieving net zero GHG emissions by 2050, with an interim goal to cut GHG emissions by 50% by 2030 compared to 2005 levels. The EU has committed to a 55% reduction by 2030 compared to 1990 levels and the UK to a 78% reduction by 2035 compared to 1990 levels. While they all have the same goal, they go about achieving it in different ways and against different GHG targets. So what you have is a complicated, fragmented, multi-layered regulatory landscape which may make it difficult for the global shipping industry to follow a clear pathway towards decarbonisation.

How can decarbonisation truly be achieved?

To achieve decarbonisation is to arrive at a position where you can say that you are using energy resources that are zero carbon. In practice, this requires a wholesale shift away from fossil fuels which global shipping heavily relies upon. It is a realistic target as long as there is an understanding of the scope and scale of change required and an acceptance that at least part of the cost of the transition is likely to be passed down to the end consumer. It also requires appropriate financial incentives and investment in new technology, infrastructure, alternative fuels and products to make these options commercially viable. Regulation is only part of the solution and its role will be more of a facilitator – or deterrent.

Is cost a prohibitive factor in achieving this?

In the transition to zero carbon fuels, there needs to be an appropriate understanding of which technologies are going to work. As long as carbon zero fuels are not commercially viable, the price will be prohibitive. Technical modifications to vessels will also need to be made, so there is a large capital expenditure on the horizon. Cost-efficient solutions for the global shipping industry as a whole and not for the select few is necessary or there will be no uptake. A transition fuel, which although not zero carbon, would be able to bridge the gap and force the initial move away from the use of more harmful fossil fuels. However, this is not straightforward as it is not simply a question of changing fuels. Again, it would almost certainly require technical modifications to vessels too, at an extra cost.

As more regulation comes into force, do you foresee a rise in climate litigation resulting from breaches?

This hasn't happened yet, but I expect we will see this materialise after the regulations are enforced. The problem right now is that the full detail of the legislative framework is only just starting to filter through. This, in itself, does not promote commercial certainty so we may see litigation even before then.

What role should regulators play with a view to achieving decarbonisation in shipping?

Regulators should have a central role. Without necessary regulation, sanctions and enforcement, people will just be left to their own devices. However, in order to have effective intervention, a common global strategy is preferable.

Is decarbonisation a realistic target?

The past year has shown that when society is faced with a global emergency, it can adapt and adjust relatively swiftly. The IMO has been planning for global intervention for some time, although the measures are yet to be fully implemented in practice. The signs are there that the global shipping industry is on the path to decarbonisation, but there are lots of twists and turns, and still much to do in the short time available. At HFW, we are there to support our clients every step of the way. Decarbonisation can be achieved, but it is a long process and we are only at the beginning of the transition.

Climate Litigation: Turning up the heat

With climate litigation rising steadily in recent years, it is critical that both companies and governments are alert to environmental liability risks

Global litigation against governments and corporations neglecting to take adequate action against climate risks has seen a substantial increase, with cases doubling over the past three years [1]. A number of landmark rulings have clearly illustrated that no company or government is exempt from accountability. A group of citizens in Poland recently announced plans to take the government to court over its alleged failure to protect them from the impact of climate change, while a number of oil giants have been sued for greenwashing products and deliberately misleading consumers about the extent to which they contribute to climate change.

The risks of falling foul of environmental responsibilities can be damaging. The potential to sour relationships with key investors, the inevitable cost implications involved in litigation and reputation are all at stake. The increase in litigation is not only being driven by watershed cases such as those mentioned above, but also through cataclysmic environmental events such as extreme weather and rising sea levels, which have served to highlight the responsibility of corporations and governments in mitigating these effects. Regulation has inevitably heightened in reaction.

The growing frequency of climate litigation as a result of not meeting stricter legislation is proving to be an effective tool in keeping governments and companies engaged in tackling climate change. The pandemic has also been a driver behind the increase in the use of litigation by activists and advocacy groups, with action prompted by the increasingly evident link between the global health emergency and the climate crisis.

A case for change

There is an increasingly clear message that action to mitigate climate change risks associated with corporate operations must be extensive and it must be rapid. Interestingly, human rights arguments are successfully being used to compel companies to reduce emissions, and will no doubt trigger a scramble to address targets and risks from companies in a number of jurisdictions keen to avoid repercussions.

For companies, the most pertinent litigation has centred around inaccurate, deceptive or unclear corporate communications that present the business and its climate change activities in a more positive light than is realistic. Otherwise known as 'greenwashing', companies which are found to be guilty do not simply face brand and investor fallout, but increasingly risk court action. BP experienced this, when, in December 2019, environmental law firm and NGO ClientEarth filed a complaint against the company alleging its advertising campaign had misrepresented the extent of its low-carbon and emissions activities.

Regulatory Impact

For governments, the risk of litigation increasingly hinges on arguments involving human rights and the threat to the health of populations. Violations include breaching 'climate rights', or failing to implement adequate climate change commitments. There have been several significant and successful cases against governments that highlight the risks of regulation transgressions, perhaps the most notable of which was the ruling against the Dutch government in the historic Urgenda case at the end of 2019. In the first case of its kind, the Supreme Court found that the Dutch Government had a legal duty to act against dangerous climate change and ruled that it must take more effective action by cutting its greenhouse gas emissions by at least 25% by the end of 2020.

As the transition to a net zero economy continues apace, so do the increasing climate liability risks for companies and governments globally. Cases across a variety of sectors and profiles are growing in volume, range and jurisdiction, proving that organisations can simply no longer afford to have inadequate sustainability practices and targets in place.

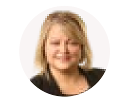
1 https://www.unep.org/resources/report/global-climate-litigation-report-2020-status-review

The HFW Community Carbon Challenge

We are launching a firm-wide sustainability challenge designed to help colleagues across our global network embed environmentally friendly behaviours into their everyday lives.

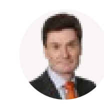
Supported by a brand new interactive platform, colleagues choose from a variety of challenges ranging from simple actions such as air-drying clothes or turning the taps off whilst washing up, to larger actions such as choosing a vegetarian diet.

Colleagues earn points for each completed challenge based on the amount of carbon they have saved, and each month we celebrate those that have had the biggest impact.



CAROLYN CHUDLEIGH
Global Head of Construction, Sydney

Having experienced one of the worst droughts on record in Australia during 2018-2020 and also owning a farm, I realise that water is very precious and should not be taken for granted. I commit to reducing my shower time and to switching the tap off while I brush my teeth.

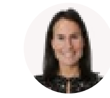


JOHN FORRESTER
Partner and Office Head, Singapore

I am taking the 'Search & Plant' challenge by pledging to use sustainable search engine Ecosia. I had no idea that browsing could benefit the planet in this way. It seems a bit of a no-brainer to me. The trees in Singapore are one of the features I love so much about this place, so planting more trees always wins my vote (maybe my surname has something to do with that too).

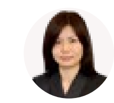
DAVID GULL
CRM Marketing Assistant, London

I have chosen the 'Unplug Me' sustainability challenge because working from home has meant that various devices, e.g. computers along with the TV and monitors are constantly plugged in and kept on standby. Being more conscious of this will make sure I use less energy when they are not being used and only when needed.



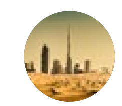
CORRIN KAYE
Global Human Resources Director, London

I have persuaded my family to commit to spending two minutes less in the shower each day. Between the four of us, that's almost an hour of water saving. I am also going to delete 1000 emails from my personal account over the weekend – I have been meaning to do it for years and saving CO_2 is the perfect catalyst.



GOGO LO
Office Manager, Hong Kong

Despite having the best intentions, there are lots of ways I could be more sustainable. I have set myself a number of challenges and pledge to minimise my food waste. I am happy to see so many family and friends on board with sustainability now too



MIDDLE EAST ASSOCIATES' COUNCIL
Abu Dhabi, Dubai, Kuwait, Riyadh

Living in countries where rain is unusual and temperatures regularly exceed 40 degrees, we are all too aware of the scarcity of natural water resources in the Middle East. We also know that we are incredibly lucky to have access to clean water – many people in our multinational communities come from countries where this is not the case. For this reason, we have chosen challenges that seek to preserve clean water in our day-to-day activities.

As a firm with a strong connection to the sea, we also hope that our choices will contribute to decreasing plastic pollution in our oceans.

We commit to:

- Switch off water while brushing teeth
- Use the dishwasher in eco-mode
- Use a reusable water bottle
- Use reusable shopping bags

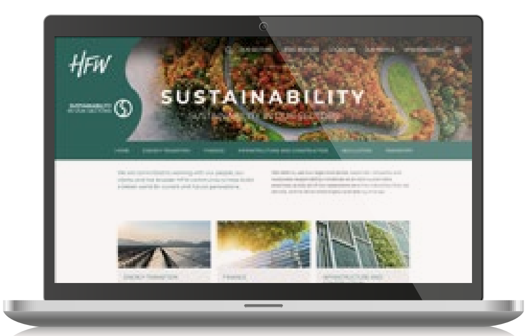
SUSTAINABILITY IN OUR SECTORS

As a firm, we are committed to supporting our clients through a period of transformation. Each sector that we serve faces its own challenges as well as opportunities. But our clients, across our sectors, have much in common in terms of their goals and the legal expertise they require to achieve them.

At HFW we have deep sector experience, combined with broad legal expertise throughout our international network. We are also committed to our own journey towards sustainability.

The HFW sustainability hub provides a window to key developments, with a focus on the core areas of expertise below. By bringing together all the latest expert knowledge from across our sectors and services, our aim is to support your sustainability goals and encourage innovation.

If you would like to discuss any of the topics covered, our team would be delighted to hear from you.



www.hfw.com/sustainability-hub

Finance

Thanks to a combination of increasing investor awareness of environmental, social and governance (ESG) factors and regulatory intervention, climate finance is no longer a niche area. Our team of multidisciplinary lawyers can advise on all aspects of this sector, for example by assisting clients to develop, negotiate and transact in environmental financing products, such as 'green loans', 'green bonds' and sustainable financing arrangements (whether debt or equity) or in the development of carbon neutral commodity products.

PETER ZAMAN
T +65 6411 5305
E peter.zaman@hfw.com

OLIVIER BAZIN
T +41 (0)22 322 4814
E olivier.bazin@hfw.com

Regulation

As regulatory demands continue to widen, we work to find commercial and enduring solutions for our clients. Our experts provide comprehensive technical and climate change advice on sustainable practices, including adoption of transformative energy opportunities, development of carbon emission reduction legal regimes, climate change strategy and the achievement of "net zero" carbon emissions commitments.

DR MICHAEL MAXWELL
T +61 (0)8 9422 4701
E michael.maxwell@hfw.com

PETER ZAMAN
T +65 6411 5305
E peter.zaman@hfw.com

Energy Transformation

We support our clients throughout the whole energy transformation, whether it be offsetting emissions to achieve net zero, emissions reduction and new technology projects, renewable power projects or PPAs or investment in renewable or emerging energy tech business. Our energy transition experts are often at the forefront of what comes next, for example we are working with industry and start-ups on exciting new ventures involving hydrogen in transport and autonomous ships.

JO GARLAND
T +61 (0)8 9422 4719
E jo.garland@hfw.com

Infrastructure & Construction

Governments around the world are turning to new infrastructure and renewable energy projects to boost economic growth, to slash carbon emissions and to meet net zero emission targets by 2050. Our experience in the construction, transport and energy industries puts us in a prime position to provide advice on all aspects of these projects as part of the green industrial revolution.

RICHARD BOOTH
T +44 (0)20 7264 8385
E richard.booth@hfw.com

Transport

We support our clients to adapt and comply with the sustainability challenges being thrown up by international, regional and national regulatory bodies that seek to regulate and limit GHG emissions and waste, the use and availability of alternative fuels and the efficiency of transit orientated performance. We also assist our clients in developing new projects and products designed to drive and gain commercial opportunity from this evolving legal and technological landscape.

ALESSIO SBRAGA
T +44 (0)20 7264 8768
E alessio.sbraga@hfw.com

PAUL WOODLEY
T +44 (0)20 7264 8121
E paul.woodley@hfw.com