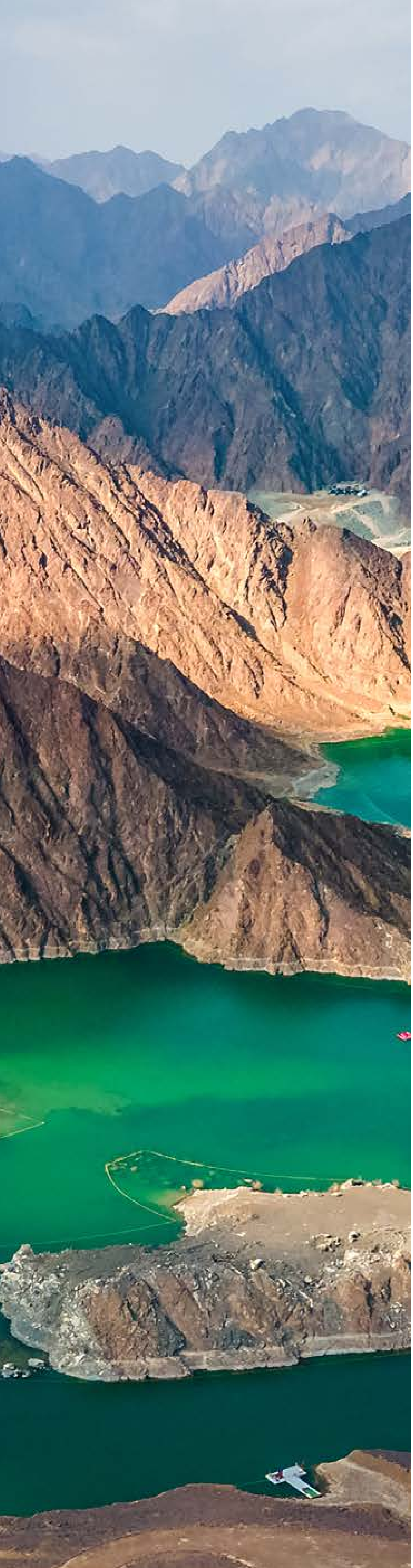
DENTONS

COP28

2024 perspectives on the key takeaways for in-house legal

Grow | Protect | Operate | Finance

February 2024



Introduction

A growing wave of ESG legislation

The build up to COP28 was dominated by the question of whether the UAE was an appropriate host of the UN's annual climate change conference, given that the gulf state's economy relies so heavily on fossil fuel extraction. So, it was perhaps fitting that the main takeaway from the summit was the commitment in the final text to transition "away from fossil fuels in energy systems". Despite the exact wording being fiercely debated, the significance of this should not be underestimated for a world economy that has been powered by hydrocarbons for the last 150 years. The UNFCCC described the text as the "beginning of the end of the fossil fuel era".

As part of the drive to replace fossil fuels, Parties (countries involved) committed to tripling renewable energy capacity globally and doubling the global average annual rate of energy efficiency improvements by 2030. Commitments were also made to scale up developing technologies, including carbon capture and storage, hydrogen and nuclear. Further pledges were made in relation to biodiversity, food and forestry.

As is always the case with complex, multilateral agreements, how these commitments will be put into practice is the key concern for corporates. In the UK and EU at least, it seems likely that governments will pull the lever of regulation, adding to a growing wave of ESG legislation for General Counsel (GC) to manage over the next few years.

Litigation and the polluter pays principle

COP27 was characterized by three words: 'loss and damage'. Countries that stand to be most affected by climate change pushed for the creation of a fund to compensate for the loss and damage that will be caused by more extreme weather. As the effects of climate change continue to exacerbate, it is no surprise that loss and damage was on the agenda once again at COP28, with money pledged for the purposes of adaptation, humanitarian relief and reconstruction. As ever, what has been pledged falls far short of what is required.

For corporates, the focus on the damage caused by climate change (and specifically, who should pay) will only lead to more scrutiny on who bears responsibility. Consequently, greenwashing allegations and litigation will remain key risks for GCs to manage as NGOs and nation states and private citizens try and enforce the 'polluter pays' principle.

Turning up the heat on net zero targets

COP28 was the first 'global stocktake' of Parties' progress on meeting the goals of the Paris Agreement. Overall, the findings were clear, that while progress is being made in some areas, overall the world is off-track where it needs to be. The task for Parties over the next 12 months is to start ratcheting up efforts towards meeting the target of keeping temperature rises to below 1.5 degrees below pre-industrial levels.

For businesses, this is an opportunity to assess their own progress in meeting the raft of admirable but ambitious net zero targets that have been set over the last few years. 2024 will likely break further records on heat and extreme weather, which will only further focus the minds of investors, customers and stakeholders ahead of COP29, in Baku, Azerbaijan, another country synonymous with fossil fuel extraction.

Summary of key COP28 outcomes

Final pact

The final COP28 decision text is noteworthy. It is the first time that nations have agreed to transition away from fossil fuels, as well as "phase-down" their use of coal. Its aim is to amplify climate action to keep the global temperature increase within 1.5oC and calls on the Parties to triple renewable energy capacity worldwide. The text was framed as a decision on the first Global Stocktake on Parties' progress towards the 1.5 degrees target, which concluded that the Parties are collectively "off-track" on meeting their goals under the Paris Agreement.

However, the text has attracted various criticisms. Certain nations, including small island states such as Samoa and the Marshall Islands, have expressed disappointment with the outcome as they were pushing to "phase-out", rather than "transition away" from, fossil fuels. They have argued that the text is weak and insufficient, and that the former phrase would have sent out a much stronger message.

The agreement also explicitly encourages the use of zero and low-emission technologies, including carbon capture, utilization and storage (CCUS). Whilst oil-producing countries including Saudi Arabia pushed for the inclusion of CCUS in the text, the move has been criticised for overlooking the limitations associated with such technology. The agreement also encourages the use of "transitional fuels", a term widely interpreted to refer to natural gas, known for its high carbon intensity in electricity generation. It has been argued that it presents certain "loopholes" for oil and gas-producing countries.

Loss and damage fund and financing transition

After months of negotiations in the lead-up to COP28, an agreement on the Loss and Damage Fund was reached on the first day of the summit. The draft agreement on the fund states that it will provide direct access for national governments and small grants for vulnerable communities, covering various potential uses, such as humanitarian relief, reconstruction and climate adaptation actions.

Funding commitments have been made by several countries, including the UAE and Germany, both contributing $100m, along with the EU, UK, US and Japan. The total initial funding is near $700m. The fund will be hosted by the World Bank for the first four years, following which periodic reviews will take place. Businesses may be able to contribute to the fund, offering them opportunities to mitigate climate-related damage in developing nations.

However, the fund has been criticised as the nations' pledges fall far short of the estimated annual $400 billion of loss and damage climate change will cause to developing countries, and so it should be seen as a starting point in conjunction with other measures.

To unlock finance towards resilience and transition, COP28 laid groundwork for the reform of international financial architecture to make climate finance available, accessible and affordable, from calling the use of innovative financial instruments and concessional finance, to multilateral developments banks committing to offer climate-resilient debt clauses in lending. A significant shift in climate finance is also seeing climate investment as an economic opportunity and not only a risk issue.

Forests and land

At COP26 in Glasgow, more than 140 world leaders pledged to halt and reverse forest loss and land degradation by 2030. In Dubai, $186.6 million of new financing for nature and climate towards forests, mangroves, and the ocean was announced. This builds on the $2.5 billion put forward to protect and restore nature during the World Climate Action Summit.

A further development was 21 countries formally endorsing the Mangrove Breakthrough, which is a science-based and measurable goal for parties to protect and restore mangroves. A number of countries also released the Joint Statement on Climate, Nature and People, which calls for the alignment of national climate and biodiversity plans and strategies to support the Paris Agreement and Kunming-Montreal Global Biodiversity Framework.

Furthermore, Brazil announced a new "tropical forests forever" fund proposal, which aims to provide 80 tropical countries across the world with $250 billion worth of finance annually for forest conservation.

These measures are a positive step towards protecting biodiversity and within the context of the world's forests remaining under severe threat due to global deforestation. However, there is still work to be done, and the pledges must be backed by tangible, measurable efforts by all participating nations.

Food

Nearly 160 nations signed the COP28 UAE Declaration on Sustainable Agriculture, Resilient Food Systems and Climate Action. This aims to expand adaptation measures and resilience for farmers and food producers, promote food security and support workers in agriculture.

The Alliance of Champions for Food Systems Transformation was also launched at COP28, co-chaired by Brazil, Norway and Sierra Leone. Its aim is to improve adaptation and resilience when it comes to food, and yield better outcomes regarding food security, nature and biodiversity. It is notable that it contains an accountability mechanism and a deadline for defined targets (by COP30 in 2025).

Methane and decarbonisation

Various actions were announced to address pollution caused by methane. Five more countries joined the Global Methane Pledge: Angola, Kenya, Kazakhstan, Romania and Turkmenistan. Its goal is to cut methane at least 30% by 2030.

Fifty oil companies, representing almost half of global production, signed the Oil and Gas Decarbonization Charter. Under the Charter, the companies committed to net-zero in their operations by 2050, and to reach near-zero methane emissions and end routine flaring in their operations by 2030. Signatories range from national oil companies such as Saudi Aramco and Petrobras, to supermajors including Exxon and TotalEnergies.

Adaptation

A key decision was the establishment of the Global Goal on Adaptation (GGA) framework, designed to help nations protect their citizens and ecosystems from climate change.

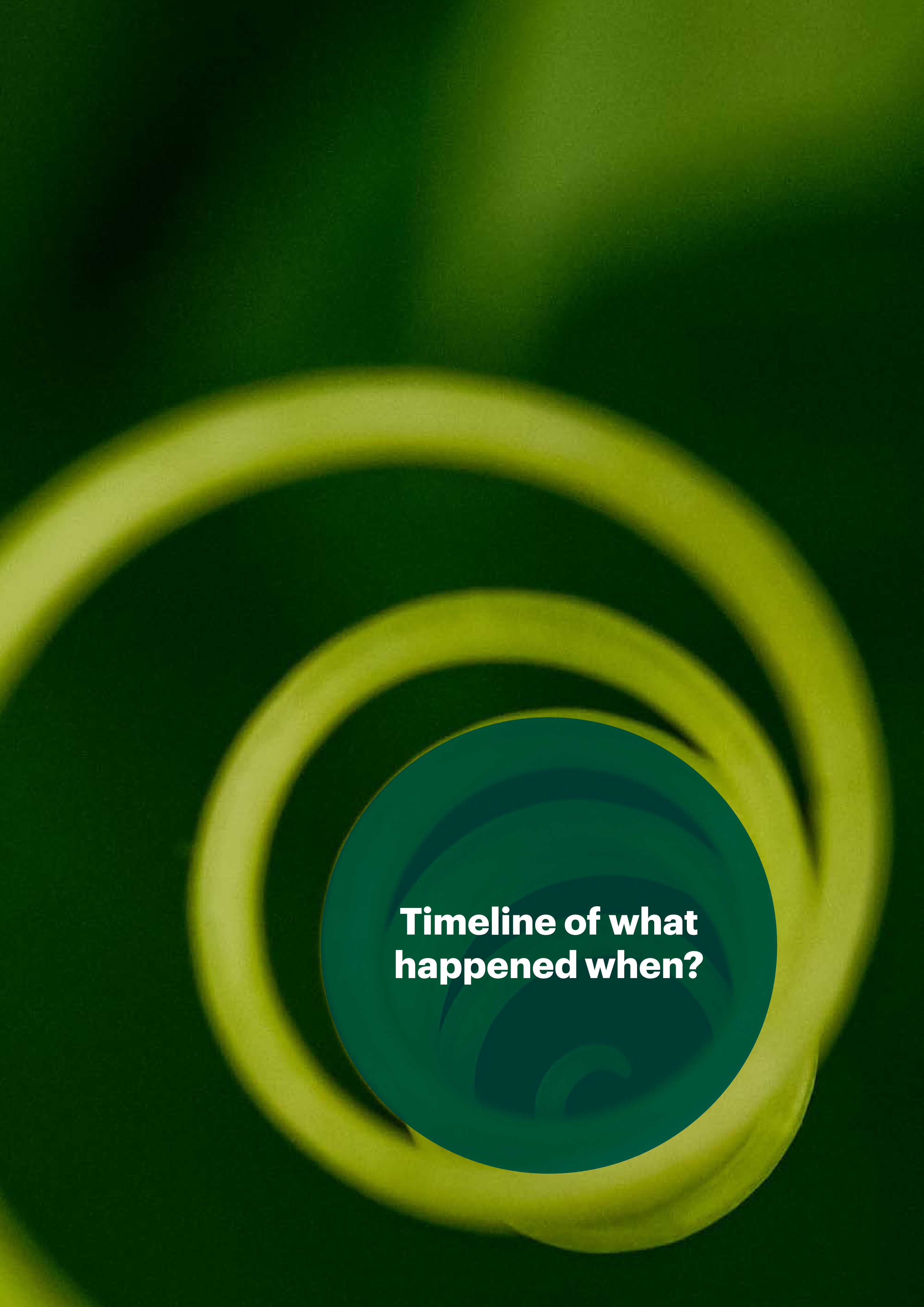
Negotiations around the GGA were challenging, with draft negotiating text not emerging until five days into COP28. The final text was accepted with the language around both finance and the Common but Differentiated Responsibilities principle weakened. There was also little in the text compelling developed countries to provide more funding to developing countries.

The lack of quantifiable targets in the final text was seen as a disappointment. Some developing countries were also unsatisfied with the specific language used, namely "transformational" adaptation, on the basis that the concept is not sufficiently defined.

Carbon markets – Article 6

Despite a two-week period of negotiations, the Parties failed to reach an agreement on rules for carbon markets under Article 6 of the Paris Agreement. Debates revolved around the UN's role in bilateral trading and the environmental integrity of removal credits. Without an agreement on a global carbon market at COP28, businesses will likely continue to face uncertainty about the price and availability of carbon credits.

Whilst some policy experts have expressed their disappointment on the outcome, others say it may in fact be preferable for market participators to wait until a clear rulebook is delivered before commencing large-scale carbon trading.



Timeline of what happened when?

30 November

The Parties approved a Loss and Damage Fund to help developing nations deal with the impacts of climate change. This will help the least prosperous and most vulnerable countries pay for costs caused by the effects of climate change.

1 & 2 December

The World Climate Action Summit was held, which involved 176 world leaders gathering to discuss the implementation of climate-related actions. In summary:

118 governments pledged to triple the world's renewable energy capacity and double energy efficiency improvements by 2030 to achieve net-zero emissions by 2050.

The Industrial Transition Accelerator was launched to speed up Paris-aligned ambitions across heavy industries, transportation, and energy sectors, which account for 65% of global emissions.

Fifty companies signed the Oil & Gas Decarbonisation Charter, committing to net-zero operations by 2050 across Scope 1 & 2 emissions, zero methane in upstream operations by 2030, and zero routine flaring by 2030.

The US announced a major crackdown on methane emissions, estimating an 80% decrease by 2038.

20 countries launched the 'Declaration to Triple Nuclear Energy by 2050', which recognises the key role of nuclear energy in achieving global net-zero emissions by 2050.

123 countries signed the UAE Climate and Health Declaration to prioritise health in climate action and promote the development of sustainable and climate-resistant health systems.

3 December

The first ever Health Day was hosted at COP in collaboration with the World Health Organisation. Health Day concentrated on five main topics:

- The relationship between climate change and human health;
- Promoting "health arguments for climate action";
- Strengthening the climate resilience of health systems;
- Expanding adaptation measures to address the impacts of climate change on human health;
- Acting at the intersection of health and relief, recovery and peace.

4 December

On Finance Day, a roundtable discussed the design of the $30 billion Altérra Climate Fund, whilst the UAE announced a Climate Finance Forum for 2024. Multilateral development banks also made significant commitments on expanding the use of Climate-Resilient Debt Clauses. A pact to reform the global climate finance architecture was established with the UAE Declaration on a Global Climate Finance Framework.

COP28 President Al Jaber confirmed the inevitability of the phase-down and phase-out of fossil fuels, after climate activists and scientists criticised his previous claims that there is "no science" indicating a necessity to phase-out fossil fuels.

5 December

The 24-page draft COP28 agreement was released and included the following three options for Parties regarding the future of fossil fuels:

1. Committing to a just and orderly phase-out of fossil fuels;
2. Accelerating efforts towards phasing out unabated fossil fuels and rapidly reducing their use to achieve net-zero CO_2 in energy systems around mid-century;
3. Not containing any text on this point.

During a "High Level Roundtable on Hydrogen" event, 39 countries endorsed the COP28 Declaration on Hydrogen & Derivatives, committing to recognising existing green hydrogen standards to facilitate the hydrogen economy. They also approved the ISO methodology for assessing hydrogen's greenhouse gas emissions.

11 – 13 December

The final negotiations were pushed into overtime due to disagreements over the language of the final deal's draft text.

The negotiations concluded with an unprecedented agreement on a text encouraging countries to transition away from fossil fuels.

10 December

On the final day of COP28's thematic program, the focus was on food, agriculture and water. 159 countries signed the Declaration on Sustainable Agriculture, Resilient Food Systems and Climate Action, as well as the Water Action Agenda.

Another key announcement was the introduction of a two-year partnership to COP30 by the UAE and Brazil, made during the first-ever COP ministerial dialogue on building water-resilient food systems.

9 December

The day focused on nature, land use and the ocean, with an emphasis on the integration of climate and nature action, and the protection of ecosystems.

The Netherlands promised to crack down on subsidies for fossil fuels, along with Antigua and Barbuda, Austria, Belgium, Canada, Costa Rica, Denmark, Finland, France, Ireland, Luxembourg and Spain.

6 December

Global leaders discussed local climate finance and climate change impacts at the Ministerial Meeting on Urbanisation and Climate Change.

The COP28 Presidency again urged national governments to embed climate action across all administrative levels and collaborate with local governments on the development and application of new climate strategies and policies.

A Global Sustainable Aviation Forum was held to explore ways of decarbonising the aviation industry. There was a significant emphasis on the deployment of Sustainable Aviation Fuel. This was supplemented by discussions on hydrogen usage, airport carbon management, equitable transition, non-CO_2 impacts, and policy and financing.

8 December

For the first time in COP history, in the Youth, Children, Skills and Education Day, children were given a significant role in the acceleration of global climate action and negotiations.

The day involved discussions on youth involvement, engagement, best practices and strategies for enhancing young people's role in the decision-making process.

What are the key areas of relevance to in-house legal?

Energy transition

COP28 was marked by a passionate debate over the future of fossil fuels. The US, the EU and small island countries called for the phase-out of fossil fuels, while other oil and gas producing countries opposed such language.

After two weeks of tense negotiations, countries reached a compromise with the final text calling for a "transition away" from fossil fuels consistent with the goal of reaching net zero emissions by mid-century. Proponents of fossil fuels did secure language in the final text that recognizes the role that fossil fuels can play in the energy transition and in ensuring energy security. The final text also calls for phasing out fossil fuel subsidies "as soon as possible", "accelerating efforts towards the phase-down of unabated coal power," and "accelerating and substantially reducing non-carbon-dioxide emissions globally, including in particular methane emissions by 2030."

In addition to the fossil fuel provisions, the final calls for countries to:

a. Triple renewable energy generation capacity and double energy efficiency improvements by 2030
b. Accelerate development of renewable, nuclear and carbon capture technologies that can be leveraged to reduce GHG emissions from "hard-to-abate sectors" and low-carbon hydrogen
c. Support the rapid deployment of zero- and low-emission vehicles, along with associated charging infrastructure.

What are the key implications for General Counsel and in-house legal teams?

The vigorous debate at COP28 on the future of fossil fuels, which resulted in the compromise "transition away" language, underscores the uncertainty regarding the timing, scope and durability of the energy transition. Countries are required to submit updated Intended Nationally Determined Contributions (INDCs) or NDCs by 2025 with the aim of strengthening their pledges to mitigate GHG emissions. The prospect of countries' submitting stronger INDCs may hinge on political developments in 2024.

Over half the world's population will go to the polls this year and elect leaders in the US, EU, India, and UK, among other countries. Populist candidates, who are running strong in many countries, are threatening to rollback policies that support clean energy and restrict fossil fuel extraction. General Counsel will need to account for political uncertainty and turmoil when assessing opportunities and risks associated with the energy transition.

Investment in renewables

Under the **COP28 Global Renewables and Energy Efficiency Pledge** endorsed by 130 countries, it is recognized that to meet the Paris Agreement goals, renewables deployment must be accompanied in this decade by a rapid increase in energy efficiency improvements and the phase-down of unabated coal power, in particular ending the continued investment in unabated new coal-fired power plants. Conversely, it is a key cooperative action to expand financial support for scaling renewable energy and energy efficiency programs in emerging markets and developing economies, including multi-source investment from private sector, multilateral development banks, and philanthropy. It is also key to collaborate on accessible financing mechanisms to reduce the cost of capital in emerging markets and developing economies, thereby enhancing technical support and capacity building for renewables and energy efficiency.

Climate and adaption finance

COP28 brought the climate finance commitments' total count to over US$85 billion, including new commitments of $792 million by 19 countries for the loss and damage fund, $317 million in aggregate for the Adaptation Fund and the Least Developed Countries Fund, and an additional US$3.5 billion commitment for the Green Climate Fund. The World Bank (hosting for an initial period of four years) will allocate resources based on available evidence and a minimum percentage allocated to least developed countries and Small Islands Developing States. A key COP28 theme was "**transforming climate finance**", focused on ensuring finance for climate action becomes more accessible and affordable, and ensuring climate investment is seen as an economic opportunity.

13 countries including the US, UK, Germany, France, Ireland, UAE, India and a handful of emerging countries agreed the **Declaration of a Global Climate Finance Framework** (the "Framework"). The framework contains 10 agreed principles for making finance available, accessible and affordable for inclusive shared prosperity. It sets up momentum for international financial architecture reform, calling for the wider use of climate-resilient debt clauses, debt-for-climate swaps and sustainability linked bonds, for sustainability and resilience, also the implementation of global mechanisms on debt treatments, debt service suspension and highly concessional funding, wider or innovative sources, to free up fiscal space for climate action and ready support for the poorest and most vulnerable countries.

The Framework acknowledges that climate transition needs to be "country-owned", meaning each country needs to commit to high-level but achievable transition pathways in line with country circumstances and strategies. This will require strong domestic climate policy frameworks as well as adaptation strategies. Country-owned investment platforms are referred to as the essential starting point, for robust investment pipelines to be co-created with multilateral institutions and private sector finance, to greatly enhance the flows and effectiveness of finance. With reference to the G20 Independent Expert Group on Strengthening MDBs, the Framework encourages MDBs to enhance private capital mobilization through supporting enabling conditions, innovative risk-sharing instruments and new partnership to maximize development impact.

At the same time, private finance needs to be unlocked through deploying effective scalable catalytic instruments and high-integrity carbon markets as an essential component of the climate finance architecture. Countries are also called to develop robust policy frameworks and financial incentives to mobilize domestic investment at scale towards respective net-zero and climate-resilience development pathways and through recognizing technical assistance to policy makers.

Regulators and other financial actors in developing countries will be critical to accelerate this agenda.

The **Declaration on Climate Relief, Recovery & Peace** endorsed by 82 countries (including US, UK and PRC) also referred to the need to evolve the international financial architecture towards enhanced financial support for climate adaptation and resilience, through efforts on continuing to scale up and mobilize a variety of financial resources, improving access and strengthening technical and institutional capacity of national governments and local actors to account for, report on, allocate and leverage climate finance effectively. There is a remarkable emphasis on prioritizing local ownership, impact, and results where possible, including through channeling finance to respond to local needs and priorities and working with affected communities and both local government and non-government partners, and leveraging financial and technical support from the private sector and adopting tailored financial instruments to mobilize new sources of finance in support of national and local responses. However, there is also a pledge to strengthen coordination, collaboration and partnerships to tailor climate action to context and needs, and to deliver coordinated, inclusive programs and sustainable solutions for greater impact.

Biodiversity

Led by the PRC and UAE as co-presidencies for COP15 on biodiversity and COP28 respectively, countries of the **COP28 Joint Statement on Climate, Nature and People** affirm that there is no path to fully achieve the near and long-term goals of the Paris Agreement or the 2030 goals and targets of the Kunming-Montreal Global Biodiversity Framework without urgently addressing climate change, biodiversity loss and land degradation together in a coherent, synergetic and holistic manner, in accordance with the best available science.

It must also include scaling of finance and investments for climate and nature from all sources, in a synergetic, dedicated and progressive manner that ensures the promotion of co-benefits and efficient use through nature-based solutions and/or ecosystem-based approaches and facilitate access to finance in an inclusive and equitable manner.

What implications should General Counsels and in-house legal teams note?

UNEP FI refers to a growing movement to finance net zero at COP28, and that the financial sector plays a key role in supporting the just transition, which requires a system-wide rechanneling of trillions of dollars annually, including closing the adaptation financing gap. The Glasgow Financial Alliance for Net Zero stated at COP28 Finance Day that its focus for 2024 will be on nature and transition planning. This will encompass expectations for credibility and accountability of private sector net-zero commitments and transition plans. The UN Secretary-General's High-level meeting for Non-State Actors at COP28 announced the launch of the new Taskforce on Net Zero Policy, with the intended focus to ensure the credibility and accountability of 1.5°C-aligned net zero emissions commitments by non-state actors. This is underpinned with coherent policies and regulatory certainty to support implementation of the recommendations of the United Nations Secretary-General's High Level Expert Group (HLEG) on Net-Zero Emissions Commitments of Non-State Entities in its report published in June 2023 "Integrity Matters", to accelerate progress on policy change additive to voluntary net zero goals. Constituents of the Taskforce include UNEP FI, UNCTAD, the PRI, the IFRS Foundation and others.

With clear policy direction and developing regulatory environment for global climate action, the line has been drawn to end greenwashing – more important than ever, private sector actors need to align voluntary net zero goals and transition plans with policy and regulatory requirements.

With growing consensus across public and private finance and the global investment communities on climate finance for climate action, transition planning and delivering credible net-zero targets, robust and comprehensive corporate disclosures on commitments and progress are vital and will increasingly underlie access to finance and investments.

While COP28 has a strong emphasis on consensus, collaboration and collective climate action, the expectation for climate finance to be inclusive and the recognition that transition plans, policies and investment frameworks shall be "country-owned" translates to a need to ensure concrete understanding and management of local requirements and stakeholders in the local context and local communities in the different jurisdictions where trades and investments are undertaken. Companies should be prepared to conduct synergistic and holistic sustainability assessment of corporate action and impact on climate and nature, under the concept of 'double materiality', as would be increasingly expected in corporate sustainability reporting requirements and scrutinized in finance and investments.

Carbon markets

The voluntary carbon market in 2023

2023 was a difficult year for the voluntary carbon market. A series of media reports alleged serious issues with a number of high-profile carbon projects, ranging from fraudulent accounting to human rights abuses. As a result, corporates reconsidered their use of carbon credits in meeting net-zero goals, given the risks of greenwashing and reputational damage. Observers and participants of this largely self-regulating industry had warned of the lack of standardisation and accountability even as the value of the sector grew exponentially over the last few years. Article 6 of the Paris Agreement was supposed to have brought some control to the market.

Recap on Article 6

Article 6 of the Paris Agreement enables countries to voluntarily cooperate to achieve their emission reduction targets, as outlined in their NDCs. It allows emissions reductions and removals in one country to be traded and counted towards the targets of another. Article 6 contains two main market mechanisms, set out in Article 6.2 and Article 6.4 respectively.

In short, Article 6.2 is a mechanism that allows countries to trade emission reductions (also known as internationally transferred mitigation outcomes, or ITMOs) between each other. Article 6.4 aims to establish a global carbon market managed by a UN entity, the "Article 6.4 Supervisory Body" (6.4SB). UN-recognised credits under Article 6.4 would be purchased and traded by countries, companies and/or individuals.

Some progress had been made on both limbs of Article 6 at COP26 and COP27. Countries such as Ghana and Switzerland now have frameworks in place to buy ITMOs and count them towards their NDCs under Article 6.2. In November 2023, the 6.4SB published two sets of recommendations concerning (1) the requirements for the development and assessment of Article 6.4 mechanism methodologies and (2) activities involving removals under the Article 6.4 mechanism. However, progress on Article 6.4 has been slow, as A6.4ERs cannot be traded until the 6.4SB and a centralised registry are in place, and further rules need to be established in relation to how ITMOs are reported and traded under Article 6.2.

What happened at COP28?

Article 6.2

Discussions in Dubai focused on the authorisation of ITMOs, the establishment of an international registry and the sequence and timing of reporting obligations. This concerned the specific information required to be reported on, and the prescribed format in which countries should report carbon trading transactions annually, to ensure a sufficient degree of transparency.

Article 6.4

Both sets of the 6.4SB's recommendations were presented for consideration and adoption at COP28. Regarding methodologies, discussions focused on the creation of new guidance that would have allowed new methodologies to be submitted under the A6.4 mechanism.

In relation to greenhouse gas removals, conversations focused on how to calculate if removals had taken place over the life cycle of an entire project. It also concerned the monitoring and permanence of carbon dioxide removals, with a reversal risk buffer pool to protect against potential reversals.

Outcome

Despite a two-week period of negotiations, an agreement on the draft rules on both Article 6.2 and Article 6.4 was not reached at COP28.

In relation to Article 6.2, there was disagreement around the extent of the UN's involvement in country-to-country trades. In particular, there were disagreements over the processes and controls that should be imposed on bilateral trading. Whilst the EU, Latin American countries and others advocated for increased oversight to minimise the differences between Article 6.2 and Article 6.4, the USA preferred a more limited role for the UN. Article 6.2 will nonetheless remain in effect, following the consensus on major guidelines at the COP26 summit in Glasgow in November 2021.

The main points of contention surrounding Article 6.4 were around the methodologies to be adopted and the definitions for removal credits.

Whilst the US pushed to get the text approved in its current format, many other countries voiced concerns, namely that the removal credits mechanism does not sufficiently achieve environmental integrity.

As the guidance on methodologies and removals was a prerequisite for the launch of the Article 6.4 market mechanism, the implementation of the text will likely be delayed by at least another year, until the next UN Climate Change Conference in 2024.

What are the key takeaways for businesses?

For corporates, the lack of agreement at COP28 means the regulatory vacuum in international carbon markets will continue to be filled by voluntary standards bodies such as VERRA and the Gold Standard. Businesses who decide to keep purchasing and retiring credits purchased on the voluntary market should exercise caution and carry out appropriate due diligence on the projects behind the credits, to ensure the methodologies used are robust, and no human rights infringements have occurred. Where businesses contract with project developers, brokers or intermediaries to purchase credits, they should ensure their contracts contain appropriate termination rights and damages clauses in the event the credits turn out not to meet the standards they were marketed as by the seller.

Just transition and migration

In the final hours of COP28, the decision was reached to reduce emissions by 42% by 2030 in order to mitigate warming to 1.5°C above pre-industrial levels through "transitioning away from fossil fuels in energy systems, in a just, orderly, and equitable manner". This decision was welcomed as the first COP final decision targeted at the leading cause of the climate crisis, thereby acknowledging, for the first time, the dire need to place fossil fuels at the centre of COP decisions and negotiations.

The language landed on was met with caution as many climate scientists urged instead for the "phase out" of fossil fuels, rather than the transition therefrom. It allows countries to steadily migrate from fossil fuels and to adopt alternative measures of compensation to minimise carbon footprints, some of which include carbon removal, carbon sequestration, and carbon trading. To facilitate energy transition many countries have also pledged to reduce their reliance on oil and instead increase reliance on transitional fuels, such as natural gas. Although also a fossil fuel, natural gas is still identified as a transitional energy source – a point that fuelled hours long debate. Nonetheless, there were significant efforts to align the room on hydrocarbons and the recognition of its importance in the energy transition. This landmark decision has undoubtedly moved the world from the nineteenth and twentieth century eras of coal and oil, which were key drivers of the industrial revolution, to the current era of the energy transition.

It is however important to note that, for the Global Majority, the final decision was imperative and necessary – both in language and the operationalisation thereof.

With emerging trends and pressures surrounding Environmental, Social, and Governance (ESG), there is a growing focus by the Global North on sustainability as purely green and environmentally friendly ideologies and practices. However, the argument made by the Global Majority is that the sustainability of the planet is incomplete without the sustainability and prosperity of its people – and vice versa. The settled text is arguably very well-balanced for the Global Majority in that it reinforces the original concept of a just transition i.e. that the idea and practice of an energy transition will extend over time and will require an energy mix. Countries must invest in renewable energies while continuing to rely on fossil fuels as they migrate from traditional fossil fuels to transitionary fuels, until such time that their investments in renewable energies are able to return a reliable energy system. While the Global North is in a position favourable enough to dispose of oil and coal, and consequently phase out fossil fuels with little to no effect on their economies, the same cannot be said for the Global Majority. The idea of "transitioning away" from fossil fuels thus entrenches the original ideologies of ESG and sustainability – that it means, and requires, different practices and different actions dependent on time and space.

In a just energy transition, transitioning away from fossil fuels carries a different meaning for different players in different locations. It is thus expected that the final decision will allow developing nations to exploit their resources sustainably. However, it was also encouraged that sustainable energy in developed nations should mean that developed nations migrate from fossil fuels sooner and faster than developing nations.

Developed and wealthy nations that are most responsible for the climate crisis committed to a combined USD 7,000,000 towards the loss and damages fund to facilitate developing nations in managing, mitigating, and adapting to the climate crisis. While this was welcomed, further commitments and investments to the loss and damages fund will be imperative in aligning and operationalising the efforts of the Global Majority in energy transition in order to enable the multiplication of the world's renewable capacities, to advance electrifications, and to continuously develop and support methods that facilitate the sustainable extraction of natural gas.

Many that argued for the final text of this landmark decision, argued that inclusivity and equity were at the heart of the success of the decision because in the event that a choice must be made between the environment and economic prosperity, the latter will likely emerge as the winner. Consequently, "transitioning away" from fossil fuels engages key decision makers and contributors and was undoubtedly the real win for COP28's environmental goals.

Energy transition will require private actors to assess and better understand their position in respect of their net-zero commitments, as well as how to operationalise those commitments to ensure the sustainability of the planet, people, and their businesses.

COP28 on-the-ground perspectives

Our team was on-the-ground in the Blue and Green Zones in Dubai, delivering presentations and meetings clients. We caught up with Andrew and Ipshita to explore some of their key takeaways.

The growing role of nuclear energy

Perspectives from
Andrew Shaw, Partner, US

One of the underreported stories coming out of COP28 was the growing recognition and support for the role that nuclear energy must play in responsibly addressing climate change. While the capacity of wind, solar and battery storage will need to grow globally, nuclear energy, along with hydropower, are essential baseload sources of non-emitting power that are critical to decarbonizing the electricity sector. Furthermore, the electricity sector is essential to broader economy-wide decarbonization efforts as countries work to electrify the transportation and industrial sectors. As such, the world is going to need to preserve existing light-water reactors while also developing and deploying small modular reactors.

Nuclear energy is also important to global energy security and geopolitics. There are significant efforts in Central and Eastern Europe to grow nuclear energy as these countries work to bolster energy security and transition away from a dependence on Russian gas imports.

Developing countries are also exploring nuclear energy as a way to reduce energy poverty and support job and economic growth.

In this context, there was significant activity at COP28 related to nuclear energy. The COP28 text references the importance of nuclear, along with renewables and carbon capture, in mitigating GHG emissions from "hard-to-abate" sectors and low-carbon hydrogen.

Perhaps even more important were multilateral agreements reached during the conference. For instance, the US and more than 20 countries signed a declaration recognizing the role that nuclear energy can play in limiting warming to 1.5° C and pledging to triple nuclear capacity by 2050. Such an increase in nuclear generating capacity will also require a secure and reliable supply chain, a significant priority for the U.S. and its allies. As such, the US, the UK, France, Canada, and Japan also signed the "Sapporo 5" agreement, pledging to mobilize $4.2 billion in government funding to strengthen nuclear fuel supply chains and limit the impact of Russian imports on global markets.

Carbon markets are here to stay.

Perspectives from Ipshita Chaturvedi, Partner, Singapore

COP28 was like the Coachella of the climate space, where instead of Jay-Z or Billie Eilish, you got to listen to John Kerry and Sadhguru. Whilst there were several key topics being discussed simultaneously, both in the official government negotiations as well as in the pavilions and the many side-events, I took most interest in the movement around voluntary carbon markets and spent most of my time in the Blue Zone speaking with policymakers, project developers, platforms, tech companies and businesses to understand the practical implications of COP28 for the future of carbon credits.

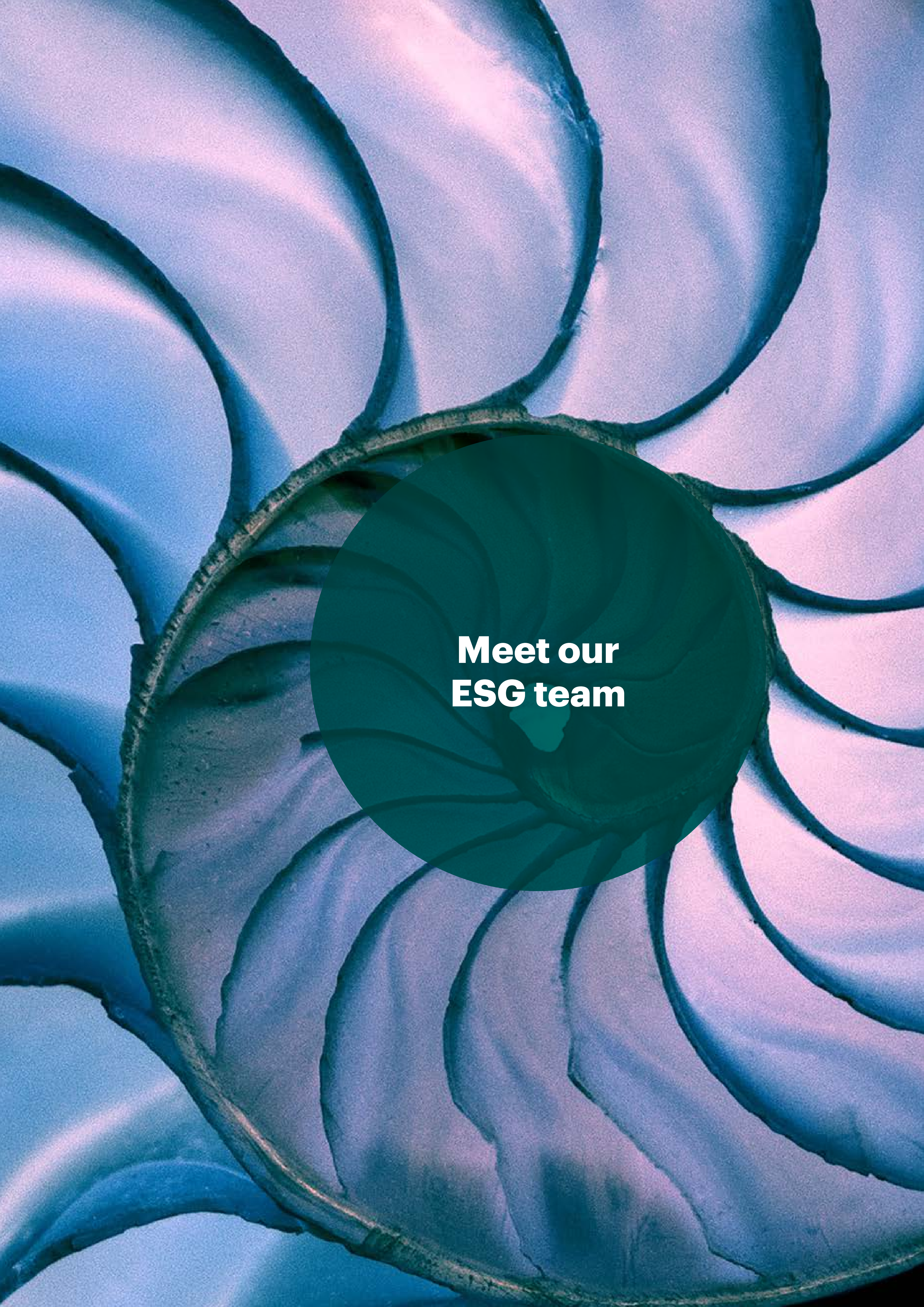
This COP revived support in a big way for the voluntary carbon market (VCM), not just by carbon market players having skin in the game, but also during the Finance Day roundtable attended by US climate envoy John Kerry and ministers from Singapore, the UK, Ghana, and Indonesia. This gathering marked the strongest political backing ever received by the market, recognizing that carbon markets are pivotal for the channelling of capital towards genuine climate solutions. VCM received united support from most parties that demonstrated that carbon markets are here to stay and will be crucial for countries and MNCs to achieve their NDCs and net-zero goals respectively.

It was expected that rules supporting the implementation of Article 6 would be finalized at COP28. However, negotiations on Article 6.2 and Article 6.4 fell apart, and parties couldn't agree on the final text. These discussions are now postponed to future COPs. Opinions on the impacts of the continuing fog around Art 6 were divided on the ground. On one hand, it's good news for the VCM because it can keep operating without complex corresponding adjustments, especially in jurisdictions where there is no clear process for obtaining authorizations. On the other hand, many were disappointed with the deadlock because of the delay in the creation of a global compliance market, which could greatly accelerate climate finance and build integrity for the carbon markets in general.

Having said that, several governments will continue to pilot projects under Art 6 in 2024.

Some of the key areas to look out for going forward are:

- What is the legal nature of a carbon credit from the point of view of property rights being accorded to it?
- What are some of the key legal areas emerging from a contractual point of view in offtake agreements, particularly w.r.t. art 6 developments?
- How can businesses hedge some of the investment risk in the carbon space?
- What will be the role of carbon credits (will it change to a seller's market) as we get closer to taking stock of 2030 net-zero targets?



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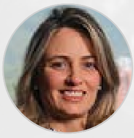

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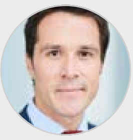

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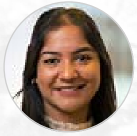

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CSBrand-134888 COP28 Key takeaways 04 — 07/02/2024