



HERBERT
SMITH
FREEHILLS

Sustainable & Impact Investment at HSF

Our sustainable and impact investing practice

Over the last few years, the **evolving relationship between sustainability considerations and investment decision-making** has significantly impacted the asset management and investment industry. The twin engines of **investor demand and regulatory change** are requiring market players to consider sustainability issues across the entire investment life cycle – ranging from product design and classification, through investment decision-making and disclosures and ultimately distribution. The consideration of sustainability issues has, therefore, evolved from a ‘compliance’ exercise to a core ‘business’ consideration.

This is particularly the case for alternative investments such as private equity, VC, private debt, infrastructure (including renewables) and real estate. The more long-term nature of these investments and their real world impact means that **sustainability considerations play a crucial role for value creation** when investing into these asset classes.

We have considerable **experience assisting asset owners, asset managers and investee companies** with responding to these developments across their businesses. As one of the only City law firms with a dedicated global

responsible investment and impact practice, we have supported clients for over a decade on issues ranging from strategic, governance or operational considerations, to regulatory advice and support with sustainability-related aspects of fund formation or investment transactions.

Our full-service offering is combined with a sector focus. We have deep expertise across climate change, agribusiness, biodiversity and natural capital, sustainable consumer products, social mobility, inclusive development and education, housing and healthcare. This allows us to tailor our advice to the specific sectors in which our clients operate, providing a key value add for our clients. We also have an award-winning disputes team who are well-placed to help with business-critical and high-profile investigations, litigation and general activism in the financial services industry.

Combining our team’s long-standing, **deep market experience on sustainable and impact investing matters** with our **strong expertise in financial services regulation and fund formation**, we stand ready to help you navigate this exciting landscape.



One of only two firms in the world consistently ranked Band 1 for ESG



Thought Leaders
[Climate Change](#) | [COP28](#)
[Business and human rights](#) | [Energy Transition and Net Zero](#) | [ESG Notes](#) | [Sustainable and Impact Investing Insights](#)



30+ years' experience
advising on ESG issues



Focus on social impact
Strong emphasis across the firm on D&I, pro bono and citizenship. We provide charities and social enterprises with pro bono legal advice on sustainable and impact investing matters



Led by true subject matter experts
with long-standing experience



Our Hub & Spoke model ensures you get the best person for the job



We are committed to become **net zero** and are working to deliver **science-based carbon reductions targets** by 2030



Herbert Smith Freehills’ ESG team is outstanding in managing wide-ranging sources of complex data to synthesise into practical advice.

Band 1 – Global, Environmental, Social and Governance Risk –
Chambers Global Rankings 2023



We provide the full range of transactional and advisory support

We provide transactional and advisory support across the entire investment life cycle.

Transactional support

Our transactional support includes advising asset managers, funds, institutional investors and asset owners on their direct investment transactions (with a particular focus on private assets including venture capital, growth equity and private equity, real estate, infrastructure, renewables and private debt) and more broadly on product design and classification, fund formation, segregated mandates, disclosures and distribution.

Our clients range from the biggest global asset managers to small asset managers dedicated to sustainable investment strategies (whether directly or indirectly through fund investments). We also advise on the applicable sustainable finance regulation and voluntary commitments including net-zero or nature-positive pledges. We are always excited to build new client relationships and we will invest in building those relationships so that we can use our extensive experience of sustainable and impact investing to help you to deliver on your ambitions.

Advisory services

We also provide advisory services on policies, procedures and governance, marketing and distribution to investors, recent and proposed legislation, regulatory advice and drafting of investor-facing or regulatory disclosures. This blended full-service practice provides us with a comprehensive overview of the market, with real-time visibility on potential regulatory developments and emerging market-led norms and trends.

We help to shape regulation and industry standards by contributing to industry associations like [Invest Europe](#) across Europe, [BAI](#) and [BVI](#) in Germany, [SPAINCAP](#) in Spain and [AFME](#), [AIMA](#) and [BVCA](#) in the UK. For example, we have helped to design Invest Europe's recently launched [ESG Reporting Guidelines](#).

We are specialists in sectors that are core to the just transition

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Sustainable and Impact Investing

We are proud to be one of the only City law firms with a dedicated global sustainable and impact investing practice, through which we advise investors, intermediaries and investee companies seeking to generate positive impact alongside returns.

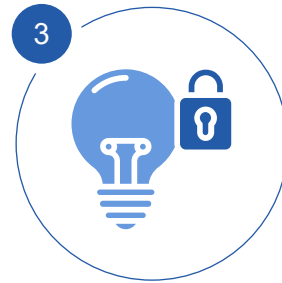
For more than a decade and with more than 250 of our lawyers advising on sustainable and impact deals, our Sustainable and Impact Investing Practice has offered clients dedicated coverage across all jurisdictions and a full-service offering, drawing on strength and expertise from our multi-disciplinary team to contribute to the growth of the sustainable and impact investing market. We help sponsors, investors, lenders and companies develop and implement ESG and impact-related policies and commitments, comply with regulatory and contractual obligations, and achieve market best practices across our clients' fundraisings and operations, in order to enhance relationships with key stakeholders, generate long-term value and achieve their impact objectives.



Funds



Finance



Corporate



Data protection



Employment



Intellectual property



Regulatory



Real estate

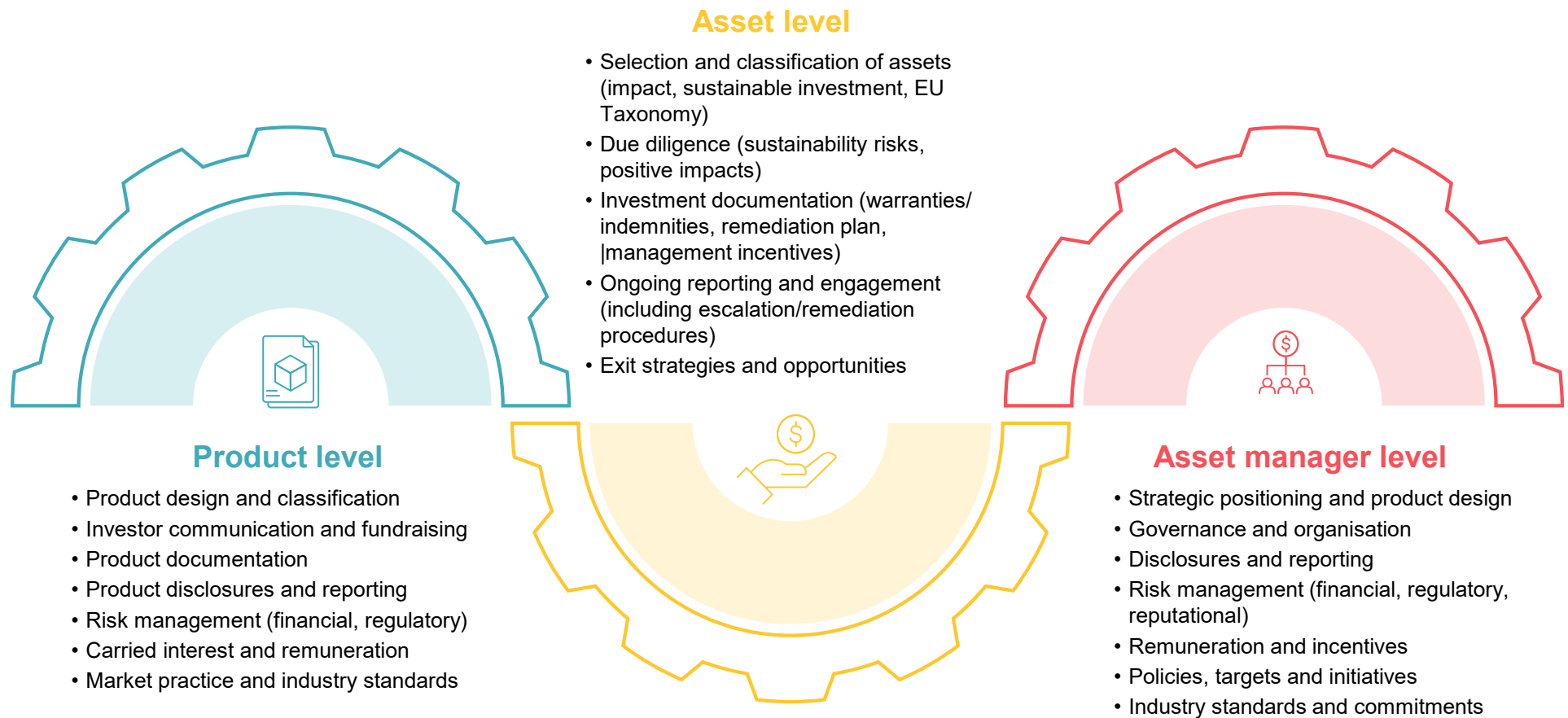
“Herbert Smith Freehills has demonstrated an excellent grasp of complex legal issues including how international developments will impact at the domestic market level.

Band 1 – Global, Environmental, Social and Governance Risk – Chambers Global Rankings 2023

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What sustainable investing means for asset managers

Whether you are acting as GP, sponsor, portfolio manager or advisor, sustainable investing needs to be integrated into your entire business model:



Integrating sustainable investing in your investment process



ESG due diligence

- Due diligence by subject matter experts who can report on the entire spectrum of sustainability issues, leveraging deep understanding of the contractual matrix and regulatory environment that apply to these assets (eg energy regulation)
- Working with technical consultants to identify and assess material ESG risks.
- Alignment with product level strategies and requirements (eg sustainable investment classification)



Key terms

- Mitigating material ESG risks through the warranty and indemnity package
- Implement management equity and incentivisation arrangements which can track investor objectives/KPIs and reporting
- Negotiating ESG lender requirements and advising on sustainability-linked or green loans.
- Negotiating the governance package (see below)



Disclosure and reporting

Manage portfolio level disclosure requirements to LPs or other stakeholders, including third party assurance requirements



Impact on value and pricing

- Expertise on pricing mechanics which are unique to sustainable investing themes eg Timber, Energy etc.
- Pricing in of ESG risks and required future improvements
- Understanding how sustainability and impact links to value and pricing



Governance package

- Negotiating the governance package to contain:
- Market leading board and reserved matter structures,
 - Mission alignment clauses,
 - investable and bankable policies and training,
 - “Uplift” checklist” to address ESG risks,
 - Building urgent ESG matters into the 100-day plan



Exit preparation

- Maximize exit opportunities by accurately reflecting ESG strengths and opportunities of a portfolio company, assisting with pre-deal DD and remediation and tailoring the exit strategy to ESG sensitivities of likely buyers, while preparing to address material ESG risks, including advice on accreditations (eg B Corp certification) which can attract a premium
- Responsible Exits

Our support at asset manager and fund level



Asset managers

We provide full-service advisory and transactional support to asset managers, including:

- Advising on downstream sustainable and impact investing and the nuances that arise in relation to such transactions
- Providing strategic advice on evolving industry standards and best practice, helping asset managers navigate the fast-changing regulatory and commercial landscape
- Providing regulatory advice on interpretive questions and helping firms anticipate the regulatory direction of travel
- Implementing regulatory change projects involving re-papering, updating contractual documentation or other BAU processes
- Advising on product design and product classification in relation to sustainability-focussed strategies
- Reviewing and advising on systems, policies and procedures, and related governance frameworks
- Advising on remuneration and incentive arrangements
- Assisting with firm-level reporting and disclosures, including in relation to ESG KPIs, metrics and reporting and measurement tools
- Supporting firm-level CSR and D&I initiatives
- Assistance in relation to the establishment of specialist ESG committees, councils and other bodies



Products

ESG expertise is integrated into our market-leading fund formation and investment mandates practice, enabling us to provide a broad range of support in relation to investment products:

- Providing strategic advice on evolving industry standards and best practice, helping asset managers navigate the fast-changing regulatory and commercial landscape
- Providing regulatory advice on interpretive questions
- Advising on product design and product classification
- Assisting with fundraising, taking into account ESG-related aspects of marketing and distribution activities
- Negotiating ESG-related provisions in key documents, including LPAs, PPMs and side letters and support ongoing compliance
- Advising on remuneration and incentive arrangements
- Assisting with product-level reporting and disclosures, including in investor decks, private offering memorandums, annual reports and wider investor communications, including third party assurance requirements

We are leaders in the energy transition

Market leaders in the Energy Transition

Our lawyers work on first-of-kind energy projects across the new energy value chain, including hydrogen, CCUS, renewables, battery storage and EV charging projects. We are at the forefront of developments in the sector, enabling us to share with our clients unrivalled experience and insights into the challenges and opportunities these projects pose.

We have the **relevant experience**, a **strong passion for decarbonisation projects**, a **deep understanding of the technical aspects** and **considerations** to help clients successfully navigate through the complexities surrounding this still-nascent area, and **insights into the key challenges and issues** which can arise. Most importantly, we have the **market-leading experience** on how to help our clients anticipate and mitigate risk through our experience on many “market-first” projects and studies.

Some examples of our experience in the energy transition:



Hydrogen – Our current experience includes acting for **bp** on the H2 Teesside project and on its investment in the Asian Renewable Energy Hub (AREH) project and as project counsel in relation to the **Hygreen green** hydrogen project in the UK. We are also acting on a major green ammonia project in the Middle East which is exporting to Europe. Our matter portfolio also includes a number of smaller hydrogen projects aimed at using transportation such as a JV between **Plug Power** and **Acciona**.



Battery storage – Our team has an unrivalled understanding of (and experience in) the sector, derived from a proven track record acting on a considerable number of BESS developments and BESS platform investments. Our recent highlights include advising **Renewable Power Capital** on its joint venture with Eelpower to acquire, build and operate utility-scale projects. The venture will target up to 1GW of storage, with a near-term pipeline of 240MW, in the UK. We also worked with **Intergen** on the sale of its UK business, including the Gateway BESS project and the Spalding BESS project.



Renewables – Solar and Wind – As a firm we have a significant focus on renewable energy, and we have been ranked in the top tier for power and renewables by Legal 500 UK for 18 years (since records began). The practice ranges from frontier mega projects for clients such as **Marubeni**, **Iberdrola**, **Mitsui** and **bp** to mid-size and smaller scale renewables platforms for **Green Investment Group (GIG)**, **Cero Generation** and **Hartree**. Our recent highlight includes **Interpath Advisory** on the sale of the solar assets owned by the Company's indirect subsidiaries, the largest operational solar portfolio transacted in the UK to date.



Tech and services for energy transition – We are active in the growth capital investments in tech for project development, exchange platforms and energy as a service. We have dedicated tech IP and construction teams experienced in negotiating and due diligence of the full range of energy transition technologies. Recent experience includes advising **Hartree** on its investment into the voluntary carbon credit developer Ecoscurities, **Equinor** in relation to its investment into Carbon Clean Solutions and **Vitol** on its carbon capture joint venture with Phillips 66 and participation in the

Humber Zero Net Project.



Electric Vehicles – We act for a range of EV market participants – industrials in JVs with OEMs, battery minerals acquisition, charge point businesses and OEMs on battery recycling projects. Clients include **Volvo Energy**, **bp pulse**, **EDF's Pod Point**.



Biofuels – We have acted on a number of biofuels projects including in relation to sustainable aviation fuel, UCF and agri-base fuels for developers and financial investors. This experience gives us unparalleled insights into the way these projects are structured and funded and into the various revenue support mechanisms. A recent example is advising **Marubeni** in relation to its investment into and JV with Biowatt.

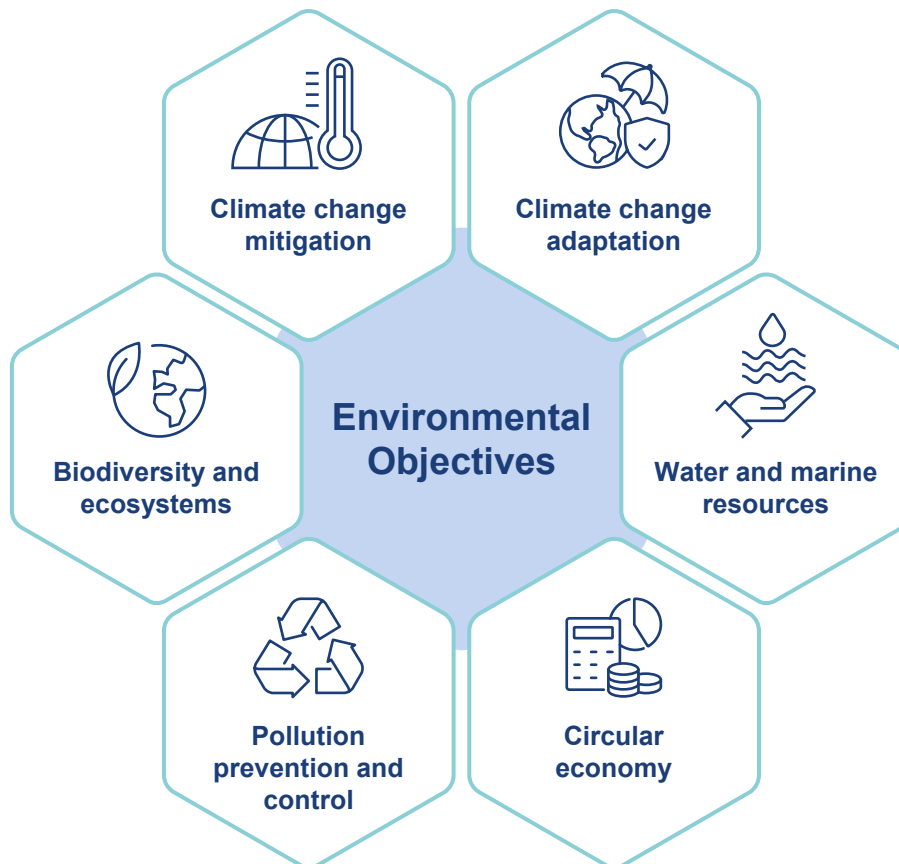


Bioenergy - We have market leading experience in advising sponsors and lenders on development, financing and disposal of bioenergy assets including advising **Copenhagen infrastructure Partners** on the investment in, development of, refinancing of and subsequent sale of over £1 billion of bioenergy transactions in the UK and lenders to the **GIG/Fortum South Clyde EfW**.



Navigating EU and UK Sustainable Finance regulation

The **EU Taxonomy** is a classification framework used in various pieces of EU legislation relevant for investors (notably SFDR, non-financial reporting of corporate issuers and upcoming EU green bond standard). The EU Taxonomy can also be used as tool to allocate capital to the transition, as recently recommended by the EU Commission in its [Recommendation on Transition Finance](#).

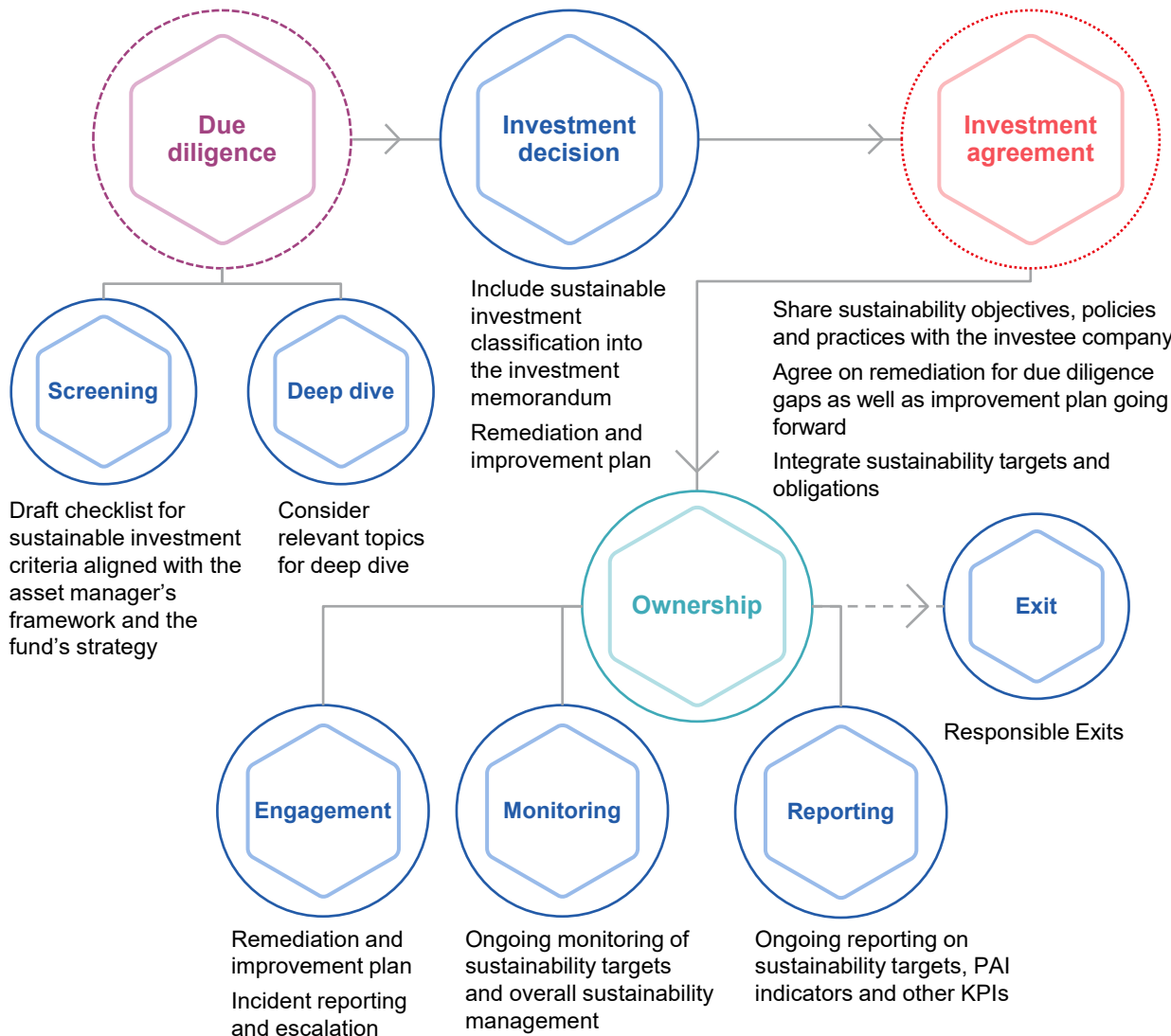


The **EU Sustainable Finance Disclosure Regulation** and the **UK investment labels, sustainability disclosures and anti-greenwashing rule** create new challenges and opportunities for asset managers. We help you to navigate the complex and interconnected framework and implement it into your day-to-day procedures – with deep regulatory knowledge, market view and the required pragmatism.



How to ensure sustainable investment classification in a deal

Sustainable investment classification needs to be integrated into the investment process and documentation:



Case study: Classifying an almost done deal retroactively as sustainable investment under SFDR

A global asset manager wanted to classify an equity investment of its Art. 9 SFDR fund in a renewables platform as sustainable investment under SFDR. When we were mandated, a technical ESG due diligence had already been carried out and the main deal documents had already been negotiated.

We performed a gap analysis of the ESG due diligence and prepared additional questions for the joint venture partner to cover shortfalls. Moreover, we carefully analysed the deal documentation to identify clauses which already covered issues relevant for the sustainable investment classification which we enhanced to meet the regulatory requirements. Where necessary, we also proposed additional clauses which were then negotiated into the deal documents.

In this context, it is important to keep in mind that financial compensation cannot cure the lack or loss of the sustainable investment classification because the fund would ultimately have to exit the investment to keep its Art. 9 SFDR status. Accordingly, indemnities are only of limited value. Warranties and undertakings can be helpful as risk mitigants to deal with information gaps or issues that need remediation, but they cannot entirely replace the due diligence by the asset manager. Finally, the ultimate consequence of breaching warranties related to the sustainable investment classification should be an event of default, triggering a sufficiently long cure period with a remediation plan and ultimately permitting to exit from the investment if remediation fails.

The Earthshot Prize

Herbert Smith Freehills is also a proud supporter of The Earthshot Prize, joining 14 of the world's leading companies that form the Global Alliance Members to support and help scale the innovative and ground-breaking solutions developed by the finalists of The Earthshot Prize.

Founded by Prince William, The Earthshot Prize seeks extraordinary solutions to the world's greatest environmental challenges over the next ten years. As a Member of the Global Alliance, we have committed to provide finalists with free legal support, in areas such as corporate structuring, intellectual property advice and regulatory matters, to unlock and accelerate growth.

In total, since the start of our relationship with The Earthshot Prize we have:

- **committed over 1,800 hours' worth of support** to The Earthshot Prize and its finalists
- **connected with 26 finalists**
- **introduced 9 finalists to local law firms** for on-the-ground assistance
- **convened an internal Nominations Committee** to submit eco-solutions for the Prize, including **11 nominations in 2023**
- **commenced introductions of HSF clients to the "Launchpad" platform**

THE
EARTHSHOT
PRIZE



Over the last three decades, concrete production has increased fourfold as urbanisation grows and economic development accelerates around the world. Our concrete reliance has a heavy cost, generating 2.8bn tonnes of CO2 emissions each year. Only two countries, China and the United States, emit more carbon than that. Low Carbon Materials has developed two products that, if scaled, could help to enormously reduce the carbon footprint of aggregate used in concrete and in paving roads.

Our London office is advising on a number of matters for Low Carbon Materials, including their latest equity fundraising round, helping Low Carbon Materials to secure much-needed working capital for the growth and expansion of their business.

Sustainable and impact investing team

Key Team



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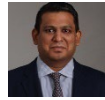
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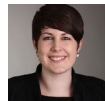
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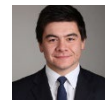
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ASIA PACIFIC, AFRICA AND THE MIDDLE EAST



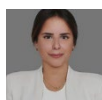
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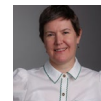
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Our memberships and contributions



THE VOICE OF
PRIVATE CAPITAL
VENTURE CAPITAL
PRIVATE EQUITY
INFRASTRUCTURE
LONG TERM INVESTORS

*Heike Schmitz is a member of the
ESG Committee*



SPAINCAP

Capital por un Futuro Sostenible

*Leonie Timmers is a member
of the SFDA Committee*



GLOBAL IMPACT INVESTING NETWORK

*Contribution to the Policy and
Regulation Working Group*



*Providing support as part of
the legal panel*



afme /
Finance for Europe



BAI /
Diversifikation zählt.

BVI

DF Insurance
Development
Forum

*Heike Schmitz co-chairs the
Infrastructure Taskforce*

THE
INVESTMENT
ASSOCIATION



*Nikesh Arya is a coordinator
for the London Impact
Investing Network*

Recent publications on sustainability topics

EU'S due diligence directive is in the home run – 2 May 2024 ([Link](#))

Recast of the energy performance of buildings directive – 21 March 2024 ([Link](#))

Climate disputes - ESG disclosure investigations – 21 November 2023 ([Link](#))

Row back on ambition – 31 October 2023 ([Link](#))

Quo Vadis SFDR? European commission launches two new consultations – 21 September 2023 ([Link](#))

Taskforce on nature - related financial disclosures and the rise of nature disclosure regulation – 30 August 2023 ([Link](#))

Global sustainability disclosures: Navigating the landscape – 31 July 2023 ([Link](#))

Barbarians reborn: Can private equity transform impact investing? – 6 November 2023 ([Link](#))

The third age looms – Why impact will shape the next generation of sustainable finance – 21 September 2022 ([Link](#))

Corporate Sustainability Due Diligence to become mandatory across the EU – 25 March 2024 ([Link](#))

ESG rating regulation in Europe: Key takeaways for asset managers – 25 March 2024 ([Link](#))

We have lift-off! FCA publishes final rules on UK sustainability disclosure requirements and investment labels – 28 NOVEMBER 2023 ([Link](#))

ESG Horizon Scanner

To help our clients stay abreast of this rapidly shifting landscape, we have published an ESG timeline providing insight into legal, regulatory, policy and market developments across various regions. Together with our regional ESG trackers/newsletters, this timeline will help businesses, investors and lenders keep track of ESG developments. ([Link](#))

For a full list of our global offices visit [HERBERTSMITHFREEHILLS.COM](https://www.herbertsmithfreehills.com)
