IN-DEPTH

Sustainable Finance Law

UNITED ARAB EMIRATES

LEXOLOGY

Sustainable Finance Law

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In-Depth: Sustainable Finance Law (formerly The Sustainable Finance Law Review) provides a practical global overview of the current state of sustainable finance and related regulatory efforts across multiple jurisdictions. It also tracks the evolution of sustainable finance and outlines key trends for the near future. Topics examined include sustainable disclosure requirements and taxonomies, sustainable finance instruments and incentives, and much more.

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United Arab Emirates

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Introduction

The regulation of sustainable finance in the United Arab Emirates (UAE) spans several jurisdictions, considering that the UAE operates a federal system with seven emirates, as well as numerous free zones, in many cases with their own laws and regulations. Some aspects of the regulatory framework are voluntary while others (including those relating to the disclosure regime) are mandatory.

The UAE has sought to cement its position as a leading economy and a destination of choice for companies with its ambition to become a global hub for sustainable finance, by identifying the area as a solution to combat climate change, expedite the necessary green energy transition and achieve the United Nations Sustainable Development Goals (SDGs). The UAE was the first country in the Middle East to sign the Paris Agreement, which was negotiated at the 21st United Nations Climate Change Conference of Parties (COP) in 2015 by 196 parties, and which came into force in November 2016. In 2021, the UAE also became the first country in the Middle East and North Africa (MENA) region to set a net zero carbon emissions commitment by 2050.

In line with this vision, the UAE hosted COP28, becoming the first Gulf Cooperation Council (GCC) country to do so. Central themes of COP28 included, among other things, exploring avenues to accelerate energy transition, transforming climate finance to bridge the gap in funding needed and establishing a new financial framework to combat climate change.

Year in review

The past year has seen the following notable events:

1. 2023 was declared the 'Year of Sustainability' with the slogan 'Today for Tomorrow' by His Highness Sheikh Mohamed bin Zayed Al Nahyan, the President of the UAE;-[2]
2. the 15th edition of Abu Dhabi Sustainability Week was held from 14 January to 19 January 2023, culminating in the 5th edition of the Abu Dhabi Sustainable Finance Forum, which was held on 19 January 2023;
3. the Abu Dhabi Global Market (ADGM) launched a consultation paper on its sustainable finance regulatory framework (the ADGM Sustainable Finance Regulatory Framework) in November 2022, which concluded in January 2023. The ADGM Sustainable Finance Regulatory Framework came into force on 4 July 2023;
4. on 7 February 2023, the Virtual Assets Regulatory Authority (VARA) issued its rulebook for the regulation of virtual assets in Dubai;
5. on 6 March 2023, the federal and local governments of the UAE signed the Net Zero 2050 Charter;
6. the ADGM and the United Arab Emirates' Sustainable Finance Working Group (SFWG) launched a consultation paper in March 2023 regarding the 'Principles for the effective management of climate-related financial risks', which concluded in May 2023 (the Climate Risk Principles). The Climate Risk Principles were launched on 13 November 2023, but still have to be issued by the relevant financial sector regulators to be implemented;

7. on 12 May 2023, the UAE Securities and Commodities Authority (SCA) issued its regulatory framework for Green and Sustainability-linked Bonds and Sukuk (GSLBS);
8. the Sustainable Finance Summit was held on 7 June 2023 at the Dubai International Financial Centre (DIFC);
9. on 26 September 2023, the UAE SFWG launched a consultation on the proposed 'Principles for Sustainability-Related Disclosures for Reporting Entities' to provide minimum standards for disclosures concerning sustainability-related matters and to allow investors and other stakeholders to make more informed decisions and better evaluate investment risks and opportunities;
10. the DIFC Sustainable Finance Framework was announced on 4 October 2023;
11. the Future Sustainability Forum was held on 4 October and 5 October 2023 at the DIFC;
12. the 8th edition of the World Investment Forum with the theme 'Investing in Sustainable Development' was held from 16 October to 20 October 2023 in Abu Dhabi, coinciding with the 2nd Global Dialogue in preparation for COP28 on 'Climate Finance and Investment', which was held from 15 October to 17 October 2023 at the ADGM. A pre-forum event was held on 15 October 2023 to discuss the International Financial Reporting Standards Foundation's newly issued Sustainability Disclosure Standards;
13. the UAE hosted COP 28 from 30 November to 12 December 2023; and
14. the Abu Dhabi Sustainability Week held a special edition at COP28 on 4 December 2023.

Regulation and policy

As noted above, the governing framework at the federal level differs from what applies in financial free zones, namely the ADGM and the DIFC. As a result, regulators charged with implementing sustainable finance regulations are also multi-layered. For instance, regulators at the federal level include the Central Bank, the SCA, the UAE SFWG and the Ministry of Climate Change and Environment (MOCCE).

In the DIFC, the following authorities exercise some form of oversight over sustainable finance: the Dubai Financial Services Authority (DFSA), the Dubai Islamic Economy Development Centre, and the Dubai Sustainable Finance Working Group (DSFWG). In Dubai and outside of the DIFC, the Dubai Land Department and Real Estate Regulatory Authority and VARA also regulate sustainable finance.

The key ADGM regulators are the Financial Services Regulatory Authority (FSRA), and the ADGM Registration Authority.

We have set out below an overview of the applicable sustainable finance framework in each of these jurisdictions.

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i UAE mainland

The sustainable finance framework operating at the federal level is codified in various regulatory instruments such as the UAE's Green Agenda 2030, UAE Net Zero 2050 Strategic Initiative, UAE Vision 2021, UAE Sustainable Finance Framework 2021 to 2031 and the 2020 UAE Guiding principles on Sustainable Finance.

Stock exchanges continue to play a critical role in driving sustainability regulations in the UAE. The various environmental, social and governance (ESG) disclosure guidance documents adopted by UAE stock exchanges, and the sustainability index created by the Dubai Financial Market (DFM) in particular, remain instrumental in monitoring impact investing and sustainability more generally in the country.

In 2019, the SCA published its Master Plan for Sustainable Capital Markets, with the aim of providing channels for funding sustainable projects, among other objectives.[3] Rules governing sustainable finance can also be derived from the following instruments: the SCA Corporate Governance Code for Public Joint Stock Companies (the Governance Code), SCA Decision No. 21/RM/2023 on the Regulation of Green and Sustainability-Linked Bonds and Sukuk (the SCA Green Bonds Decision) and SCA Decision No. 29/RM/2023 on the Exemption from the Fees of Registration of Green and Sustainability-Linked Bonds and Sukuk in 2023.

In 2021, the UAE SFWG published its Public Statement on Collaboration on Sustainable Finance in the UAE. The statement identifies three topics most relevant to the nature of financial services in the UAE and internationally recognised as conducive of change: (1) strengthening sustainability disclosure; (2) fostering sustainability-focused corporate governance; and (3) designing the UAE's Sustainable Finance Taxonomy.

Dubai mainland instruments include: Law No. 4 of 2022 Regulating Virtual Assets in the Emirate of Dubai, the 2023 Rulebooks for the regulation of virtual assets in Dubai (excluding the DIFC) and the 2016 Dubai Sustainable Finance Declaration.

ii ADGM

In 2019, the ADGM issued its ADGM Sustainable Finance Agenda establishing a roadmap for sustainable finance in the ADGM based on four pillars: (1) regulation; (2) collaboration; (3) awareness; and (4) ecosystem. As part of the regulation pillar, the ADGM adopted the ADGM Sustainable Finance Regulatory Framework, which is codified in the Companies Regulations 2020 (as amended) and the FSRA rules (such as the conduct of business rulebook, the fund rules and the market rules). As part of the collaboration pillar, the ADGM initiated the Abu Dhabi Sustainable Finance Declaration in 2019 seeking to establish a partnership between private and public institutions in the region to advance sustainable finance. As part of the awareness pillar, an annual Abu Dhabi Sustainable Finance Forum is hosted. As part of the ecosystem pillar, the ADGM Sustainable Finance Platform tracks data and trends in key sustainable finance areas.

iii DIFC

DIFC sustainable finance initiatives include the DIFC Sustainable Finance Framework, DFSA Business Plan 2023–2024 and DFSA Task Force on Sustainable Finance.

In 2023, the DSFWG published a white paper on unlocking the potential of ESG innovation in the UAE and across the globe, with the aim of (among other things) providing actionable recommendations that will serve as a roadmap for fostering an impact-driven ESG innovation ecosystem and push the country to becoming a global hub. The DSFWG has also published several guidance documents such as the Net Zero Guide for UAE companies, the Sustainability-Linked Loans Guide, the Sustainable Investing Guide and the Sustainable Issuance Guide.

Sustainable finance instruments

i SCA

The SCA Green Bonds Decision defines Green Bonds and Sukuk (GBS) as bonds or *sukuk* whose subscription proceeds are entirely used to finance a new project or refinance an existing project, totally or partially, in line with prescribed core components. Sustainability-Linked Bonds and Sukuk (SLBS) are defined as bonds or *sukuk* with structural or financial properties, or both, concerning the future key performance indicators (KPIs) of the issuer as well as the sustainability objectives agreed upon in the offering documents.

Core components of GBS and SLBS are aligned on the International Capital Market Association (ICMA) Green Bond Principles and the ICMA principles on sustainability-related *sukuk* or bonds (the ICMA SLBS Principles), respectively. For GBS, they include provisions on the: (1) allocation of subscription proceeds; (2) assessment and selection of projects; (3) management of subscription proceeds; and (4) preparation of reports. For SLBS, they include: (1) selection of KPIs; (2) assessment of the chosen KPIs' suitability; (3) determination of the SLBS specifications; (4) preparation of reports and disclosure; and (5) verification.

Upon fulfilment of the requirements of the SCA Green Bonds Decision, an issuer may submit an application to the SCA for issued bonds or *sukuk* to be designated as GSLBS.

The GSLBS will lose this designation if they no longer meet the requirements on an ongoing basis.

ii ADGM

The ADGM Sustainable Finance Regulatory Framework establishes a voluntary opt-in regime with minimum eligibility requirements for green-labelled financial instruments.[4] The framework aims to enable capital to be invested towards financing sustainable projects and the net zero transition.

A fund established or domiciled in the ADGM (i.e., a 'domestic fund'), as long as the fund meets the investment and attestation requirements for the relevant designation, may choose to obtain an:

1. ADGM green fund designation, for funds comprised predominantly of assets that are considered green according to an existing green taxonomy (e.g., the ASEAN or EU taxonomy, or the forthcoming UAE taxonomy) or that are included or tracked in one or more EU Paris Aligned Benchmarks (PAB);[5] or
2. ADGM climate transition fund designation, for funds comprised predominantly of assets that are not green, but have the potential to be over time, and that are: (1) aligned with a climate transition taxonomy;[6] (2) considered GSLBS;[7] (3) tracking, or are included in, one or more EU Climate Transition Benchmarks; (4) greening real estate assets and infrastructure;[8] or (5) companies with a public, 'credible' net zero strategy.[9]

The attestation requirement for both funds is substantially similar. The fund manager must appoint an independent third party to attest, at least annually, that the fund complies with its investment requirement, as explained below. The fund manager of a fund reserved for qualified investors (QIFs) may self-attest that the investment requirement for such fund has been met.

Public funds (i.e., funds open to retail investors) must obtain approval from the ADGM authorities to use the ADGM Green Fund Designation or the ADGM Climate Transition Fund Designation, whereas other funds, open only to sophisticated investors such as QIFs, only need to notify the authorities.

Other designations include discretionary managed ADGM Green Portfolios and ADGM Climate Transition Portfolios offered to retail investors that are essentially identical to those discussed above for ADGM Green Funds or ADGM Climate Transition Funds, and green and sustainability-linked bonds and *sukuk*.

An issuer of financial instruments may apply to obtain an ADGM Green Bond Designation, an ADGM Sustainability-Linked Bond Designation, an ADGM Green Sukuk Designation or ADGM Sustainability-Linked Sukuk Designation if the bonds or *sukuk*: (1) are offered in the ADGM (regardless of the issuer's place of establishment); (2) conform to the ICMA Green Bond Principles, the ICMA SLBS Principles or an equivalent framework; and (3) are assessed pre-issuance and annually by a third party, with a copy of the review sent to the ADGM authorities.

Sustainable disclosure requirements and taxonomy

i SCA

The SCA Green Bonds Decision requires GBS issuers to provide a prospectus that includes a list of prescribed information regarding a project's sustainability, selection and financing. The issuer must also deliver a semi-annual report to the SCA with information on the use of subscription proceeds, a description of the projects funded and their environmental impact. This report must be updated on a regular basis, including in the event of a material change, must be disclosed to investors and must abide by the standards set by the Global Reporting Initiative (GRI) or the International Sustainability Standards Board (ISSB).

Furthermore, the SCA Governance Code provides that public joint stock companies listed on a UAE stock exchange (such as the Abu Dhabi Securities Exchange (ADX), the DFM or NASDAQ Dubai (such entities being 'listed PJSCs')) must publish an annual sustainability report. Currently, this mandatory disclosure applies only to listed PJSCs, while private and state-owned companies are only encouraged to issue this sustainability report. Listed PJSCs also have the option of choosing from the various sustainability disclosure guidance documents available, including those issued by the respective stock exchanges where they are listed.

ii VARA

The VARA issued its rulebooks for the regulation of virtual assets in Dubai (excluding the DIFC), in February 2023. Three levels of ESG disclosure are set out: voluntary, compliance and mandatory. The VARA determines the level of ESG disclosure required for each virtual asset service provider (VASP) during their licensing process. In making such a determination, the VARA may consider the following non-exhaustive factors: (1) number of employees; (2) turnover and other financial information; and (3) business model and virtual asset activities. VASPs may choose at any time to comply with a higher ESG disclosure level than that set by the VARA. However, VASPs should maintain the same ESG disclosure standard across their group, to the extent possible.

A VASP involved in virtual asset mining or staking activities, irrespective of its designated ESG disclosure level, must disclose publicly on its website, information concerning its: (1) use of renewable or waste energy in the conduct of such activities; and (2) decarbonisation and emission reduction initiatives.

Furthermore, VASPs should carefully consider their social and environmental responsibilities when selecting service providers.

All ESG disclosures and reports will be kept confidential by VARA, unless otherwise provided or disclosed on an anonymous basis.

iii ADGM

The ADGM Sustainable Finance Regulatory Framework establishes a 'comply or explain' ESG disclosure regime for large ADGM-headquartered companies that are either: (1) companies with a turnover of US$68 million or greater; or (2) fund and asset managers with US$6 billion in assets under management or greater. Entities choosing to disclose on ESG must include information on their position, development, strategy and performance in accordance with a freely chosen international framework (e.g., the rules issued by the ISSB, the Task Force on Climate Related Financial Disclosures (TCFD), the GRI or other rules – presumably including also other jurisdictions' national regulatory regimes). These entities must also include the necessary ESG disclosures in their annual accounts or a separate document submitted to the ADGM registrar.[10]

Companies and fund or asset managers meeting the above thresholds can choose not to provide the required information, but they must submit a clear and reasoned explanation for their decision to the ADGM registrar. Entities that do not meet the conditions may voluntarily choose to comply.

Furthermore, the ADGM rules also prescribe specific disclosures that mining and petroleum companies have to follow in their prospectus when they make an offer of securities. They must include the policies and practices implemented to operate in a sustainable manner with regard to: (1) environmental and social issues; (2) the impact of their business practices on the environment and local communities; and (3) the social and environmental risks that they face. This information must be updated annually.

iv GCC

On 9 January 2023, the Exchanges Committee of the GCC published a set of 29 unified indicators for voluntary ESG disclosures by local listed entities.[11] The indicators do not replace existing ESG disclosure guidelines issued by the GCC's individual stock exchanges or regulators, but indicate an intention towards further harmonisation between GCC countries' sustainability-related regulations. They, at the very least, facilitate uniformity in ESG disclosures by listed companies across the region.[12]

v Taxonomy

The UAE Sustainable Finance Framework endeavours to establish a nationwide common taxonomy for sustainable finance. Conversely, as discussed above in Section IV, the ADGM Sustainable Finance Regulatory Framework does not mandate the use of a specific taxonomy and instead provides a list of acceptable taxonomies depending on the financial instrument. This list includes the UAE taxonomy (once it is published), but a company can comply with the ADGM rules by following any other recognised taxonomy from a country, regulator or standards-setting body outside of the UAE. It is unclear, at this time, whether the DIFC Sustainable Finance Framework will create a new taxonomy or allow the use of one more acceptable taxonomies, similar to the ADGM Sustainable Finance Regulatory Framework.

ESG data, ratings and reporting

As discussed in the previous Section, not all companies are required to report on ESG. Listed PJSCs may comply with this reporting requirement based on any of the sustainability standards discussed above. The ADX and DFM disclosure guidelines contain 31 and 32 ESG indicators, respectively, mapped against the GRI and SDGs, including GRI 305 on greenhouse gas emissions.

Nevertheless, all companies, even listed PJSCs, are encouraged by regulators to go even further than current requirements, as explained in the previous Section. However, the biggest challenge remains the multiplicity of disclosure regimes, such as the GRI, the ISSB, the TCFD and the GCC reporting guidelines, that are available if companies wish to report more than the bare minimum.

The UAE does not currently have any green or sustainable benchmarks. It mandates the use of accepted PABs or climate transition benchmarks. Financial entities are also not required to produce a transition plan in the UAE.

The ADGM Sustainable Finance Platform tracks and benchmarks sustainable finance data across the region via five themes: (1) responsible banking; (2) responsible investing; (3) sustainable products ; (4) ESG disclosure; and (5) sustainable capital markets. Each theme follows KPIs that are aligned with the ADGM Sustainable Finance Guiding Principles.[13] There are currently no regulatory requirements specific to ESG rating providers in the UAE.

Sustainable finance incentives

The UAE offers no direct sustainability incentives in the form of tax credits, subsidies or other business incentives. The UAE has also not imposed any oil surplus revenues tax, and this seems unlikely to change in the foreseeable future. Oil and gas production is a critical component of the UAE's government revenue, as 30 per cent of the country's GDP is directly based on its oil and gas output. Each of the emirates has its own system of oil and gas taxation, which are broadly similar:

1. oil and gas companies are taxed under concession agreements or fiscal letters that typically supersede Emirati tax decrees, are agreed on a case-by-case basis and are not publicly available; and
2. typically, these oil and gas taxation systems feature a combination of a royalty of 12.5 to 20 per cent (escalating as production increases) and income tax typically set at 55 per cent (sometimes also escalating with production), in each case applied to the revenue deemed generated by production, using an agreed reference price rather than market price.

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i Support for the private sector

While the UAE offers no direct sustainability incentives, the following is a good example of how the UAE indirectly supports the private sector's endeavours to operate more sustainably, namely by way of subsidising manufacturers' gas and electricity bills for, among other things, efficient energy management in Abu Dhabi.

In 2022, the Abu Dhabi Department of Economic Development (ADDED) launched the Land Incentives Program, part of an effort to nurture local industry. Under this programme, long-term leases are offered at below-market rates (as low as 5 dirhams per square metre) in an effort to promote manufacturing growth.

ADDED has also launched the Energy Tariff Incentive Program (ETIP 2.0), in collaboration with the Abu Dhabi Distribution Company and Al Ain Distribution Company.

Under this initiative, manufacturers may receive preferential rates for gas and electricity, based on eligibility criteria, one component of which is efficient energy management (other criteria include enhancing productivity, improving the supply chain, using skilled labour and supporting emiratisation).

In October 2022, ADDED reported that 55 manufacturing entities had participated in its programme, benefiting from 24 billion dirhams of support, increasing their productivity by 15 per cent.

ii Transition frameworks

In 2017, the UAE launched the UAE Energy Strategy 2050, which targets the following energy mix:

1. clean energy: 44 per cent;
2. gas: 38 per cent;
3. clean coal: 12 per cent; and
4. nuclear: 6 per cent.

The strategy is 'a joint effort of all energy-related authorities and executive councils in the UAE and falls under the supervision of the federal government'.[14] The UAE government aims to invest 600 billion dirhams by 2050 to meet the growing energy demand and ensure sustainable growth for the country's economy.[15]

In July 2023, the strategy has been updated, given 'the recent dynamic changes in the energy sector, the maturity of emerging low-emission energy technologies, and the country's commitment to the objectives of the Paris Agreement'.[16] As part of this revision, several new goals were added, including the creation of 50,000 new green jobs by 2030, to triple renewable energy capacity to 14 GW by 2030, raise the percentage of clean energy in the total energy mix to 30 per cent by 2031 and become carbon-neutral by 2050.[17] Also, per the revised UAE Energy Strategy 2050, the UAE envisions producing 1.4 million tonnes of hydrogen annually by 2031 and estimates the figure to increase tenfold to 15 million by 2050. The UAE's clean energy firm Masdar is expected to produce 1 million tonnes of green hydrogen of the total 1.4 million tonnes by 2031 with the remaining 0.4 million tonnes of blue hydrogen produced using natural gas.[18]

By way of further example at the emirate level, in 2017, the Dubai government announced that as part of its five main pillars of the Dubai Clean Energy Strategy 2050 launched in 2015, it would establish a 100 billion dirham Dubai Green Fund to finance investments in the clean energy sector through partnerships with financial institutions.[19] Similarly, as part of the Abu Dhabi Industrial Strategy launched in November 2022, the government of Abu Dhabi will invest 10 billion dirhams to implement six transformational programmes by 2031 (including the Circular Economy Program).[20]

See also the above-discussed different policy initiatives in the UAE mainland, ADGM, and DIFC in Section III, as well as the stock exchange disclosure requirements discussed above.

Carbon markets and carbon trading

In 2022, the ADGM launched the world's first regulated carbon credit trading exchange, AirCarbon Exchange (ACX) and carbon clearing house, ACX Clearing Corporation.[21] Simultaneously, the FSRA became the first regulator to develop a framework that treats carbon as a commodity and regulates carbon credits and offsets as environmental instruments.[22]

As such, companies are able to trade and finance carbon credits like traditional financial assets while offsetting their carbon emissions on a regulated voluntary carbon exchange. These environmental instruments: (1) enable their holder to emit greenhouse gases into the atmosphere, in accordance with any emissions trading scheme; (2) attest to the reduction or removal of greenhouse gases into the atmosphere; or (3) attest to the environmental attributes of an underlying unit.

This endeavour will hopefully encourage companies to become carbon neutral and contribute to the UAE's net zero initiative. In 2022, the ADGM became the world's first international finance centre to achieve carbon neutrality by offsetting its carbon emissions.

However, the efficacy of carbon markets and offsetting as a strategy to reduce emissions is uncertain and has been criticised by some as a form of greenwashing.

Green technology

Below is an overview of some of the recent developments in the decarbonisation sphere in the UAE, which implies a diversified investment approach towards green technologies:

1. the Climate-Responsible Companies Pledge to reduce carbon emissions;
2. Abu Dhabi National Oil Company (ADNOC) allocating US$15 billion towards decarbonisation projects and initiatives to reduce its carbon emissions by 25 per cent by 2030;
3. ADNOC announcing a partnership to pilot technology that permanently mineralises CO2 within rock formations found in Fujairah using carbon capture and mineralisation technology to eliminate CO2 from the atmosphere;
4. the high-voltage direct current subsea transmission network project (Project Lightning) announced by ADNOC and Abu Dhabi National Energy Company PJSC. ADNOC has allocated US$3.8 billion towards Project Lightning;
5. joint development agreements between Masdar and the State Oil Company of the Republic of Azerbaijan, for onshore wind and solar projects, and integrated offshore wind and green hydrogen projects, with a total combined capacity of 4 gigawatts; and
6. the formation of an Expert Group between the UAE and the US to govern the Partnership for Accelerating Clean Energy (PACE). PACE aims to catalyse US$100 billion in financing, investment and other support and also deploy 100 gigawatts of clean energy by 2035.

Financing green projects in the UAE

The UAE does not offer subsidies to third parties for funding green projects. State-owned entities generally take the lead on energy projects, while private financing is also used. The below examples further demonstrate a dynamic and balanced investment focus at the various emerging green technologies:

1. nuclear: the Barakah Nuclear Power Plant was reportedly financed by US$19 billion of debt (including US$16.2 billion from the Department of Finance of Abu Dhabi, US$2.5 billion by KEXIM and US$250 million from local and international banks) and US$4.7 billion of equity (contributed by ENEC and KEPCO);[23]
2. solar: the 100MW Shams Concentrated Solar Power plant, the UAE's debut solar project, cost US$600 million and was financed by a consortium of international banks led by BNP Paribas, the National Bank of Abu Dhabi and Mizuho. Its equity is held by Masdar (60 per cent), Total (20 per cent) and Abengoa Solar (20 per cent);
3. carbon capture: in 2016, ADNOC built the region's first industrial-scale carbon capture utilisation and storage facility. It captures 800,000 tons of carbon dioxide with plans to expand six-fold by 2030; and
4. Masdar: Abu Dhabi is dedicating US$20 billion to a renewable energy programme administered by Masdar, which has already resulted in the UAE's renewable energy portfolio expanding by 400 per cent over the past decade.

Climate change, nature and biodiversity impacts

It is difficult, at this stage, to assess how successful the different sustainable finance regimes in place in the UAE will be at reaching climate and nature-related targets as the frameworks are still in their infancy. However, there has been notable interest in sustainable finance products in the UAE, which saw a 32 per cent year-on-year growth in 2022, and in the broader region, which saw a 532 per cent year-on-year growth in 2021.[24] In July 2023, the UAE Ministry of Finance announced that it will submit data concerning government expenditure on climate and environmental initiatives to the International Monetary Fund and that such data will be available on the Climate Change Indicators Dashboard, which assesses the impact of national climate policies and spending on macroeconomic sustainability and transparency.[25]

The Climate Risk Principles encourage local financial firms to incorporate physical risk and transition risk into their risk management and governance structure. Physical risk refers to potential economic and financial losses arising from climate and weather-related events and the long-term progressive impact of climate change. Transition risk arises from the adjustment phase towards a lower-carbon economy, prompted by, notably, changes in climate policy, technological advancements or market trends.[26]

Greenwashing and climate litigation risks

There is currently no regulation directly addressing greenwashing in the UAE. However, the prohibition of greenwashing is captured in legislation proscribing false, misleading or exaggerated advertisements. The UAE also aims to curb greenwashing through the various ESG disclosure regimes that have been implemented. Furthermore, the ADGM endeavours to combat greenwashing with its prescribed attestation requirements and designation regime for funds, portfolios, bonds and *sukuk*. Similarly, the SCA aligned the regulation of GBS and SLBS with international best practices.

Furthermore, the UAE has been investing heavily in technology to achieve its net zero commitment and deliver truly sustainable products. This has been spurred, among other things, by consumer demand for products that are easily identifiable as sustainable.

There have not been any documented climate change, nature or biodiversity litigation cases in the UAE to date. However, climate litigation is a rising concern that is expected to become more prevalent in the coming years. So much so that the Climate Risk Principles identify liability risk, arising from climate-related compensatory claims and direct legal actions (such as emissions lawsuits), as one of the financial risks from climate change that UAE-domiciled financial firms are encouraged to incorporate into their disclosures for effective governance and risk management.

Outlook and conclusions

The upcoming publication of the DIFC Sustainable Finance Framework and of the UAE taxonomy are hotly anticipated. They will bring the UAE one step closer to a fully comprehensive sustainable finance framework to address the upcoming challenges of the next decade and beyond.

Moving forward, developing funding initiatives and introducing sustainable finance incentive mechanisms would entice the private sector to embark on the journey of energy efficiency, renewable energy and green technology. It is hoped that in the UAE, a combination of favourable (and sometimes innovative) regulatory landscape, government and state-owned investors leading by example and mounting investor and market pressure will encourage behaviours that hasten the energy transition, consistent with the UAE's stated goals of achieving net zero carbon emissions and the SDGs. This would have the added positive effect of further diversifying the UAE's economy, while also creating jobs across multiple sectors in the process.

Endnotes

1 Chris Macbeth is a partner, Daniela Weerasinghe and Misthura Otubu are associates and Kay Hechaime is an international lawyer at Cleary Gottlieb Steen & Hamilton LLP. The information in this chapter was accurate as at 27 November 2023; at the time of writing, COP28 is taking place in the UAE, and developments are constant. ^ Back to section

2 See https://uaeyearof.ae/. ^ Back to section

3 See https://www.sca.gov.ae/Content/Userfiles/Assets/Documents/29e6ef1d.pdf. ^ Back to section

4 See https://www.clearygottlieb.com/news-and-insights/publication-listing/an-innovative-sustainable-finance-regulatory-framework-takes-shape-in-the-abu-dhabi-global-market. ^ Back to section

5 The EU PAB tracks companies that are on track to reduce their carbon emissions by 50 per cent compared to companies in their parent index basket, and 7 per cent year-on-year. ^ Back to section

6 A climate transition taxonomy is a classification system of economic activities that are not currently zero or near-zero emitters of greenhouse gases, but that assist with the transition towards an economy with lower carbon emissions or more environmental sustainability. ^ Back to section

7 Only bonds and*sukuk* issued under third party frameworks and subject to external review are eligible. ^ Back to section

8 Third party metrics should be used to measure the progress of those assets achieving sustainability objectives. Progress against those metrics should be disclosed to investors periodically, including in the annual report. ^ Back to section

9 This should focus on entities whose net zero greenhouse gas emissions targets have been verified by the Science-Based Targets initiative (SBTi). ^ Back to section

10 See https://www.clearygottlieb.com/news-and-insights/publication-listing/an-innovative-sustainable-finance-regulatory-framework-takes-shape-in-the-abu-dhabi-global-market. ^ Back to section

11 See https://www.clearygottlieb.com/-/media/files/alert-memos-2023/2023_02_24-gcc-launches-unified-sustainability-disclosure-metrics.pdf, page 1. ^ Back to section

12 See https://www.clearygottlieb.com/-/media/files/alert-memos-2023/2023_02_24-gcc-launches-unified-sustainability-disclosure-metrics.pdf, page 2. ^ Back to section

13 See https://adgm.arabsustainability.com/; the 10 ESG disclosure KPIs based on GRI and Sustainability Accounting Standards Board standards can be tracked across Abu Dhabi Sustainable Finance Declaration signatories and GCC Listed Sustainability reporters. They include: (1) community investment as a percentage of pre-tax profit; (2) energy intensity (GJ/employee); (3) whether ESG risks are reviewed at board level; (4) greenhouse gas intensity (tons/employee); (5) the percentage of women at board level; (6) the percentage of women in management positions; (7) the percentage of women in the workforce; (8) whether a sustainability report is prepared; (9) training hours per employee; and (10) the turnover rate. ^ Back to section

14 See https://www.moccae.gov.ae/en/our-sustainable-environment/strategies/uae-renewable-energy-strategy.aspx. ^ Back to section

15 www.moccae.gov.ae/en/our-sustainable-environment/strategies/uae-renewable-energy-strategy.aspx. ^ Back to section

16 See https://u.ae/en/about-the-uae/strategies-initiatives-and-awards/strategies-plans-and-visions/environment-and-energy/uae-energy-strategy-2050. ^ Back to section

17 See UAE Energy Diversification | UAE Embassy in Washington, DC (www.uae-embassy.org). ^ Back to section

18 See https://www.reuters.com/world/middle-east/uaes-revised-energy-strategy-includes-big-hydrogen-plans-2023-07-11/. ^ Back to section

19 See https://www.dewa.gov.ae/en/about-us/media-publications/latest-news/2017/10/world-green-economy-summit-2017-concludes-with-the-announcement-of-the-4th-dubai-declaration. ^ Back to section

20 See https://www.abudhabi.gov.ae/en/programmes/abu-dhabi-industrial-strategy. ^ Back to section

21 See https://www.adgm.com/media/announcements/abu-dhabi-to-launch-first-regulated-carbon-credit-trading-exchange-and-clearing-house-in-the-world. ^ Back to section

22 See https://www.adgm.com/media/announcements/adgm-fsra-issues-enhancements-to-its-capital-markets-framework-including-environmental-instruments. ^ Back to section

23 More Information on Barakah Nuclear Power plant: The direct loan agreements include the overnight cost of the Prime Contract for the construction and commissioning of the Barakah Nuclear Energy Plant, interest during construction and the cost of initial nuclear fuel. They also include allowances for potential inflationary increases in the price of commodities, such as construction materials, during the period of construction. https://www.mediaoffice.abudhabi/en/economy/added-expanded-its-electricity-tariffs-incentive-programme-to-include-smes/; 'UAE secures $24.4bn for its first nuclear power plant', TXF (https://www.txfnews.com/articles/5845/uae-secures-24-4bn-for-its-first-nuclear-power-plant); https://www.apicorp.org/wp-content/uploads/2021/12/Solar-Energy-in-the-UAE-Impressive-Progress.pdf. For further examples of green energy and productivity and efficiency projects and programmes, see also: https://www.uae-embassy.org/discover-uae/climate-and-energy/uae-energy-diversification; https://www.mocd.gov.ae/en/services/apply-for-inflation-allowances.aspx-; and https://www.turnerandtownsend.com/en/projects/shams-1-100mw-csp/. ^ Back to section

24 See https://wam.ae/en/details/1395303133592. ^ Back to section

25 See https://www.thenationalnews.com/business/economy/2023/07/12/uae-finance-ministrys-new-projects-to-boost-countrys-economic-environment/. ^ Back to section

26 See https://www.clearygottlieb.com/news-and-insights/publication-listing/uaes-innovative-climate-risk-principles-expected-to-apply-to-whole-financial-sector. ^ Back to section

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