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Managing climate risk in an era of environmental, social and governance awareness

Jane Caskey, Global Head of Risk Advisory
Alan Harvie, Senior Partner

January 31, 2018

motion2018
discussing what matters

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Speakers

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Ms. Caskey’s practice involves working with global clients to identify and manage key risks in a holistic and strategic manner, which includes analysis of risks in the context of commercial goals of the business, and its risk culture and appetite. Her background is IP law, including all aspects of IP strategy, protection and enforcement.

Alan Harvie

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Alan Harvie has practised energy and environmental/regulatory law since 1989 and regularly deals with commercial, operational, environmental and regulatory issues, especially for the upstream oil and gas, energy, waste disposal and chemical industries. He is a member of our energy and environmental departments.

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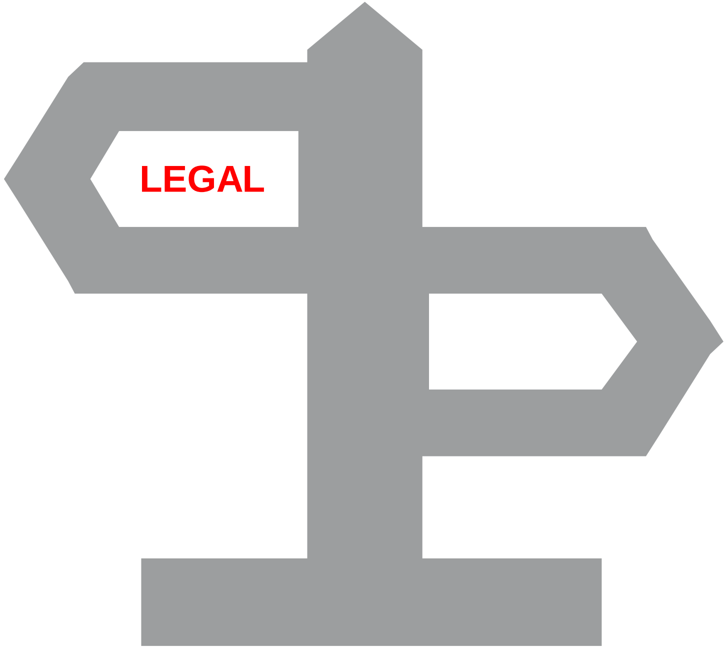
The evolving risk landscape

Evolving role of GC and legal team



- LEGAL
- STRATEGY
- RISK
- COMPLIANCE
- IT & TECH
- COMMUNICATIONS
- CONDUCT/CULTURE

Increasing maturity and sophistication
Moving from reactive to proactive

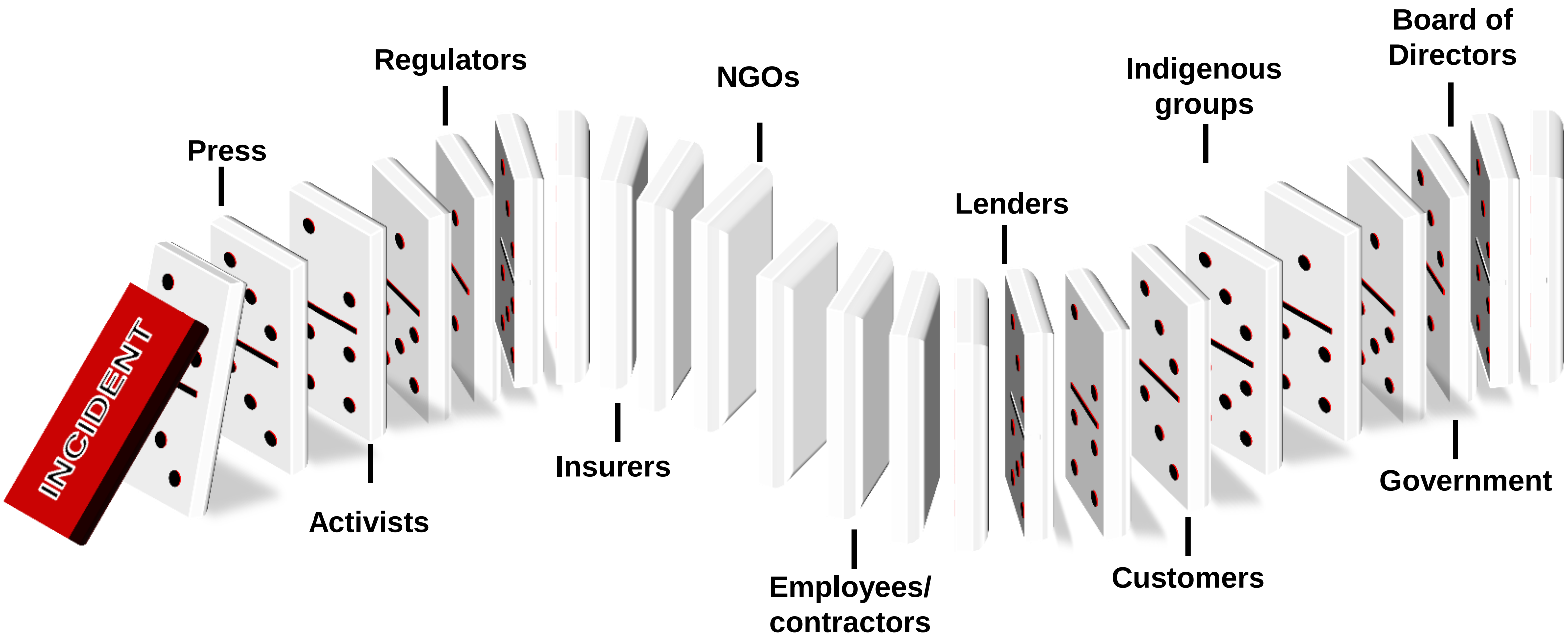
Legal team more aligned to c-suite goals

Effective legal support	Drive better value	Risk management
Maximize value	Cost-effective	Protect board and shareholder value
Minimize losses	Lower cost	Minimize long-term reputational damage

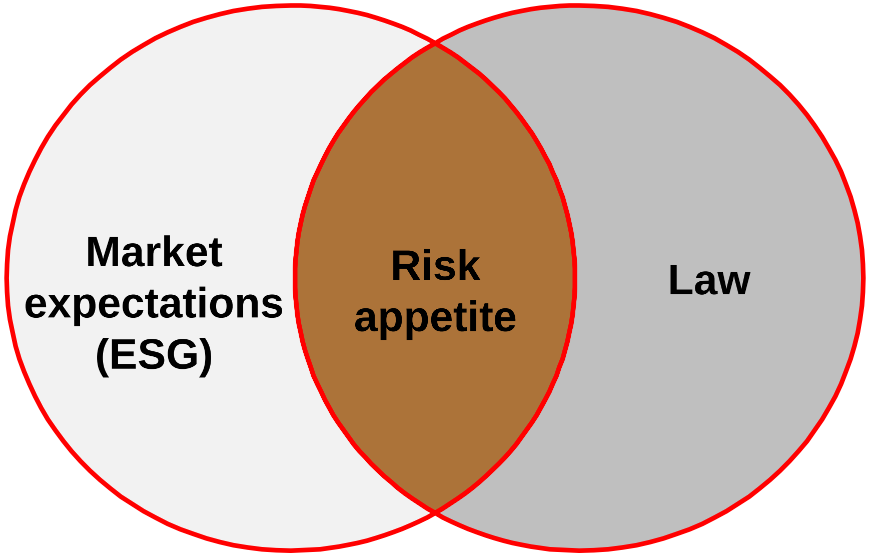
Risk advisory
Strategically important
Holistic expertise

Risks are interconnected: The domino effect

One incident can lead to follow-on consequences and loss of confidence across multiple issues and parties:



ESG: Overlap between market expectations and law



- Law often represents a minimum mandatory standard
- Stakeholders may expect a standard that exceeds the legal minimum
- Organizations need to decide what they should do versus what they must do to be legally compliant

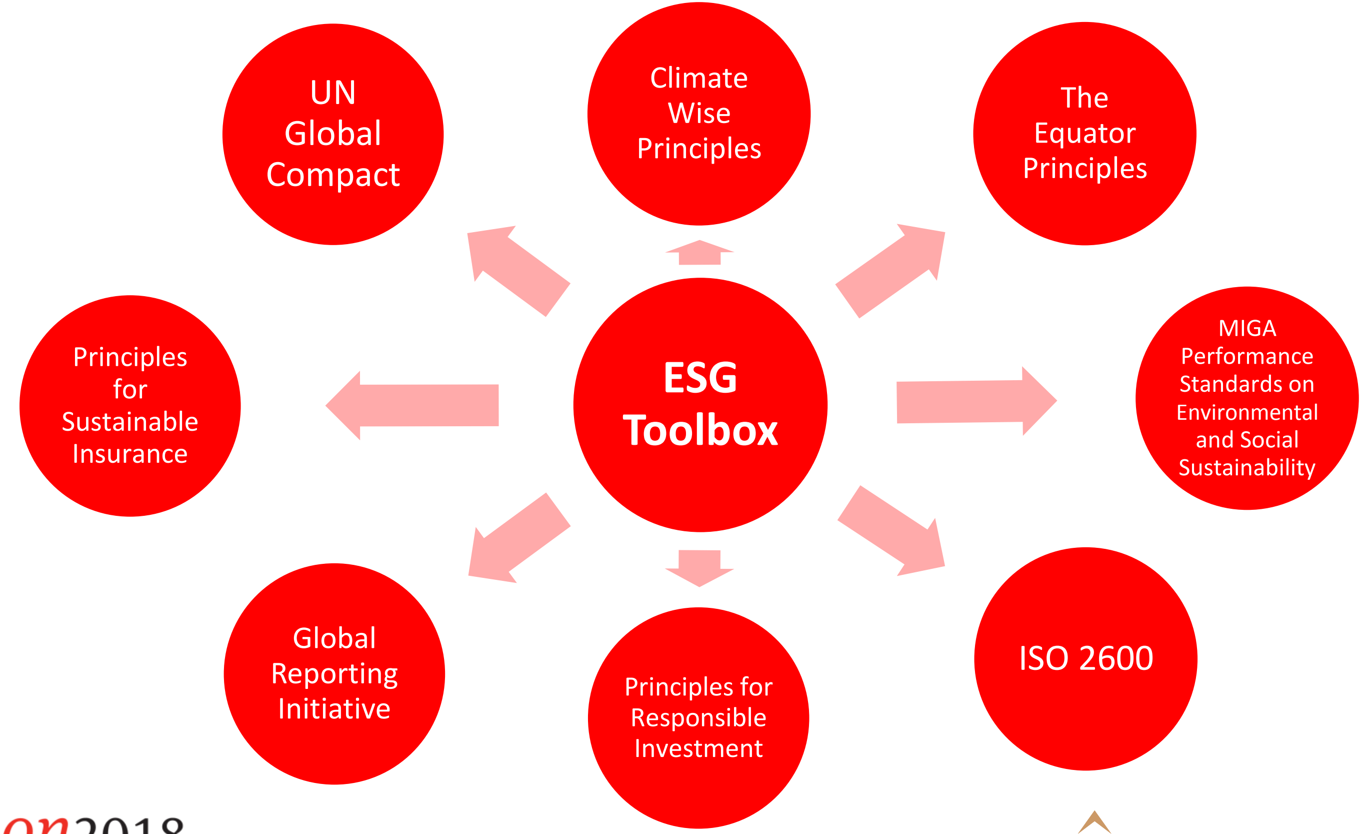
What is ESG?

An evolving set of global standards used to identify best-in-class companies

Environmental	Social	Governance
• Climate risk • Greenhouse gas emissions (GHG) • Resource depletion, including water • Waste and pollution • Deforestation	• Working conditions, including slavery and child labour • Local communities, including Indigenous communities • Conflict • Health and safety • Employee relations and diversity	• Policies, procedures and controls • Executive pay • Bribery and corruption • Political lobbying and donations • Board diversity and structure • Tax strategy

Source: PRI Association, *Principles for Responsible Investment* (https://www.unpri.org/about/what-is-responsible-investment).

ESG Standards: ESG toolbox



Why ESG matters?

- Tells you where regulation is going – Starts as a standard (soft law), becomes hard law (privacy, data protection, anti-bribery)
- Real risks, real consequences – Affects legal risk, business strategy, access to capital
- Identifiable standards exist – Not just ‘ethics’ anymore, there are actual standards to look to that guide governance approaches
- Risk management best practice – ESG strategy can help you manage your risks more effectively and be more competitive; strong ESG strategy can be key differentiator in the marketplace
- New opportunities for product innovation – Consider what products your customers need

Climate risks

Bloomberg View | Markets | Tech | Pursuits | Politics | Opinion | Businessweek

OPINION | NATIONAL SECURITY

America's Most Pressing Threat? Climate Change

The Trump administration is ignoring a huge threat to national security and global stability.

JANUARY 3, 2018

Renewable Energy

Most UK electricity in 2017 is low-carbon for first time

Renewables and nuclear reach landmark after rapid growth in wind and solar sources

CNN politics

Report: Trump admin scrubbed mentions of climate change from websites

THE GLOBE AND MAIL* Business risk from climate change now to SUBSCRIBE SIGN IN

BOARD GAMES 2017

Business risk from climate change now top of mind for Canada's corporate boards

DECEMBER 13, 2017

FT View

Climate disclosure takes a giant step forward

Pressuring companies to be more transparent on risks is a good idea

World Bank to end financial support for oil and gas extraction

Bank announces in Paris it 'will no longer finance upstream oil and gas' after 2019 in response to threat posed by climate change

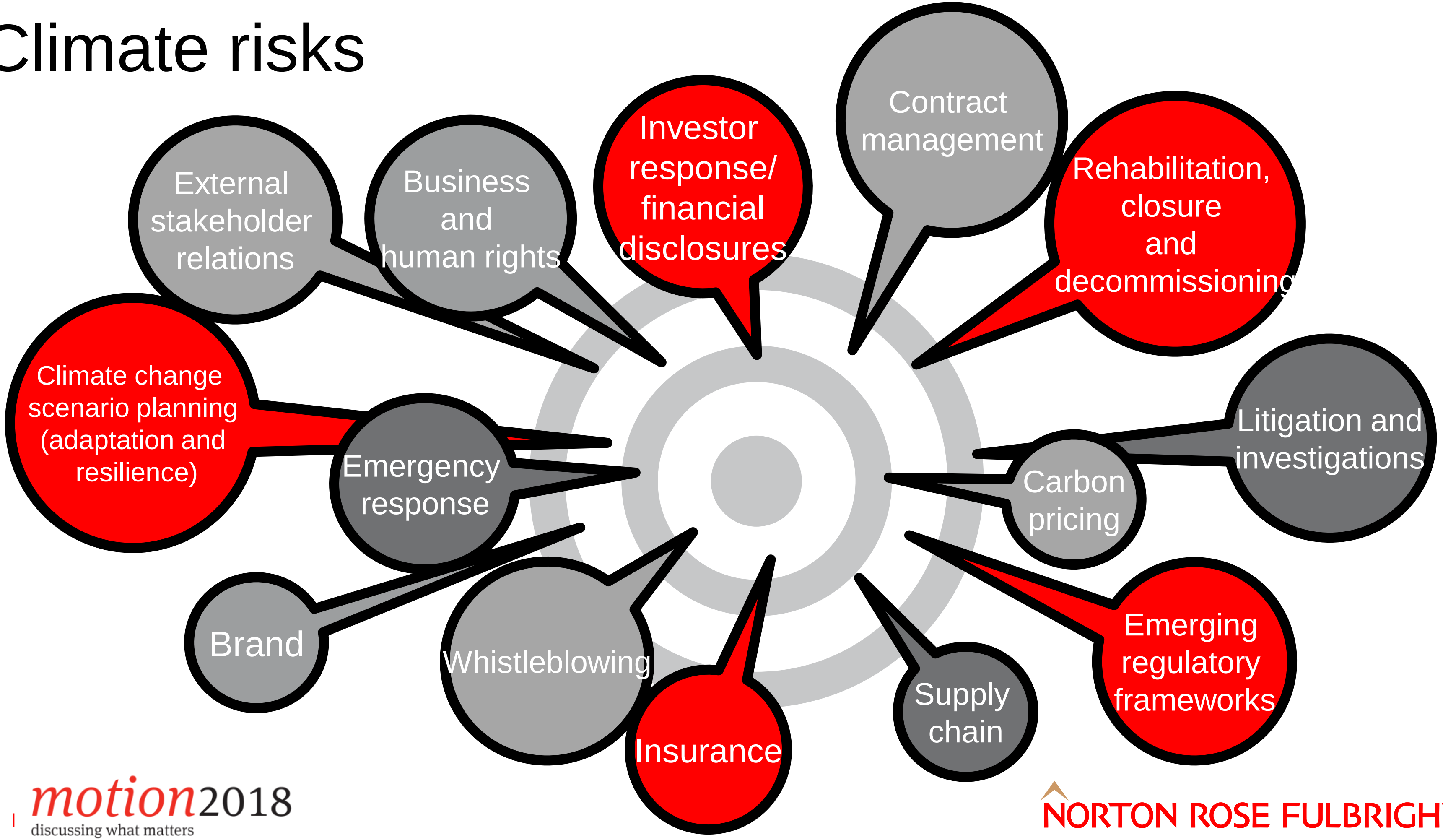
NOVEMBER 17, 2017

Climate change

Climate change talks proceed despite fears over Trump

Bonn conference makes progress on technical issues left unresolved in Paris deal

Climate risks



Climate risks (cont'd)

Legal/regulatory and reputational risks

Emerging regulatory frameworks

- Legislative and regulatory change (including local policies as well as nations joining together to undertake ambitious climate change-driven efforts in line with Paris Agreement commitments) can impact day-to-day business operations.
- Understanding and anticipating likely changes to regulatory frameworks is critical for strategic planning.

Investor response/ financial disclosures

- Investors are demanding greater analysis of climate risks and transparency.
- Recommendations of the FSB's Task Force on Climate-related Financial Disclosures were structured around governance, strategy, risk management, metrics and targets.
- Companies should consider these recommendations in business planning and the legal implications in doing so.

Litigation & investigations

- There has been a significant rise in climate-related litigation globally across multiple countries and sectors (in May 2017, the UN reported 850 such lawsuits, 13 in Canada).
- Early lawsuits focused on challenging government climate change policies and the approval of projects which could contribute towards climate change impacts.
- Recently there is an increase in lawsuits targeting corporate entities.

Climate risks (cont'd)

Legal/regulatory and reputational risks

Business and human rights

- A business's human rights impacts are subject to considerable scrutiny.
- Companies must factor human rights into their ESG programs and be prepared for a response to any potential climate-related claim or enquiry.
- Full knowledge of business and human rights frameworks and legislation is required to eliminate human rights impacts and improve human rights risk management.

Whistleblowing

- Legislation protecting the actions of 'whistleblowers' and increased public expectations of global corporate accountability means that businesses need to adopt a proactive approach to managing allegations or disclosures that point to misconduct.

External stakeholder relations

- Obtaining and maintaining social licence to operate is becoming increasingly important.
- Opposition from communities, Indigenous groups, environmental groups, government or other stakeholders can cause significant delays or even project cancellation.
- Concepts such as free, prior and informed consent and their relationship to legal requirements is a complex issue.

Climate risks (cont'd)

Operational and reputational risks

Emergency response	• A significant event can have severe consequences and can lead to major disruption if practical plans are not developed and deployed – and staff are not well trained. • Undertaking a detailed climate risk assessment is a key foundation to developing a climate risk resilience plan.
Climate change scenario planning (adaptation and resilience)	• Scenario analysis, particularly around a 2 - 3°C transition scenario, is the 'new normal'. • Boards and senior management should give proper consideration to risks posed by climate issues, with a view to ensuring that these risks are incorporated into strategic decision-making.
Carbon pricing	• Depending on the jurisdiction, companies may be exposed to carbon price risk. • Internal carbon pricing is advocated by organisations such as the Carbon Disclosure Project (CDP) as an effective means of assessing the impact of carbon pricing on investments.

Climate risks (cont'd)

Operational and reputational risks

Rehabilitation, closure and decommissioning

- Portfolio management is critical; as energy assets reach the end of life or are closed for financial or regulatory reasons, a search for innovative solutions is required.
- Risk of exposure to stranded assets is a major driver for greater disclosure to investors.

Supply chain

- Many influential companies have committed to reducing carbon emissions; however, for many, significant carbon impacts lie in their supply chains.
- Procuring from socially and environmentally responsible suppliers is not only a public relations issue but a liability issue.

Insurance

- Assessing climate issues and pricing climate-related risks is challenging for insurance companies.
- At one end of the spectrum is the response to a potential increase in weather-related events; at the other end of the spectrum is the liability risk if organizations are held accountable for climate related matters.

Climate risks (cont'd)

Operational and reputational risks

Contract management

- The implications of climate risks throughout the lifecycle of a project need to be considered from the outset.
- Implications include risk allocation during the construction phase, environmental and sustainability conditions in financing agreements and the review of long-term agreements, employment agreements and support service agreements.

Brand

- Many companies are undertaking corporate rebranding exercises to ensure that their brand and image reflect the company's sustainable approach to business.
- Rebranding must be carefully managed as risk always arises when a new brand is being put into the marketplace.

Climate lawsuits apply pressure to disclose


FINANCIAL TIMES myFT

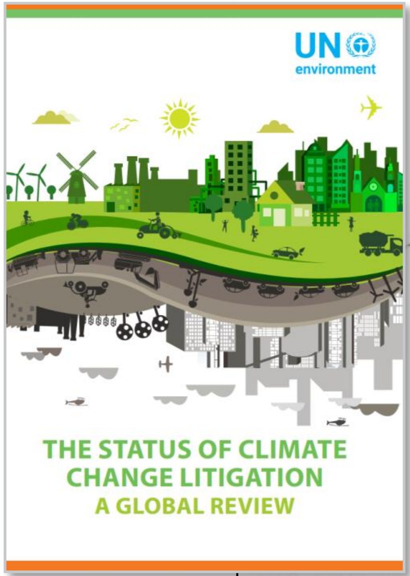
Climate change + Add to myFT

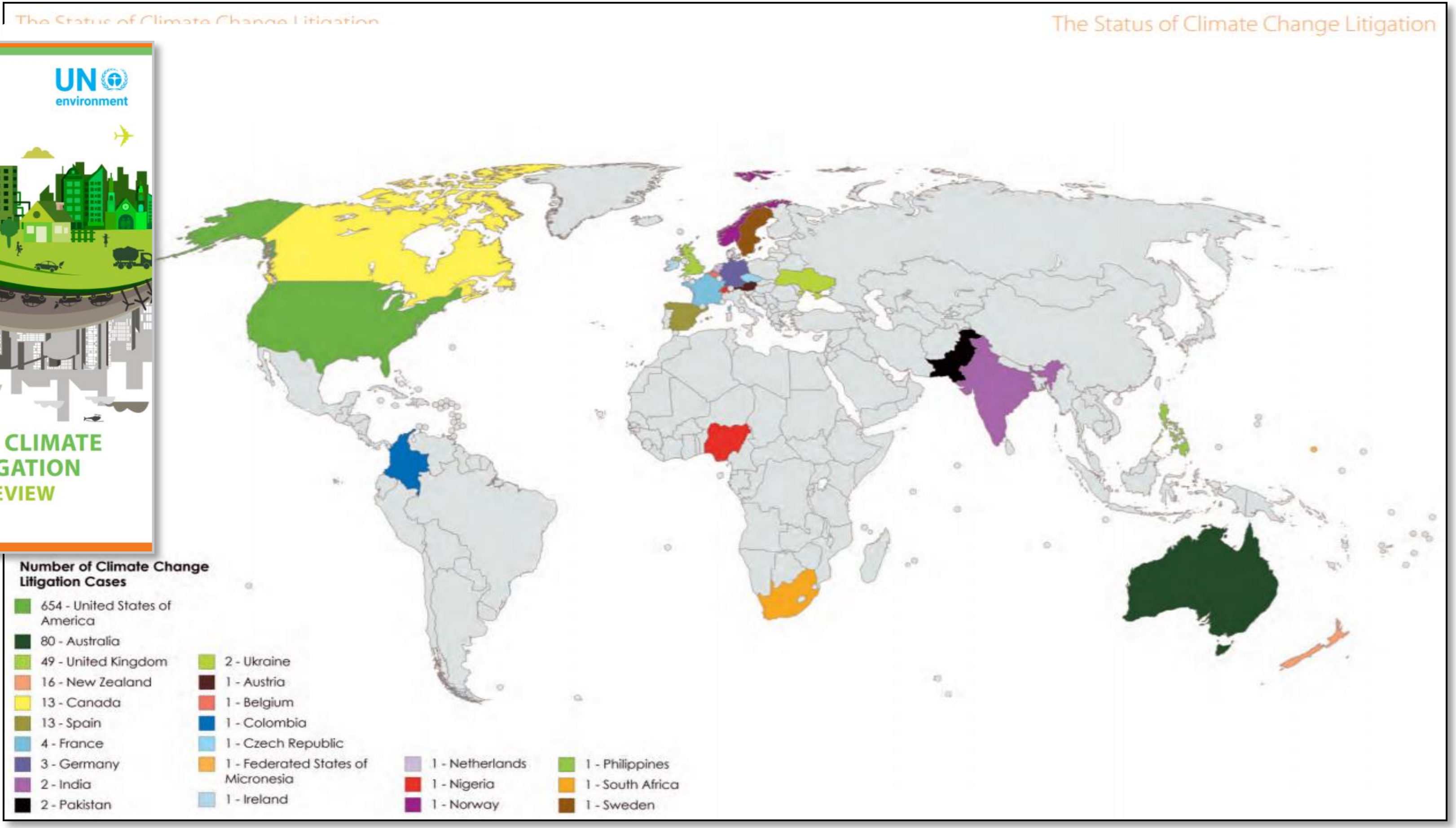
New York sues big oil companies over climate change

City will also look at divesting its pension funds of fossil fuel companies

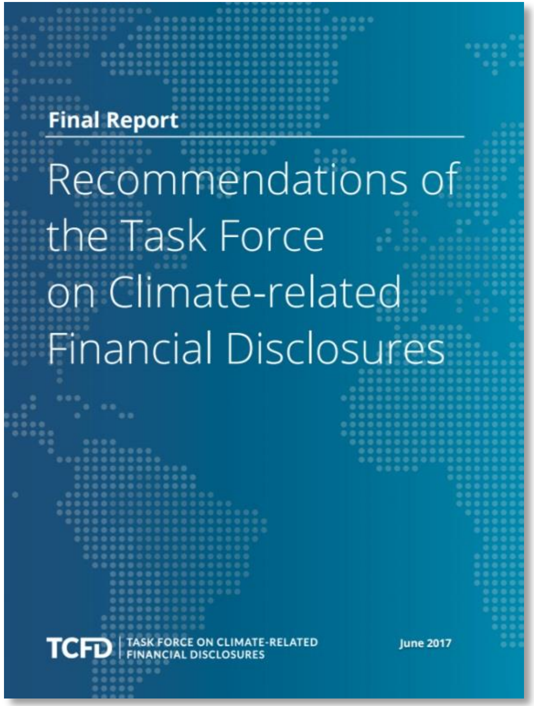
© Getty

- On January 9, New York City filed a lawsuit in federal court against some of the world's largest listed energy companies for "billions of dollars" for contributing to climate change
- City to also analyze ways to divest pension funds of fossil fuel companies (about US$5bn of the total US$189bn in assets) within 5 years
- In September 2017, lawsuits were filed in California against the same five oil companies seeking billions of dollars to finance infrastructure to deal with rising sea levels blamed on climate change


UN environment
THE STATUS OF CLIMATE CHANGE LITIGATION
A GLOBAL REVIEW


The Status of Climate Change Litigation
Number of Climate Change Litigation Cases
654 - United States of America
80 - Australia
49 - United Kingdom
16 - New Zealand
13 - Canada
13 - Spain
4 - France
3 - Germany
2 - India
2 - Pakistan
2 - Ukraine
1 - Austria
1 - Belgium
1 - Colombia
1 - Czech Republic
1 - Federated States of Micronesia
1 - Ireland
1 - Netherlands
1 - Nigeria
1 - Norway
1 - Philippines
1 - South Africa
1 - Sweden

Financial Stability Board: Task Force on Climate-related Financial Disclosures (TCFD)



- **TCFD mission** – to develop voluntary, consistent climate-related financial risk disclosures for use by companies in providing information to investors, lenders, insurers, and other stakeholders
- **TCFD recommendations** – will help companies understand what financial markets want from disclosure in order to measure and respond to climate risks, and encourage firms to align their disclosures with investors’ needs

Recommendations of the TCFD

Figure 4

Recommendations and Supporting Recommended Disclosures

Governance	Strategy	Risk Management	Metrics and Targets
Disclose the organization's governance around climate-related risks and opportunities.	Disclose the actual and potential impacts of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning where such information is material.	Disclose how the organization identifies, assesses, and manages climate-related risks.	Disclose the metrics and targets used to assess and manage relevant climate-related risks and opportunities where such information is material.
Recommended Disclosures	**Recommended Disclosures**	**Recommended Disclosures**	**Recommended Disclosures**
a) Describe the board's oversight of climate-related risks and opportunities.	a) Describe the climate-related risks and opportunities the organization has identified over the short, medium, and long term.	a) Describe the organization's processes for identifying and assessing climate-related risks.	a) Disclose the metrics used by the organization to assess climate-related risks and opportunities in line with its strategy and risk management process.
b) Describe management's role in assessing and managing climate-related risks and opportunities.	b) Describe the impact of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning.	b) Describe the organization's processes for managing climate-related risks.	b) Disclose Scope 1, Scope 2, and, if appropriate, Scope 3 greenhouse gas (GHG) emissions, and the related risks.
	c) Describe the resilience of the organization's strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario.	c) Describe how processes for identifying, assessing, and managing climate-related risks are integrated into the organization's overall risk management.	c) Describe the targets used by the organization to manage climate-related risks and opportunities and performance against targets.

Source: Task Force on Climate-related Financial Disclosures, *Final TCFD Recommendations Report* (June 2017) (https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-TCFD-Report-062817.pdf).

TCFD implementation

- June 2017: 100 public company CEOs signed a statement of support to encourage take-up of TCFD recommendations, including:
  - Oil: Shell and ENI
  - Mining: Barrick Gold, BHP Billiton, Vale, Glencore
  - Financial: RBC, TD, HSBC, Bank of America, Citigroup, ING Group, BNP Paribas, AXA, Aviva, and Aegon
- January 2018: 240 organizations with a combined market capitalization of over US$6.3tn have expressed their support for the TCFD

IE INVESTMENT EXECUTIVE

Industry News

Growing support for TCFD

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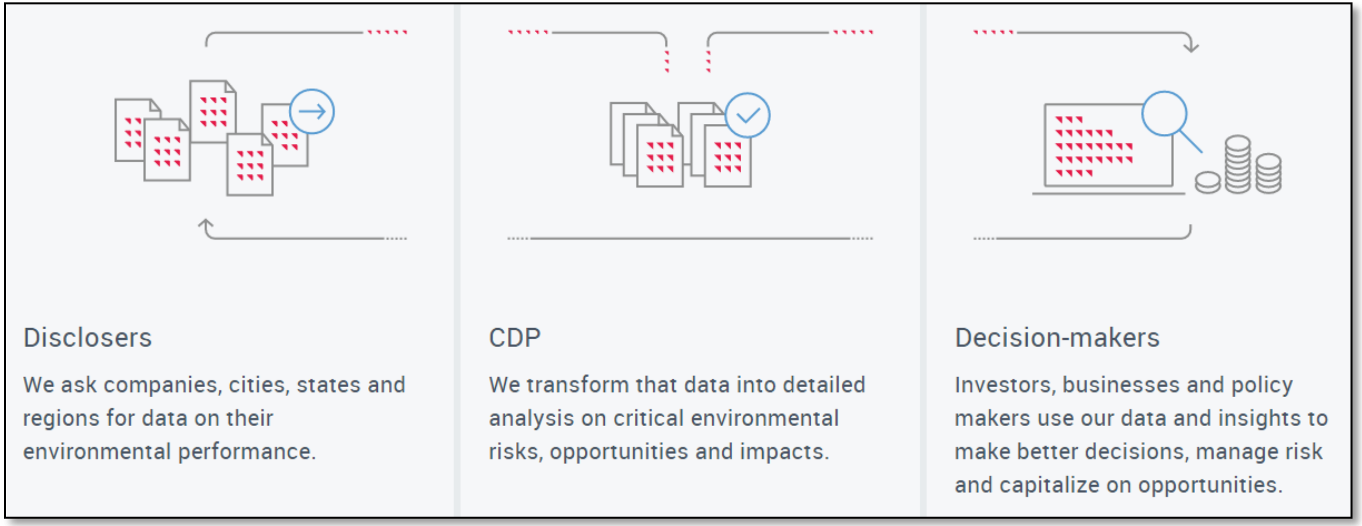
The number of firms supporting the task force's climate-related disclosure recommendations has more than doubled since the final recommendations were published in June

By James Langton | December 12, 2017 14:15

Carbon Disclosure Project (CDP)

- CDP is a registered charity in the UK which runs a global disclosure system that enables companies, cities, states and regions to measure and manage their environmental impacts



Regulatory framework: CSA staff notice

- This ongoing review project aims to:
  - Review various matters in relation to the disclosure of risks and financial impacts associated with climate risks
  - Ensure that issuers provide high quality disclosure of material information to enable investors to make informed decisions


Protecting Investors
maintaining confidence in Canada's markets

For Immediate Release
March 21, 2017

Canadian Securities Regulators Announce Climate Change Disclosure Review Project

CPA study of climate-related disclosures

- In 2016, the CPA of Canada commissioned a study of the climate-related disclosures provided by TSX-listed companies in their securities filings and found:
  - Majority of companies (79%) are making climate-related disclosures, but the nature and extent varies
  - Climate-related disclosures provided insufficient context, were not comparable across or within industries, used inconsistent terminology
  - Few made specific disclosure of board or senior management oversight of climate-related issues (29%) or proactive strategies to transition to low-carbon economy (24%)
  - Majority of client-related disclosures did not include financial metrics or targets

Expert panel on climate change adaptation and resilience results

- In August 2017, the Government of Canada established the Expert Panel with representation from academia, private sector, government, NGOs, and Indigenous groups
- In addition, federal government funding includes:
  - C$250m budget allocation over 5 years to improve access to climate change data in order to enhance decision-making relating to not just mitigation but adaptation as well (budget includes funding for health, Indigenous groups, transport infrastructure in Northern Canada, etc.)
  - C$2bn cost-sharing fund to mitigate natural catastrophes, extreme meteorological events and encourage resilience to climate change, to be managed by the Green Infrastructure Fund

Regulatory framework: Outside Canada

- **US** – in 2010, SEC issued its Guidance Regarding Disclosure Related to Climate Change; enforcement by SEC is low
- **UK** – since 2013, quoted companies, UK organized companies with shares listed on the LSE’s Main Market, any main exchange in the EEA, NYSE or Nasdaq are required to disclose annual greenhouse emissions data
- **Australia** – companies that meet various emission thresholds must report to the government on their emissions and energy production and consumption

Recommendations

- For any company with institutional investors, going beyond minimum legal requirements is becoming the norm
- Extent of how far influenced by:
  - What are emerging expectations of investors, financiers, relevant stock exchanges and regulators?
  - What are sector leaders and other competitors doing?
  - What are the data and governance gaps that would need to be managed to come to an informed decision and strategy?
  - Are there relevant in-house risk management and reporting tools available to assist analysis of climate risks?

Recommendations (cont'd)

- Depending on the strategy adopted, consider:
  - Adopting TCFD or CDP recommendations as a useful framework
  - Establishing a climate risk committee to:
    - Evaluate the impact of climate risk on the business
    - Track industry and regulatory developments at the global, national and regional levels
    - Develop recommendations for a climate risk strategy
    - Oversee implementation of climate risk strategy
    - Develop and review disclosure practices
    - Report to management and the board on these issues
  - Updating risk management policies and procedures to include climate risks, taking into account mitigation and adaption
  - Engaging with shareholders including investors, where appropriate

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Appendix: Resources

1. CDP, **CDP Canada Report 2017** (November 2017) (https://b8f65cb373b1b7b15feb-c70d8ead6ced550b4d987d7c03fcdd1d.ssl.cf3.rackcdn.com/cms/reports/documents/000/002/859/original/Canada-edition-climate-change-report-2017.pdf?1511193746)

2. CPA of Canada, **State of Play: Study of Climate-Related Disclosures by Canadian Public Companies** (June 2017) (https://www.cpacanada.ca/en/business-and-accounting-resources/financial-and-non-financial-reporting/sustainability-environmental-and-social-reporting/publications/climate-related-disclosure-study)

3. PRI Association, **Principles for Responsible Investment** (https://www.unpri.org/about/what-is-responsible-investment)

4. Task Force on Climate-related Financial Disclosures, **Final TCFD Recommendations Report** (June 2017) (https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-TCFD-Report-062817.pdf)

5. UN Environment, **The Status of Climate Change Litigation: A Global Review** (May 2017) (http://columbiaclimatelaw.com/files/2017/05/Burger-Gundlach-2017-05-UN-Envt-CC-Litigation.pdf)