

Legal Readiness for Climate Finance: Private Sector Opportunities

Report and Findings of Roundtable held
at King's College London, 25 January 2019





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1

Introduction

1.1
The legal
challenge

Addressing climate change will require increased flows of private capital and more effective leveraging of public capital globally. The reason is simple: making the transition to a low-carbon and climate-resilient global economy will take vast sums of money that far exceed current government bursaries. As such, conceptions of ‘climate finance’ and ‘sustainable finance’ must now include private capital.

Efforts by the private sector will help countries to meet their obligations under the Paris Agreement; and capital-allocation decisions by the market will facilitate the transition (or not) to a low-carbon economy. Those efforts and decisions are shaped by law and regulation as well as policy. Having ‘legal readiness’ for climate finance can encourage investor confidence.

Specifically, legal readiness for climate finance includes:

- Laws and regulation that “can enable access to climate finance and investments and realise NDC [Nationally Determined Contribution] targets” and “that have been carefully considered and enacted based on comprehensive assessment, analysis and consultations” (Morita and Pak 2018: 11); and
- Building legal and institutional capacity through knowledge-sharing and technical expertise.

Legal readiness is relevant for all countries; yet it is especially pressing for developing

countries. This is because it encourages not only increased flows of climate finance, but also transparency, clarity, and accountability of multi-stakeholders by providing the architecture for regulating behaviours and activities. Importantly, legal and regulatory frameworks can both ‘call in’ external (multilateral) climate-related funding and also ‘put out’ endogenous (in-country) investment opportunities (Bowman 2018a). So an important corollary of building legal readiness and capacity for climate finance is that it strengthens country ownership in financial processes for more sustainable outcomes.

This area is extremely new and key questions are just emerging. How can law-makers, regulators, and practitioners work together to support the implementation of the Sustainable Development Goals (SDGs) and the Paris Agreement? What is – and should be – the role of law and regulation for a truly systemic transformation by enabling finance at scale, encouraging project pipeline, and ensuring corollary benefits of enhancing economic and social development in a sustainable way?

This level and type of change presents a new challenge for many law-makers and regulators around the world. It also presents risks and opportunities for the private sector. Learning from the experiences of early-movers can help other countries to initiate legal and regulatory reforms to build critical mass for a global transformation.



Roundtable delegates

1.2 The roundtable: purpose and design

This report summarises the agenda and findings of the *Legal Readiness for Climate Finance: Private Sector Opportunities* roundtable co-convened by King's College London, UN Environment, and Legal Response International. It is part of an ongoing King's College London/UN Environment partnership to stimulate collaborations and mutual learning between public and private stakeholders in developing and developed countries for transformational change.

This roundtable is a sister event to *Climate Finance Law: Legal Readiness for Climate Finance* which was co-convened in March 2018 by King's College London and UN Environment (see Bowman and Steenmans 2018). It was aimed at the public sector and focused on experiences of Kenya and Mexico as case-studies. Delegates at that workshop subsequently indicated a strong desire to engage with the private sector, especially lawyers, financiers, and investors.

Thus, this 2019 roundtable embodies the next step in providing a forum in which public sector actors and private practitioners can learn from each other to increase collaboration and to strengthen national law and regulation to enable financial opportunities at scale.

The roundtable was held on 25 January 2019 at King's College London. It comprised 26 invited experts from the UK, Europe, and Kenya who are situated in the private sector (legal, financial, consulting), the public sector (central banks, financial regulators, multilateral financial institutions), specialist non-government organisations (legal and financial); and academia. Participating organisations are listed in Appendix A.

Roundtable delegates shared knowledge and experiences with the aims of:

- Identifying business opportunities alongside risks for practitioners in this space;
- Identifying concrete actions to improve the legal and regulatory enabling environment for private sector investment and implementation of NDC, Paris, and SDG objectives;
- Identifying emerging criteria that help central banks and other regulators engage the finance sector in their own jurisdictions;
- Institutional learning between participants from different sectors and countries; and
- Creating and shaping a new global community of decision-makers in Climate Finance Law.

In order to tease out and share learnings about the legal and regulatory dimensions of climate finance, the event was designed as follows:

It was structured around three main themes:

- 1** The regulators' role in sustainable finance leadership;
- 2** Designing a toolkit for law-makers and regulators; and
- 3** Opportunities for mainstreaming climate finance, especially in developing countries.

And it comprised two components:

- A** Full-day private roundtable as a forum for dynamic discussion under the Chatham House Rule of non-attribution. Lead speakers gave short presentations to kick off full group discussion and debate.
- B** Evening public event designed to bring awareness of key issues to a non-specialist public audience. A panel of roundtable delegates presented on the regulators' role, designing a legal and regulatory toolkit, and mainstreaming green finance, which was followed by audience Q&A.

Appendix B sets out a detailed agenda.

2

Framing: core themes

2.1 Session 1

In 2015 Mark Carney, the Governor of the Bank of England, was the first financial regulator to publicly herald that climate change presents systemic financial risks with potential to destabilise markets and induce a new global financial crisis. Since then central banks around the world have started paying attention to climate risk, with early-movers including France, China, and the Netherlands. Most recently, the Bank of England's Prudential Regulation Authority (PRA) released a Supervisory Statement for consultation in October 2018 setting out high-level (non-prescriptive) expectations for banks and insurers.

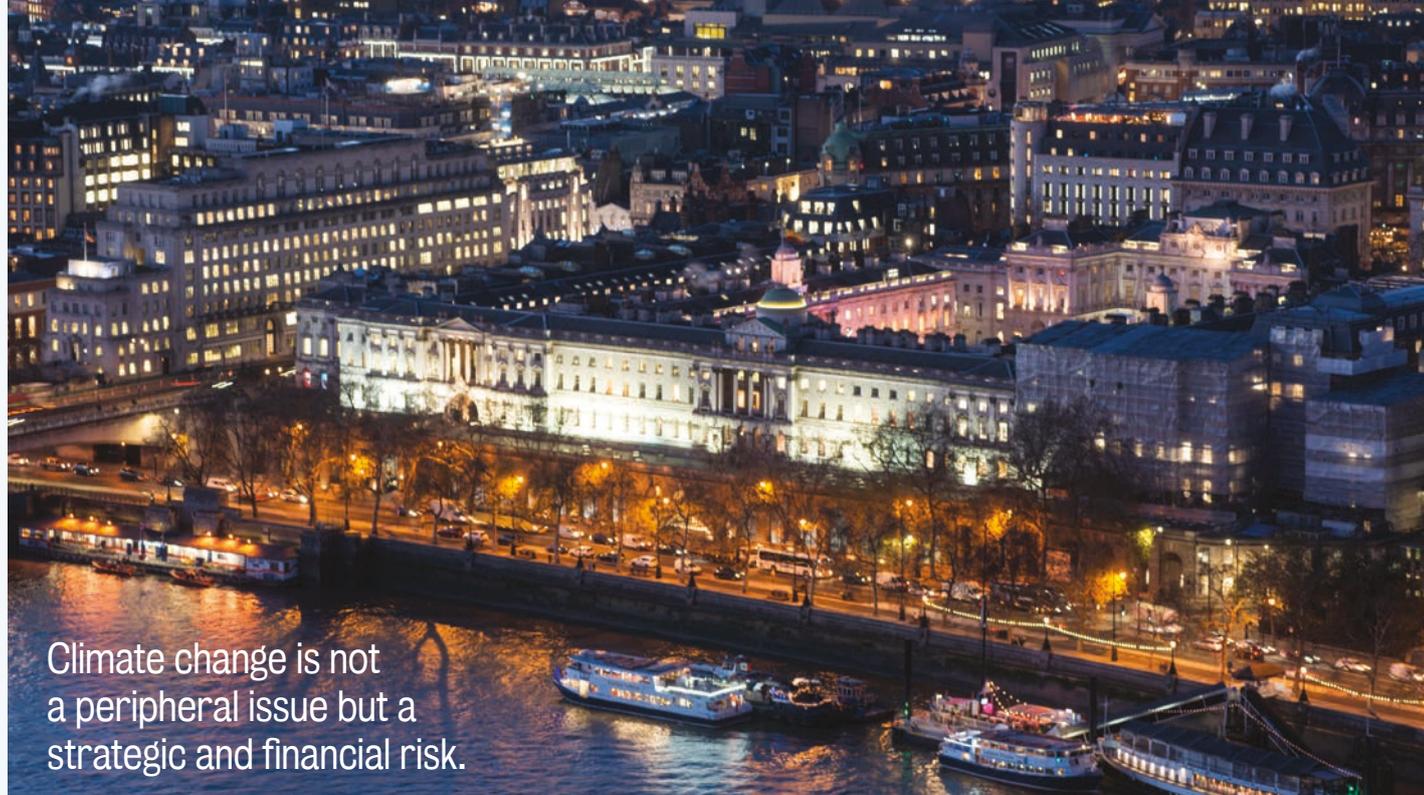
Climate change poses financial risks. Regulators are now starting to develop methodologies, analytical tools, and approaches to better equip the financial system to respond to it.

Moreover, the Banque de France has initiated the Central Banks and Supervisors Network for Greening the Financial System (NGFS) which is a voluntary network commenced with 8 founding institutions in December 2017. In a very short time it has expanded to more than 30 members and observers globally (Banque de France 2019). NGFS objectives include contributing to the

development of climate risk management in the finance sector, mainstreaming finance to support the low-carbon transition, and defining and promoting best practices for in-country implementation by member banks. It also serves as an educational community whereby member banks can disseminate best practices and learnings with each other. It has three workstreams, each of which is chaired by a member institution. The workstreams are as follows:

- 1** *Supervision* (chaired by Bank of China): mapping regulatory and supervisory practices including disclosure by financial institutions;
- 2** *Macro-financial* (chaired by Bank of England): connecting climate change and financial stability; and
- 3** *Mainstreaming green finance* (Chaired by Deutsche Bundesbank, Germany): central banks/supervisors as catalysts for greening the financial system.

The NGFS published its first progress report in October 2018 which concluded that climate change poses financial risks; and that regulators have been lagging but are now starting to develop methodologies, analytical tools, and approaches to better equip the financial system to respond (NGFS 2018). In April 2019 the NGFS will provide its first comprehensive report on why climate change falls within the responsibility of central banks and supervisors, and their role in this regard. Other examples of international collaboration include the G20 Sustainable Finance Study Group; and initiatives for



Climate change is not a peripheral issue but a strategic and financial risk.

capacity building in emerging markets such as the IFC-convened Sustainable Banking Network (SBN) and Global Green Finance Leadership Program.

Activity from regulators is a positive trend. Their leadership has potential to catalyse more ambitious and faster action.

Similarly, securities and financial markets' regulators around the world are beginning to step up focus on climate risk disclosure and to increasingly engage with firms. Early-movers include the French Financial Market Authority (AMF), the Dutch Authority for Financial Markets, the UK Financial Conduct Authority, and Japan's Financial Services Agency. The French AMF is an excellent example of regulatory innovation in this space. It is one of the first financial market authorities to publish a vision and roadmap for investor protection, information disclosure and transparency, and efficient and fair functioning of the market in the context of climate risk and opportunities (AMF 2018). This has included the creation of a new Strategy and Sustainable Finance Unit, which has been tasked with implementing the roadmap in the context of further legislative changes introduced by the new *French Action Plan for Business Growth and*

Transformation (PACTE) corporate law reform. Moreover, the California Department of Insurance, the European Insurance and Occupational Pensions Authority, and also the UK Department for Work and Pensions have made clear that climate change is not a peripheral ethical issue but a strategic and financial risk issue. Many of these regulators are pushing for stress tests and scenario analyses for banks, insurers, and financial service providers, and even divestment of fossil fuel assets by regulated firms in the case of the Californian Insurance Commissioner.

Moreover, akin to the NGFS and given the growing momentum in this new area, a number of securities market regulators are starting to share knowledge about supervisory practices and market behaviours through international networks such as the International Organisation of Securities Commissions (IOSCO) and the European Securities and Markets Authority (ESMA).

These initiatives by financial regulators are relatively recent and highly innovative. Supporters view this "flurry of activity" from regulators as a positive trend given that their leadership has potential to catalyse more ambitious and faster action from the financial sector (Cripps 2018). Yet critics have warned against a perceived over-reach of regulatory mandate (Crow and Binham 2018).

To enable climate finance, there is an important role for regulatory leadership to

facilitate not only external collaboration between public and private sectors but also internal collaborations between law-makers, policymakers, Treasury, and other Ministries with portfolios such as environment, transport, agriculture, and energy. Some developing countries are making this a priority. For example, Kenya exemplifies why both approaches are important. Due to the serious consequences of climate change it implemented recent national measures with a particular focus on climate finance, such as the *National Climate Change Action Plan 2013-2017*, the *Climate Change Act 2016*, and a *National Policy on Climate Finance 2018*. Yet despite this regulatory activity, the Kenyan Treasury has identified a need for more effective engagement with the private sector to locate climate-relevant targets/projects and apply for green funding from the finance sector as well as providing finance directly to fill public funding gaps. So the Kenyan Treasury is now focusing on how best to incentivise private investment, including structures to support public-private partnerships and tax incentives to encourage the entry of private investors. These changes will necessarily include strengthening the legal environment to improve investor confidence and attract private climate finance from developed countries. Accordingly, the Kenyan Treasury has highlighted a need for technical assistance and capacity building to help map and strengthen legal architecture.

2



2.2 Session 2

It is important to consider legal and regulatory tools that can be utilised to enable climate finance at scale. Broadly, law and regulation can mandate or steer climate finance flows using a hard approach that mandates behaviour ('command and control' regulation) or through softer ways such as financial incentives/disincentives and disclosure. An important ingredient is establishing a common language or aim (e.g. through a taxonomy); and to be 'predictively flexible' in climate legislation.

More specifically, law-makers can utilise a two-fold typology of regulatory options and legal forms to mobilise climate finance through 'financial mechanisms' and 'facilitative modalities'.

(Bowman 2018a, 2018b).

Financial mechanisms directly mobilise or leverage private finance through, for example blended finance (grants, loans, guarantees, insurance), green investment banks, climate trust funds, carbon pricing, tax incentives, green bonds, feed-in tariffs, and subsidies. In contrast, facilitative modalities are non-financial initiatives that help indirectly mobilise private finance by improving knowledge transfer, project pipeline, and capacity building. This includes enhancing governance structures, prudential regulation, corporate reporting, matchmaking and training schemes, renewable energy targets, and taxonomies for defining 'green' investments. Both types of option are essential and complementary for creating an enabling regulatory environment. In particular the 'facilitative' category is rarely acknowledged as a component of climate finance, yet it is crucial for its success (Bowman and Steenmans 2018).



Top image, left to right: Julie Ansidei (AMF), Clare Burgess (Clifford Chance), Megan Bowman (King's College London), Oscar Njuguna (Nairobi International Financial Centre), Antonio Barbalho (World Bank), Michael Ridley (HSBC)

Right: Emmanuel Buttin (Banque de France), Julie Ansidei (AMF)



Indeed, two of those facilitative modalities – corporate disclosure and a green taxonomy – are garnering critical attention as pivotal tools for potential sector-wide change.

- In France, Article 173 of the *Energy Transition and Green Growth Law 2015* mandates climate-related disclosure from banks, insurers, listed corporations, and institutional investors about their risk exposure and strategy toward a low-carbon economy. At the international level, enhanced disclosure as a risk mitigation tool has gained traction since release of the final recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD 2017). The voluntary TCFD recommendations encourage individual firms to provide information

to stakeholders (investors, lenders, and insurers) on risks and opportunities posed to their business by climate change using forward-looking scenario analysis regarding governance, strategy, risk management, and metrics and targets. Both of these initiatives are generally lauded, yet questions exist regarding TCFD uptake, the optimal form of law as mandatory or voluntary, implementation impact of sector policies, and the need for more substantive and consistent scenario analysis.

- Development of a 'green' taxonomy is currently underway in Europe. The EU's Technical Expert Group (TEG) on sustainable finance published a draft taxonomy on climate mitigation activities for public consultation in December 2018 (TEG 2018). The final taxonomy will be integrated into legislation and used to determine standards for green bonds, loans,

investment funds, new financial products such as green securitisation, and may also be incorporated into financial disclosure obligations. It is highly significant not only for its stated goal of defining a common language of 'green' across the investment chain in Europe and mitigating against greenwashing, but also for its potential extrapolation to other countries to scale up truly green investments for sustainable development. Yet it is an unprecedented initiative in a democratic system, which heralds high anticipation and some angst amongst market participants. Questions are emerging as to potential impacts on existing markets, and whether a definition of 'green' can or should be standardised across sectors or harmonised internationally.

2



2.3 Session 3

It is estimated that US\$95 trillion will need to be invested globally by 2030 in infrastructures (energy, transportation, water, telecommunication) to address climate change and that 60-70% of that investment will be needed in developing countries (OECD 2017). The clear question is how will it get there?

Green bonds are a significant tool for scaling up financial flows and mainstreaming green finance.

Around US\$1.45 trillion climate-aligned bonds were issued in 2018, including US\$389 billion of labelled green bonds (CBI 2018). The largest issuers have been commercial banks and development banks, but corporate, sovereign, and municipal issuance is increasing.

However, green bond data are variable due to a lack of standardised definitions. Different database providers categorise bonds differently with some distinguishing between categories of 'green', 'social', 'environmental', and 'sustainability' (e.g. International Capital Market Association (ICMA)) and others grouping them all together as 'green bonds'. Greater convergence is expected as disclosure and taxonomy frameworks progress.

Green bonds are widely regarded as a market for opportunity even despite the fact that they represent a marginal portion of the total bond market and that annual issuances flattened over 2017-2018 (Robins 2019). The reason for a positive outlook is partly due to their suitability for long-term sustainable infrastructure investment and also the global nature of the market: they have potential for high impact in developing countries where bonds are being used to finance greener projects to replace intensive greenhouse gas-emitting infrastructure such as coal-fired powerplants. Provided that use of proceeds are stated as going to sustainable outputs/outcomes prior to issuance, the bond can be promoted as green. This means that an issuing company need not be a sustainably-minded company, which widens scope for the pool of issuers. Yet this also raises concerns about market integrity and potential greenwashing, which can undermine investor confidence and also give the false impression that things are changing while capital flows remain unaligned with a 2 degree world.

There are some concerns about market integrity and potential greenwashing, which can undermine investor confidence.

Top image, left to right: Christoph Schwarte (Legal Response International), Stephen Mallowah (TripleOKLaw Advocates), Michael Ridley (HSBC), Alison Chan (Climate Bonds Institute), Clare Burgess (Clifford Chance), Lyla Latif (University of Nairobi / Cardiff University)



There needs to be collaboration and coherence between regulators, policymakers, and practitioners to enable financing at scale.

Other funding opportunities for project and capacity building in developing countries exist through multiple channels, including:

- Multilateral Financial Institutions (MFIs) such as the Green Climate Fund and Multilateral Development Banks (MDBs); and
- Innovative government initiatives such as the Climate Finance Accelerator (PwC and Ricardo Energy and Environment 2017) to bring together government, finance, and capital markets players from developing countries with project and green finance experts from the UK to develop financing propositions that align with the Paris Agreement.

World Bank and Climate Finance Accelerator experiences highlight the importance of sharing know-how and technical expertise across legal, regulatory, and financial domains from the start of project pipeline development. There needs to be collaboration and coherence between regulators, policymakers, and practitioners to enable financing of climate projects (e.g. otherwise timelines may not match, requirements may be contradictory). Achieving replicability of project design and preparation may help reduce transaction costs and make sustainable projects more bankable.



Left to right: Robert Ondhowe (UNEP), Megan Bowman (King's College London), Stephen Mallowah (TripleOKLaw Advocates)

3

Discussion

Thematic issues, tensions, and questions arose throughout the course of the day, and often reoccurred and overlapped within and across sessions. As such, the following synthesis of discussions is clustered into groupings of two key themes that arose during roundtable dialogue: (1) regulatory leadership and (2) regulatory tools for mainstreaming climate finance.

3.1 Regulatory leadership: essentials and uncertainties

Essentials: Mandate & mobilisation

The first issue to which the roundtable attended was the question of why regulators are introducing climate-related initiatives having regard to their financial remit.

Participants agreed that financial stability is a major concern of central banks; their legal mandate is to promote the safety and soundness of regulated firms in the finance sector. Leading central banks, such as Banque de France, Bank of England, and the People's Bank of China, are taking a forward-looking supervisory approach that assesses firms against current risks and also plausible future risks. And it is here that climate change becomes relevant to the supervisor's job. Climate change has been identified as a material foreseeable financial risk that needs to be addressed by the finance sector today to prevent or minimise the harshest impacts on the sector – and hence the market – in the future (PRA 2018; Fisher 2017). Specifically, climate-related risks comprise a tripartite taxonomy of physical risks, transition risks, and liability risks which will likely manifest as credit, market, and operational risks for banks and insurers (ibid).

Therefore, as quoted recently in *Environmental Finance* by Sarah Breedon, Executive Director for International Bank Supervision at the PRA: “It is in the financial system's own interests to

minimise those risks and those risks are minimised with an early, orderly transition ... I am not asking them to hug a tree but to manage their financial risk.” (Cripps 2019). Yet a recent PRA survey of 90% of the UK banking sector representing over £11 trillion in assets found that only 10% of respondent banks are taking a strategic, board-level approach to identify and measure long-term financial risks posed by climate risk (PRA 2018).

“This is a new area for everyone and we all have similar challenges.”

Oscar Njuguna,
Nairobi International Financial Centre

This means that the vast majority of firms are not yet supporting an orderly transition. Thus, increasingly, central banks around the globe are regarding the identification of climate risk and actions required to address it by the financial sector as a necessary part of their legal obligation to ensure financial stability.

Financial market authorities and securities market regulators have a comparable mandate. Their focus is investor protection, which includes regulating disclosure to ensure relevant information for the market. Given that climate risks present material financial risks and that climate-related markets also present financial opportunities, two key pillars or roles for securities market authorities are emerging:



- *Transition Facilitation* by raising awareness, assessing and addressing risks adequately, showcasing good practices, encouraging innovation and new investment opportunities; and
- *Supervision* with regard to climate information provided by firms in the investment chain to see how they incorporate climate risks into their strategies.

The challenge for regulators is to implement these pillars and integrate climate-related changes into all tasks and activities.

Delegates discussed the particular role of financial institutions in aiding an orderly transition to a low-carbon economy. From a systemic stability perspective, regulators in the room reiterated the need for finance sector actors to assess their own risks and opportunities and also to engage with clients and governments to facilitate an orderly transition. Yet they also acknowledged the steep learning curve involved. Climate risks are different to traditional financial risks: they sit outside current business planning horizons of 3-5 years, and there is no real precedent for measurement given that most modelling is based on historical data and tail risk is becoming an issue.

So, are market participants amenable? Most delegates lauded regulator leadership. For example, one delegate noted that the PRA draft supervisory statement had been “an excellent tool for internal education of decision-makers”

within their bank. Others commented that regulator leadership is viewed as providing a sense of legitimacy and logic for climate-related action by financial actors and heralds “a sea-change in disclosure”.

Yet questions are emerging around data and harmonisation. Specifically, concerns emerged in discussion regarding:

Definitional clarity

Delegates highlighted the need to clearly articulate and define the purpose of capital flows at micro and macro levels. As one delegate noted, “Are we solving for SDGs? For environmental protection? Or for climate risk?” The concern is to ensure that market participants head in the same direction and that regulatory goal posts are not constantly changing. There was general agreement that focusing on climate change, at least initially, provides some clarity and focus for market participants. Some pointed out that we cannot address most other SDGs without solving climate change. Others highlighted the consequential nature of climate change, leading to an inevitable blurring of boundaries with other environmental issues such as biodiversity loss and water stress.

Scenarios

Second, all delegates emphasised the importance of scenario-based risk analysis to inform evaluations by firms, especially financial institutions, of their climate-related risks and how to mitigate them. Yet delegates also criticised current scenarios as being

immature and insufficiently robust, with some delegates highlighting the need for standardisation and open source tools. For example, the International Energy Agency’s climate scenarios, which are often the basis of stress-tests by investors, are not aligned with Paris Agreement goals (Greenpeace 2018). Moreover, the challenge of scenario analysis is its forward-looking nature which can be confusing for investors (and firms) due to uncertainty over the future. But delegates recommended that companies disclose the assumptions on which the scenarios are based so that investors can decide whether they agree with them.

International standardisation

The third main concern expressed by delegates was international consistency and a level-playing field. Some expressed a strong desire for standardisation. For example, UK-regulated banks are being monitored by the PRA but there is concern that foreign-regulated banks on UK soil may be held to a lower standard. On this point, apparently the NGFS is discussing the possibility of putting out some high-level qualitative transition path scenarios which could help supervisors and financial institutions to conduct climate risk assessments. Other delegates emphasised that ‘standardisation’ goes beyond scenarios, which is why the EU is developing a taxonomy for standards and definitions regarding green finance more broadly (discussed below).

3

The financial sector is not homogenous. Each link in the investment chain has different preferences and imperatives.

Uncertainties: What do players want?

Almost everyone agreed that the goal of regulatory interventions must be to ensure that attention to climate risk sits squarely at board-level and is viewed long-term. It was also clear from discussion that market participants would like more guidance from supervisors, especially central banks, on how to translate high-level expectations and principles into action. Yet there was no ready agreement about the level of granularity or prescription. Preferences tended to depend on a delegate's sector but varying views were expressed even within the same sector.

For example, some delegates took the approach that no new rules are required because high-level regulatory guidance is sufficient to encourage action through existing general risk management and stress-testing tools and by sharing best practice. Others preferred a legislative

rules-based approach to help satisfy market participants' need for clarity and certainty.

Similarly, some market participants noted the dizzying multiplicity and proliferation of standards for investors (SDGs, TCFD, impact metrics) and stated a preference for regulation (notably disclosure requirements) that is mapped not only to regional context but also against specific sectors of the market and even to the level of asset class. Other market participants wanted as little prescription as possible, trusting instead in market innovation and stakeholder pressure as forms of self-regulation.

These divergent views are an important finding of the roundtable. They present a challenge for regulators already juggling expectations from a multitude of stakeholder groups and working through a lot of information while operating with finite resources. It is clear that stakeholder collaboration and consultation to help formulate effective regulation will be essential going forward.



Roundtable delegates

3.2 Regulatory tools for green mainstreaming: disclosure, definitions, developing countries, and dancing

Disclosure and duties

Delegates highlighted reporting obligations and fiduciary duties as key regulatory tools to facilitate corporate action on climate change. Much discussion focused on the TCFD recommendations and the importance of data and scenario analysis for evaluating risks and opportunities, and building sectoral awareness and action.

Discussion explored whether the TCFD recommendations added meaningfully to what directors are already required to do. That is, if climate change is now regarded as a material financial risk by regulators then, by definition, reporting on it is already captured by existing corporate law obligations. In response, delegates highlighted the importance of the TCFD as a catalyst rather than an end in itself. It has focused corporate conversations on climate-related financial disclosures while gradually becoming soft law. Yet some delegates from the finance sector noted that the TCFD recommendations do not go far enough to realise their full potential. As one delegate observed: TCFD reporting only “focuses on risk to the portfolio and not risk to people or planet, ... [and] does not sufficiently capture land-use related emissions, nor does it focus on lobbying practices or public policy engagement”. Others opined that further definitional clarity (see above) and granular guidance on reporting is needed, and that it ought to be informed in part by the needs of end-users about what they intend to do with disclosed data to ensure reporting is truly useful.

Discussion turned to whether TCFD recommendations should become mandatory law à la French Article 173, which was noted by some as desirable best practice. That law now requires listed companies and financial institutions to disclose on climate risks, following a ‘comply or explain’ model.

It was highlighted how this mandatory requirement for reporting had brought attention to climate risks within companies and the financial sector. It made investors more aware of climate risks and raised transparency levels which enabled civil society organisations to put pressure on investors. Some delegates opined that this legislation triggered the emergence of best practices in reporting. However, other delegates noted that although reporting under this law is mandatory, the method of reporting is discretionary; and the result has been a highly variable quality of reports (see e.g. FourTwentySeven 2018). Similarly, another delegate noted that reporting against the UK *Modern Slavery Act 2015* is mandatory but only one third of firms are meeting requirements, even though it is a much simpler piece of legislation. Certainly, recent complaints to the UK Financial Reporting Council (FRC) about deficient climate-related reporting (see below) may indicate that some companies are failing to disclose material financial risks even despite compulsory corporate law obligations to do so. Arguably there is some concern about exposure to liability arising from future uncertainty. The upshot, as noted by one delegate: “even mandatory reporting does not guarantee meaningful reporting”. Nonetheless, it was stressed that mandatory climate-related reporting forces the conversation on Board agendas which is a big step forward.

“There seems a lot of interest in climate finance but little industry coordination or coherence.”

Robert Ondhowe, UN Environment

Moreover, it became clear throughout discussions that the financial sector is not homogenous. Each link in the investment chain, from asset owners to asset managers and a variety of actors in between, have different preferences and imperatives. For example, fiduciary duty is relevant to motivating trustees but not for banks. Furthermore, discussions revealed that even between different departments within the same firm there is heterogeneity of knowledge and interest in climate change. For example, investment banking may be across the issues but retail and private banking likely will not. This all

raises questions about industry coordination and coherence.

So, there is still much work to be done to:

- Actually do data collection as a fundamental prerequisite to disclosure. Currently there are concerns around methodologies;
- Engage in *internal* capacity building such that every relationship manager and every portfolio manager is aware of climate-related risks and opportunities and can communicate them to relevant stakeholders adequately;
- Achieve mainstreaming within individual firms by taking a systemic approach to consider climate change in every single decision; and
- Achieve mainstreaming in the markets such that green/climate finance thinking is everyday practice in mainstream (not just Environmental, Social and Governance (ESG)) markets.

Discussions also raised questions about regulator capacity and accountability. If regulators do not (yet) have the capacity or remit to enforce regulation, then what is the use of having it? It is here that discussion focused on the important work of third sector organisations that are pushing for improved accountability from both companies and regulators regarding disclosure compliance. For example, in 2018 ClientEarth submitted claims to the FRC alleging that the annual reports from firms such as EasyJet are deficient on the issue of climate risks and therefore in breach of current reporting requirements under the UK *Companies Act 2006* (ClientEarth 2018a). Clarification was also requested from the Big 4 auditors about how they address climate-related issues in light of recently introduced UK legal requirements regarding audits (e.g. ClientEarth 2018b). Moreover, in relation to fiduciary duties, ClientEarth has worked with ShareAction on legal duties of pension funds to take climate risk into account when making investment decisions (ShareAction and ClientEarth 2018).

These legal actions were news to some of the financial practitioners in the room. It demonstrated an important point: adjudication and accountability are essential but less-discussed aspects of ‘regulation’. Specifically, these actions demonstrate the real-life legal, financial, and reputational implications of not integrating the 2 degree transition, which can all impact the corporate bottom line.

3

“Accountability and enforcement are essential pieces of the climate finance puzzle.”

Daniel Wiseman, ClientEarth

Developing countries

During discussions, some delegates expressed a concern that current emphases by practitioners on uncertainties regarding risk assessment, scenario analyses, standardisation, and taxonomies tend to cloud the existential imperative and to delay some of the necessary action. As one delegate noted: “I was really struggling to see the relevance [of reporting] for small developing countries and to understand why no-one mentioned the IPCC reports.”

There is an assumption by some international standard-setting bodies that all countries see enhanced disclosure as an essential regulatory tool. In actuality however, perspectives differ depending on jurisdiction and culture. For example, recent research shows that companies operating in parts of Asia are not compelled by sustainability disclosure requirements issued by market regulators (Liu et al. 2019; Nurunnabi 2016).

Nonetheless, roundtable discussion revealed that some developing country governments could welcome enhanced disclosure regulation as a modality by which to engage directly with the private sector on climate-related investment. Delegates noted that in Kenya, for example, there has been proliferation of policy and regulation on climate finance but an implementation gap due to lack of engagement with and responsiveness from the private sector.

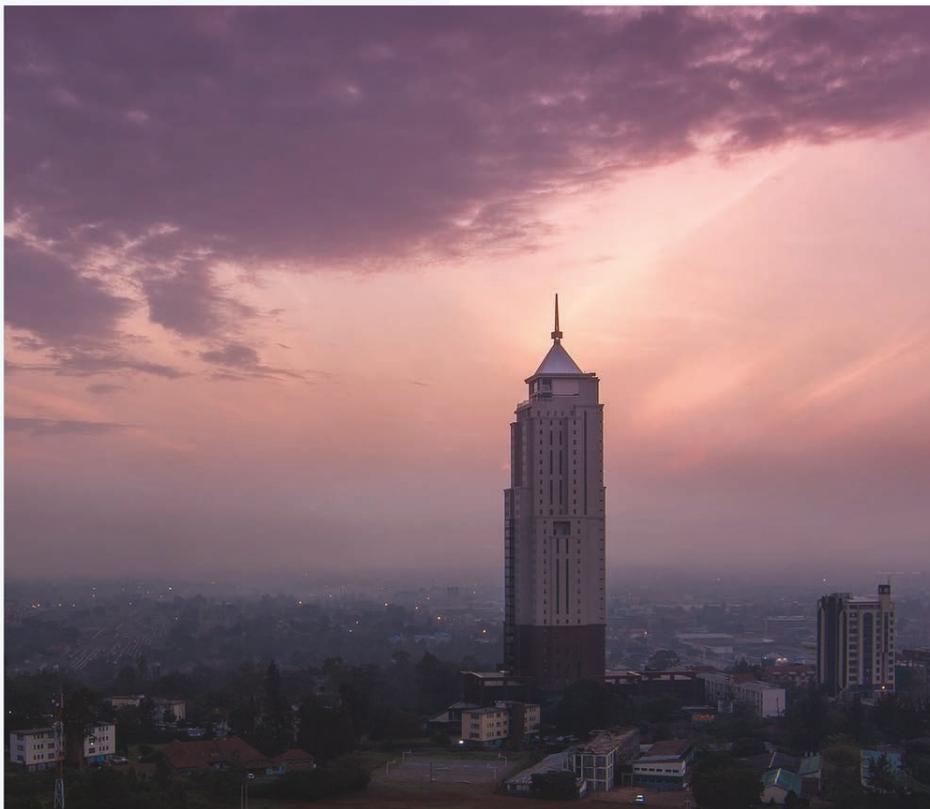
Part of this is due to an inherent infrastructure deficit and the lack of available local finance due to insufficient incentives and capacity. Nonetheless, focus is on opportunities including, for example, a potential US\$8.5 billion investment opportunity in recycling, infrastructure, and waste management in Kenya. For this reason a new entity, the Nairobi International Financial Centre, has been established to work with Treasury. It is a ‘virtual’ special economic zone aimed at improving the business environment in order to attract financial and professional services to Kenya.

Definitions

At present there are no internationally agreed definitions of terms such as ‘green’ or ‘climate finance’, which has ramifications for tracking financial flows, measuring outcomes and impacts of financial mechanisms such as green bonds, and building investor confidence. Agreed definitions also enable corporate clients of the financial sector to apply and advocate for finance for climate-relevant projects. Thus, many regard the work of the EU ‘green’ taxonomy as critical to enhancing consistency, comparability, and transparency.

Specific definitional benefits of the taxonomy discussed by delegates included providing guidance for national labelling schemes for green financial products and a reference point for financial market participants to develop green financial products. Within the EU, agreed definitions can provide (1) the foundation for a single EU market for sustainable finance, and (2) the basis for future EU standards and labels for green financial products such as green bonds or investment funds. Some noted that it may provide guidance for other jurisdictions such as the USA where there is little new federal-level law-making and a shrinking Environmental Protection Agency remit.

Yet questions emerged about whether it is possible, or desirable, to have a global taxonomy given diverse stakeholder views and consideration of local contexts. Some delegates queried whether such a taxonomy should be complemented by a ‘brown’ taxonomy to identify the activities to be avoided. Moreover, some observed that the current drafting of the taxonomy “is quite complex and doesn’t quite fit with how banks work”. There are also concerns regarding constriction of the green bond market, as discussed below.





Dancing

A dance often occurs between law-makers, regulators, and practitioners regarding who should lead on change. Market participants often declare that elected governments must decide the path of climate-related action, including which investments to pursue or eschew, to create a level playing field (e.g. Bowman 2015); yet governments often defer such decisions to the market due in part to the neo-classical economics thesis that less or de-regulation is desirable for market efficiency (Gunningham and Bowman 2016). The risk inherent to this dance is that no one takes responsibility for change and business as usual continues. What do we need to do better or differently to really move the needle? Delegates shared their experiences on this point.

On the discrete issue of climate risk and disclosure, nearly everyone agreed that regulators and legislators must lead on change to set strong expectations and enable *en masse* uptake.

Yet on other regulatory issues, there was philosophical and preferential disagreement depending on a delegate's sector. Some opined that the vital role of regulation is often invisible: it recalibrates underlying norms to facilitate change in business habits, practices, and culture. Key to this role is implementation (and enforcement) of regulation to ensure impact and to build confidence amongst market players. In contrast, some finance sector

practitioners suggested that regulation can unsettle markets due to regulatory uncertainty (such as mid-stream repeal of investment incentives) or by stifling market innovation and internationalisation (such as local-specific prescriptive legislation or taxonomies). A middle ground was provided by some legal practitioners who opined that regulatory leadership can encourage market leadership. For example, government-led initiatives, such as renewable energy and storage incentives, can encourage finance at scale by decreasing upfront costs or risk and creating investment opportunities, which spurs market players to take ownership and leadership.

The logic here is 'build it and they will come'.

A good example of this dance in practice transpired in the context of discussing the opportunities and challenges associated with developing the EU taxonomy as a regulatory tool. For some delegates, the EU taxonomy – and indeed other regulatory interventions – demonstrated a legal readiness to hold the market accountable and this is desirable. They pointed out that climate change is widely regarded as a massive market failure which, by definition, the market alone cannot fix; and preventing green-wash is necessary for market integrity, investor confidence, and, ultimately, fulfilling Paris Agreement objectives. Yet for others, the taxonomy

presented potential market constriction. For example, one delegate in the finance sector voiced fears that, in seeking to define and regulate what is 'green', the EU taxonomy might not only slow down growth of the green bond market but also bifurcate it between the EU and the rest of the world. They noted the innovation and success of self-regulation in leading the market over the past 10 years and asserted that the process of third-party verification is sufficient to ensure the 'greenness' of a bond. Moreover, they highlighted the global nature of the green bond market, especially uptake by developing countries, and expressed a desire to ensure that globality can continue to flourish by minimising jurisdiction-specific regulation and prescription.

Yet, interestingly, it is emerging economies' regulators and market authorities that are leading the creation of green bond guidelines and regulatory frameworks. For example, China's National Development and Reform Commission published green bond guidelines in 2015, the Capital Markets Authority in Morocco followed suit in 2017, the Indian Securities and Exchange Board promulgated disclosure requirements for issuing and listing green debt securities that same year, and several other developing countries have guidelines and regulations in place or in process (Hurley and Cripps 2018). Indeed, as a delegate in academia pointed out, green bond regulation is one of the stand-out areas in which emerging economies can assist advanced economies with best practice.

4

Learnings & conclusions

The overall conclusion from delegates was that the workshop successfully brought together a diverse mix of the right participants for beneficial knowledge-exchange on climate finance law and regulation. Looking forward, it has laid valuable groundwork for collaboration and knowledge exchange between delegates and other stakeholders about effective and innovative law and regulation to enable sustainable finance in-country and between international markets.

Six key learnings from the roundtable:

- 1 The value of connecting siloes
- 2 Shifting focus to opportunities
- 3 Desirable criteria for emerging guidelines
- 4 Understanding what players want
- 5 Knowledge upgrades on key issues
- 6 Building an expert Climate Finance Law network

These learnings are detailed over the following pages. They were derived from: roundtable discussions of core themes; individual 'spot test' assessments of risk and opportunity; and post-workshop questionnaires that evaluated the effectiveness and impact of the workshop by a representative spread of roundtable delegates.



Figure 1:
The benefits of
cross-sectoral
knowledge exchange



4.1 The value of connecting siloes

Delegates agreed that it was unique and valuable to have a diverse mix of participants in the same room: public/private, legal/financial, regulators/regulated, and developed/developing countries. It is an uncommon mix as sectors tend to operate in their own siloes. But sustainable finance is inherently cross-sectoral and global, and it is complex in both design and implementation. So doing sustainable finance effectively will require breaking out of disciplinary bubbles to connect siloes and create collective action solutions. Bringing a diverse group together was a deliberate experiment of the roundtable. The aim was to find common ground for improved cross-sectoral communication, collaboration, and action. Overwhelmingly, delegates lauded the mix and want more of it. One delegate specifically noted that

market regulators have been a missing ingredient in such meetings.

Most respondents (over 80%) found it useful to share experiences and learn from each other (Figure 1) and wish to continue engagement going forward (see Learning 6).

Specific benefits of connecting siloes included:

“Learning from different approaches across jurisdictions, especially AMF and French Art 173, and potential for replicability in other jurisdictions”.

“Important to understand the perspective of different stakeholders (NGOs, banks, investors, etc.) during this process”.

“In-depth peer engagement, and great breadth of experiences”.

“Informing future policy development”.

4



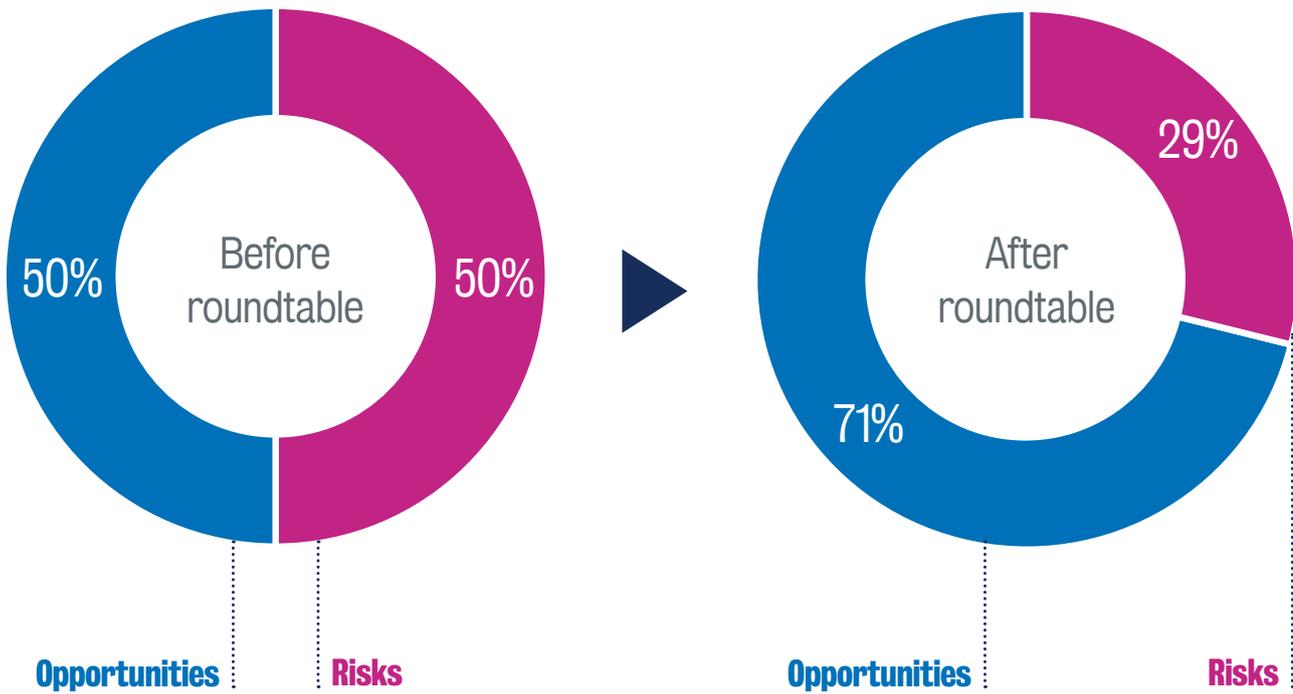
4.2 A shifting focus to opportunities

The roundtable demonstrated the importance of education and knowledge-exchange to create ‘enthusiasm for change’. This was best exemplified by considering risk versus opportunity as motivating forces for action. At the start of the roundtable, respondents were motivated to act in equal measure by risks and opportunities. By the end of the day, it was clear that respondents were motivated more by the opportunities in this space (Figure 2). This finding

is important for both momentum and innovation in sustainable finance. Thus far, regulators have largely focused on climate-related risk, which has been a game-changer for shifting corporate attention to climate change. But, moving forward, as one delegate noted: “the way industry will engage meaningfully is through opportunity”.

Top image, left to right: Julie Ansidei (AMF), Laura Mai (King’s College London), Christoph Schwarte (Legal Response International), Stephen Mallowah (TripleOKLaw Advocates)

Figure 2:
Motivation to act in
the climate space



**Through opportunity,
industry can engage
meaningfully.**



4



Left to right: Oscar Njuguna (Nairobi International Financial Centre), Antonio Barbalho (World Bank)

Specifically, respondents articulated which issues they regarded as presenting risks and opportunities. Key risks included green washing; uncertainties for the private sector regarding regulatory implementation due in part to a lack of knowledge, interest, and data; and regulatory and also practitioner incoherence and inconsistency (Figure 3).

These risks are compounded by climate change being a time-sensitive issue requiring rapid action.

Opportunities were depicted as financial, facilitative, and collaborative (Figure 4):

- Financial opportunities arise from project and product innovation and access to new markets, with one respondent noting they will use ideas from the roundtable to “develop a climate change practice in my firm – there’s a financial opportunity here”.
- Facilitative opportunities include capacity building and a vital opportunity to mainstream sustainable development. Delegates noted this can occur through infrastructure investments and, more broadly, making visible social and environmental ‘externalities’. That is, sustainable finance frameworks can create “incentives to live a better life”.
- Collaborative opportunities: A recurring theme from the roundtable was that sustainable finance presents new and welcome opportunities for cross-sectoral collaboration and knowledge-exchange.

Figure 3:
Issues that present **risks**
for practitioners/regulators

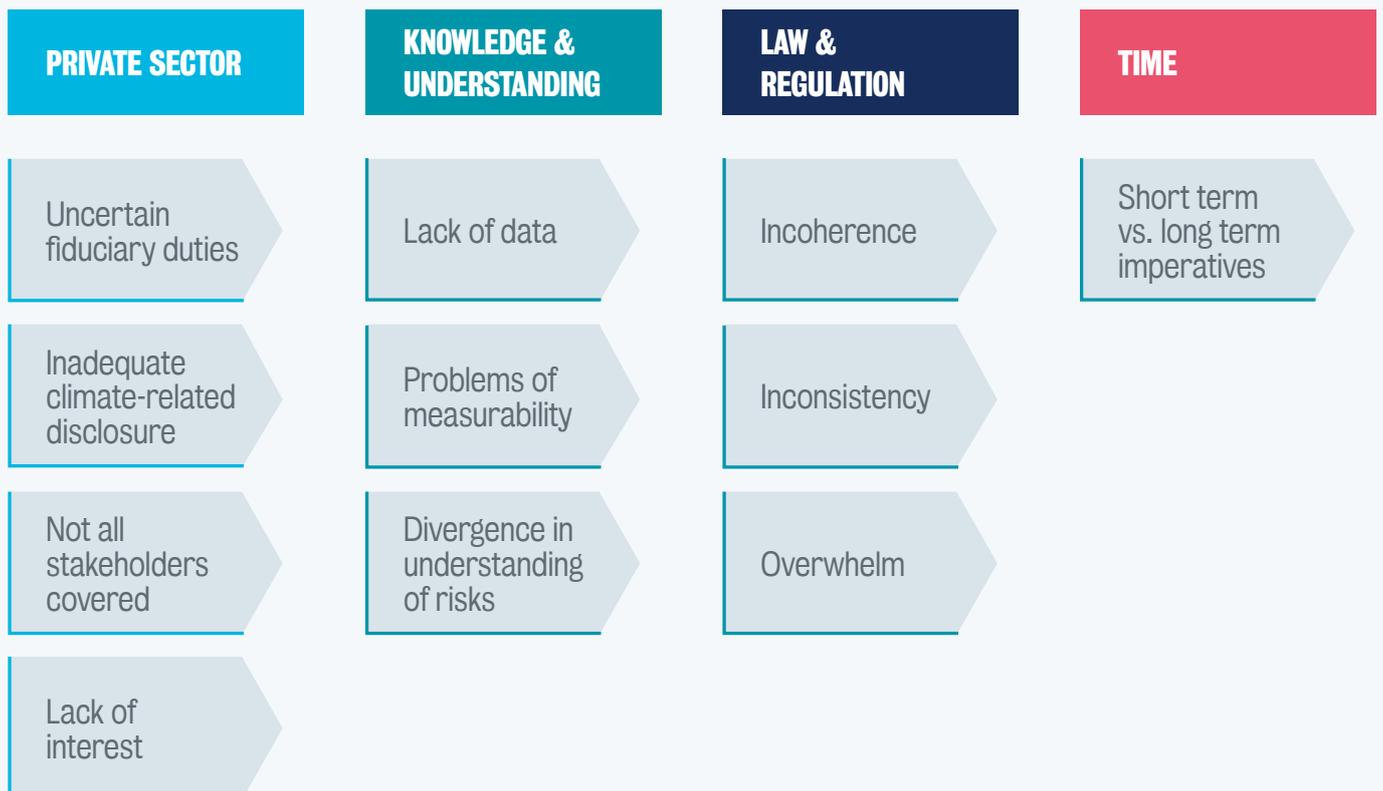
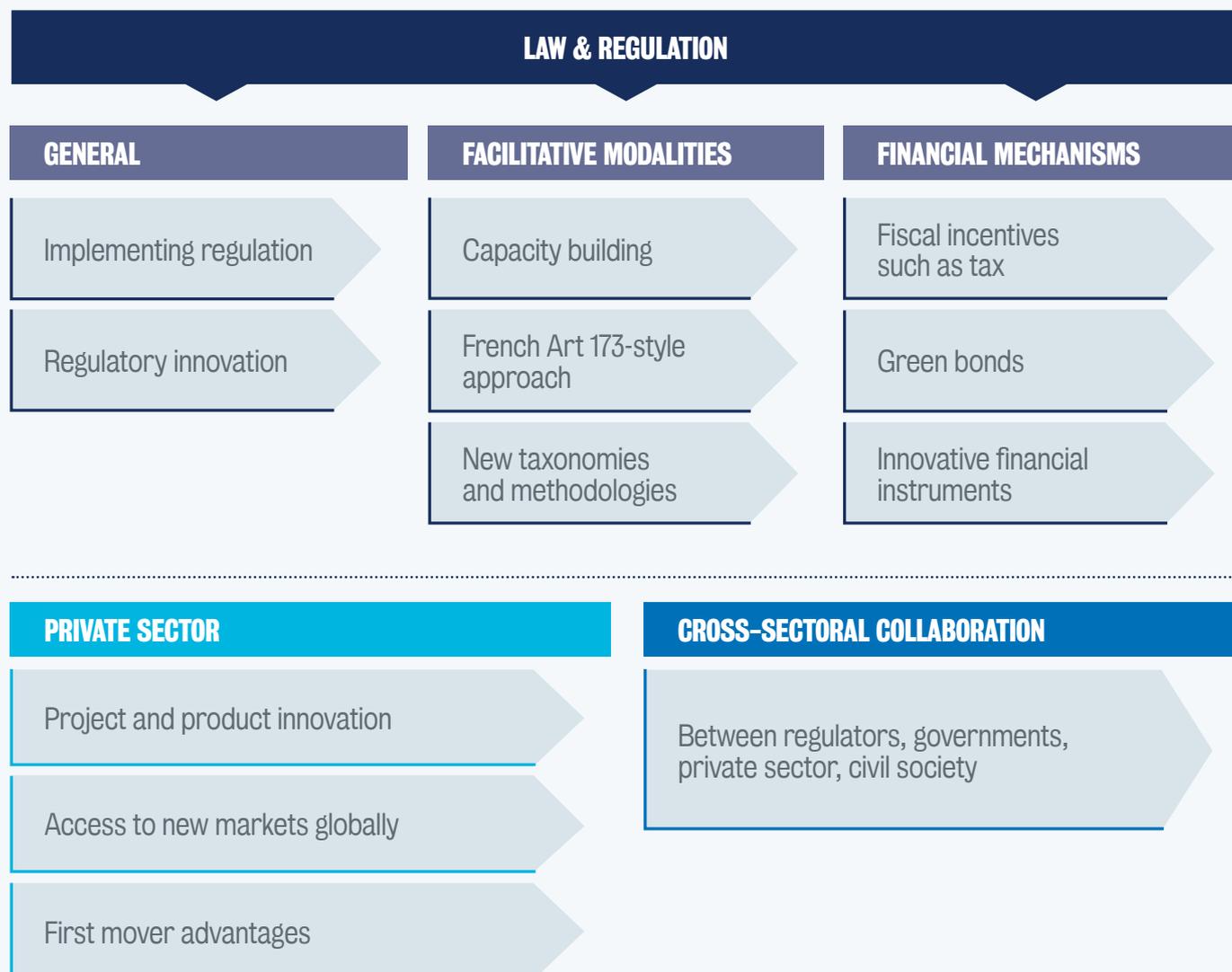


Figure 4:
Issues that present **opportunities**
for practitioners/regulators



In addition, a recurring concern that manifested *as both risk and opportunity* during roundtable discussion was the imperative to ensure that sustainable finance flows at scale to markets and sectors in emerging economies that need it. For example, as noted in Part 3, infrastructure development in Kenya represents an US\$8.5 billion investment opportunity. Yet, while emerging economies offer high returns combined with high impact, there is much perceived and actual risk associated with investment in developing countries, which deters foreign private capital.

Funding opportunities for project and capacity building in developing countries exist through MFI channels and innovative government initiatives such as the Climate

Finance Accelerator (PwC and Ricardo Energy and Environment 2017) and the UK PACT (Partnering for Accelerated Climate Transitions) (DEFRA, DID and BEIS 2019). But enabling financial investment directly from the private sector is still a work in progress. For example, in Kenya, delegates discussed how the business sector is mostly comprised of Small-Medium Enterprises (SMEs) with agriculture playing an important role in the economy such that finance for adaptation measures is a much higher priority than for mitigation. The problem is that SMEs pose a high risk for local bank lending yet are too small to get access to international or foreign finance. Discussion focused on how green bonds and sukuk instruments could attract

international investors, as demonstrated by Nigeria and Malaysia, and how deals could be aggregated to attract international and MDB finance so that local banks could focus on financing bespoke projects. Moreover, delegates highlighted how collaborating with financial institutions that have already done business in emerging markets is a useful way to leapfrog some of the knowledge gaps; and engaging with strategic policy makers in emerging markets, such as the Nairobi International Financial Centre, could help create a conducive investment climate. Delegates also reiterated the importance of strengthening legal and regulatory architecture to build investor confidence and mitigate both perceived and actual risks.

4



4.3 Desirable criteria for emerging guidelines

Priorities for enabling legal and regulatory environments

The main aim of the roundtable was to focus on law and regulation as an enabler of sustainable finance, including the rainbow of forms it can take beyond narrow concepts of ‘black letter’ legislation or litigation. This may help to ensure that law and regulation ‘on the books’ is enabling transformational change ‘in practice’.

Generally, respondents considered that legal and regulatory action ought to be prioritised to enable private sector investment and implementation of Paris Agreement goals. This is a helpful finding given that legal dimensions of climate and sustainable finance have received little attention to date but are essential for enabling that finance at scale. Respondents noted that hallmarks of an enabling legal and regulatory environment included: clarity and consistency (especially for standards and definitions); regulatory leadership (especially on mandatory disclosure); capacity building (such as sharing knowledge and providing technical assistance); collaboration; financial incentives; and accountability.

Emerging regulatory guidelines

More specifically, delegates discussed whether guidelines are emerging from the experiences of central banks and financial market authorities that can be replicated in other countries, especially emerging economies and developing countries.

A clear finding was that, due to the new and unprecedented nature of these initiatives, both the regulators and the regulated are on a steep learning curve. As noted by a delegate: “This is a new area for everyone and we all have similar challenges”. There is a sense of cautious experimentation on both sides.

Given the newness of the area, delegates discussed how best to help shape it. While any ‘model’ guidelines for regulatory intervention are still a way off, desirable criteria are emerging from the nascent experiences thus far (Figure 5).



Figure 5:
Desirable criteria for developing
model regulatory guidelines

		DELEGATE SECTOR				
		Legal	Finance	Regulatory	Academia	Government
CHARACTERISTIC	Clarity					
	Collaborative with peers (other regulators), market actors, and governments					
	Consistency					
	Context-specific					
	Legal certainty					
	Standardisation/comparability (of disclosure and reporting frameworks)					
	Transparency					
	Trust between regulators and market actors					
CONTENT	Based on industry feedback					
	Climate-related disclosure requirements					
	Climate-related prudential requirements					
	Climate-related risk management requirements					
	Enforcement provisions					
	Incentives (including market-based incentives)					
	Jurisdiction-specific content					
FORM	Soft law/voluntary guidelines					
	Hard law/mandatory compliance					
	Not one size fits all					

- There was strong agreement amongst delegates regarding the characteristics of clarity, collaboration, transparency, trust, and content on disclosure. By contrast, there were diverse views regarding the legal form guidelines should take (soft or hard), and the competing desires for consistency/standardisation versus respect for local context. Moreover, there was a spread of views on content such as enforcement measures, prudential and risk mitigation requirements, and incentives.
- In addition, discussion revealed the desirability of internal alignment within the regulator. Examples of good practice included: permeating climate-related awareness throughout the regulator by creating a 'hub & spoke' model and/or implementing a new unit dedicated to climate risk; and central banks beginning to green their own balance sheet.
- Delegates also agreed that collaboration and consultation within and between the private and public sectors is essential. In particular, some delegates highlighted that regulators will need to collaborate with government departments and agencies in their own country in an inclusive and transparent manner. This may help to ensure there is coherence and relevance between portfolios whereby, for example, a central bank's assessment of climate risks integrates Environment Ministry studies and expertise.
- The forthcoming NGFS report in April 2019 may expand or refine these findings.

4



4.4 Understanding what players want

Discussions revealed some thematic tensions described in Part 3, which provide three more important findings from the roundtable.

- Market participants want clarity, certainty, consistency, and leadership from regulators about what to do and how best to do it; yet they “do not want to be told what to do” by regulators. The problem is that, in practice, the former may look very similar to the latter. This tension has potential to create a high-wire act for regulators and/or regulatory resistance from market participants.
- Different types of market participant prefer different types and degrees of regulatory intervention, and this will likely depend on jurisdiction too. This presents a challenge for regulators regarding local coherence let alone global harmonisation. It also requires honesty and readiness from market participants regarding integration of climate change internally into all departmental decision-making, and externally across all links of the investment chain. This goes well beyond greenhouse gas emissions accounting; it will flavour all corporate activities.
- We all need to keep our eyes on the main game, which is how to avert the cataclysm of a 2 degree world while helping developing countries achieve climate resilience and financial autonomy.

In summary, the roundtable discussion revealed that more attention will need to be paid by both regulators and market participants to potentially conflicting goals and desires within markets regarding:

- 1** Certainty and consistency via standardisation;
- 2** Flexibility and jurisdiction specificity; and
- 3** Actually shifting the trillions to where they are needed in developing countries.

Yet these challenges also present opportunities. They dovetail with the clear message from the workshop that everyone is on a steep learning curve. Formulation and refinement of key definitions and also continued frank sharing between sectors and regulators globally will help to provide clarity moving forward.



Marie-Justine LaBelle (PwC)

Top image, left to right: Stephen Mallowah (TripleOKLaw Advocates), Antonio Barbalho (World Bank), Megan Bowman (King's College London), Katrien Steenmans (Coventry University), Oscar Njuguna (Nairobi International Financial Centre), Clare Burgess (Clifford Chance), Robert Ondhowe (UNEP)

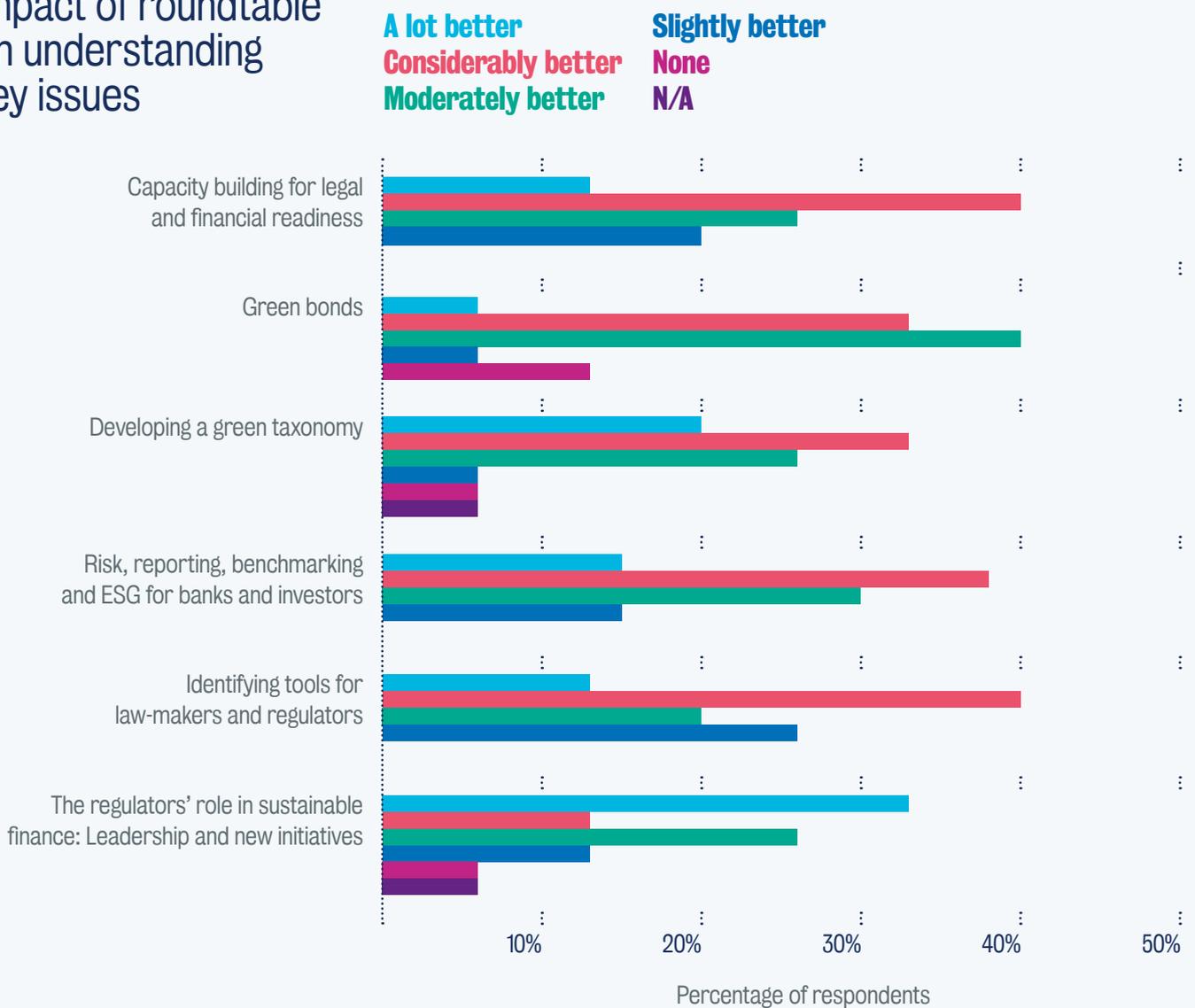
4.5 Impact on knowledge of key issues

The overwhelming response from respondents was that the roundtable helped to improve their knowledge of all topics covered (Figure 6).

Specifically, Figure 6 shows that stand out areas of learning were the regulators’ role and developing a green taxonomy with, respectively, one third and one fifth of respondents understanding those topics significantly better as a result of the roundtable discussions.

Moreover, due to the roundtable, approximately half the respondents understood these topics much better: (a) tools for law-makers and regulators on sustainable finance; (b) risk, reporting, benchmarking, and ESG for banks and investors; and (c) capacity building for legal and financial readiness.

Figure 6:
Impact of roundtable on understanding key issues



Just as importantly, delegates intend to integrate these learnings and ideas into their work and networks. Some commented how they will share ideas internally and infuse them into reflections about practices, especially long-term strategy. Others will focus on client education, particularly regarding

“integration of climate risks into their investment decision processes, disclosures & reporting practices.” Yet others will develop “further research in green finance and insurance regimes in Africa” or focus on “collaboration with local institutions and improving legal practice”.

4



4.6 Building a Climate Finance Law network

Delegates from all sectors expressed a strong desire for this work to continue deepening and expanding. Thus, next steps of the King's College London/UN Environment partnership are two-fold.

First, continue building a community of decision-makers to help develop legal readiness for climate finance globally. This Climate Finance Law Network can include interested delegates from the 2018 and 2019 roundtables and expand to other stakeholders such as rating agencies. Its purpose would be to facilitate dialogue between diverse sectors and share knowledge on new developments such as: follow-up discussions to reports by the NGFS and TEG on Sustainable Finance; intersections between positive impact finance and climate/sustainable finance (UNEPFI 2018); and practical success stories and other experiences.

The Network would also encourage complementary initiatives such as the Climate Finance Accelerator, UK PACT, the Commonwealth Secretariat's Law and Climate Change Toolkit, and Legal Response International.

Second, the research team will continue to investigate different dimensions of climate finance law and regulation. This research will be submitted for publication and disseminated to the Network. Investigations include:

- The regulators' role and developing tools for regulators and law-makers globally; and
- How climate finance law can facilitate social justice and equity objectives, as well as financial ones, having regard to a just transition.

To do sustainable finance effectively, we need to break out of disciplinary bubbles and create collective action solutions.



Roundtable delegates



From left to right: Laura Mai and Megan Bowman (King's College London), Katrien Steenmans (Coventry University)



The evening public event

Appendix

Appendix A Roundtable delegate organisations

Aviva	Nairobi International Financial Centre
Bank of England	PwC
Banque de France	Royal Bank of Scotland (RBS)
Boston Common Asset Management	Simmons & Simmons
ClientEarth	Standard Chartered Bank
Clifford Chance	TripleOKLaw Advocates Kenya
Coventry University	UN Environment (UNEP)
French Financial Market Authority (AMF)	UN Principles of Responsible Investment (UNPRI)
HSBC	University of Nairobi
King's College London	World Bank
Legal Response International	

Appendix B Agenda outline

10.30 – 11.00	Welcome, purpose, introductions
11.00 – 12.00	Session 1
	The regulators' role in sustainable finance: leadership and new initiatives Chair: Dr Megan Bowman, King's College London
	<ul style="list-style-type: none"> - Central Banks - Financial Market Authorities - Treasury
12.00 – 13.00	Lunch
13.00 – 14:30	Session 2
	Designing a legal & regulatory toolkit for climate finance Chair: Mr Robert Ondhowe, United Nations Environment (UNEP)
	<ul style="list-style-type: none"> - Identifying tools for law-makers and regulators - Risk, reporting, benchmarking and ESG for banks and investors - Developing a green taxonomy
14:30 – 15.00	Afternoon tea
15.00 – 16:15	Session 3
	Facilitating opportunities to mainstream green finance: regulatory and market architecture Chair: Mr Christoph Schwarte, Legal Response International
	<ul style="list-style-type: none"> - Green Bonds - Capacity building for legal and financial readiness
16.15 – 16.30	Roundtable Wrap Up and Looking Forward
17:30 – 19:00	Public event
	The private sector and legal readiness for climate finance Chair: Dr Megan Bowman, King's College London
	Expert Panel:
	<ul style="list-style-type: none"> - Ms Julie Ansidei, Head, Strategy and Sustainable Finance Unit; Secretary, Executive Committee, Regulation Policy and International Affairs, French Financial Market Authority (AMF) - Mr Antonio Barbalho, Practice Manager, Latin America and the Caribbean, Energy & Extractives, World Bank - Ms Clare Burgess, Partner (Finance and capital markets), Clifford Chance - Mr Oscar Njuguna, Interim CEO, Nairobi International Financial Centre - Dr Michael Ridley, Director, Green Bonds & Corporate Credit, Fixed Income Research, HSBC
19.00 – 20.30	Cocktails and canapés

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