

**International  
Comparative  
Legal Guides**



# **Environmental, Social & Governance Law**

# **2024**

**Fourth Edition**

Contributing Editors:

**David M. Silk & Carmen X. W. Lu**  
Wachtell, Lipton, Rosen & Katz

**glg** Global Legal Group

## Expert Analysis Chapters

- 1** **Facing the Energy Transition Challenge: Navigating Complexity, Uncertainty and Opportunity**  
David M. Silk & Carmen X. W. Lu, Watchell, Lipton, Rosen & Katz
- 6** **ESG and UK Pension Schemes: A Matter of Governance?**  
Andy Lewis & Jonathan Gilmour, Travers Smith LLP
- 10** **ESG for Asset Managers**  
Brenden Carroll, Katie Carter, Thomas Kim & Tyler Payne, Dechert LLP
- 20** **U.S. Legal and Compliance Issues Relating to ESG for Private Fund Advisers**  
Debra Franzese, Nicholas R. Miller, S. John Ryan & Charlie Enberg, Seward & Kissel LLP
- 27** **ESG Considerations in Project, Energy, and Infrastructure Finance**  
Matt H. Ahrens, Allan T. Marks, Iliana Ongun & Allison E. Sloto, Milbank LLP
- 36** **ESG Reporting, Green Claims and Greenwashing Risk: A UK and EU Perspective**  
Dipika Keen, James Watson & Lars Kutzner, Osborne Clarke LLP

## Q&A Chapters

- 44** **Austria**  
Fellner Wratzfeld & Partners:  
Florian Kranebitter & Josef Peer
- 52** **Brazil**  
Lima Feigelson Advogados:  
Jean Marc Weinberg Sasson
- 57** **Canada**  
Stikeman Elliott LLP: Vanessa Coiteux,  
Ramandeep Grewal & Catherine Grygar
- 72** **Cayman Islands**  
Maples Group: Tina Meigh, Julian Ashworth &  
Kerry Ann Phillips
- 79** **Denmark**  
Kromann Reumert: Line Berg Madsen, Sofie Jensen &  
Jacob Høeg Madsen
- 85** **France**  
Signature Litigation: Sylvie Gallage-Alwis &  
Gaëtan de Robillard
- 91** **Germany**  
Lindenpartners Part mbB: Dr. Nils Ipsen, Dr. Lars Röh &  
Dr. Nina Scherber
- 98** **Ghana**  
B & P Associates: Adelaide Benneh Prempeh,  
Maame Barnie Adu Amoah, Bessy Agyeiwaa Crentsil &  
Christian Konadu Odame
- 106** **Greece**  
Bernitsas Law: Maria Nefeli Bernitsa &  
Adamantia Karamanou
- 113** **Hong Kong**  
Dentons Hong Kong LLP: Vivien Teu
- 126** **India**  
Trilegal: Sanjam Arora, Jagrati Gupta,  
Rajveer Gurdatta & Akshaya Kapoor
- 138** **Ireland**  
McCann FitzGerald LLP: Éamon Ó Cuív &  
David O'Keeffe Ioiart
- 146** **Israel**  
Herzog Fox & Neeman: Livnat Ein-Shay Wilder,  
Janet Levy Pahima, Liat Maidler & Ruth Moatti
- 157** **Kenya**  
Ashitiva Advocates LLP: Caroline Karugu,  
Jennifer Nduati & Lucy Kinyanjui
- 164** **Korea**  
Yulchon LLC: Yonghee Yoon & Min Ho Lee
- 171** **Mexico**  
Galicia Abogados, SC: Carlos Escoto &  
Marianela Romero
- 179** **Norway**  
BAHR: Svein Gerhard Simonnæs, Asle Aarbakke &  
Lene Nygård
- 185** **Portugal**  
PRA – Raposo, Sá Miranda & Associados:  
Joana de Sá, Leila Grácio, Pedro Braz & Ângela Bento
- 193** **South Africa**  
Bowmans: Ezra Davids, Ryan Kitcat & Charles Douglas
- 201** **Spain**  
RocaJunyent: Iñigo Cisneros, Cristina Eguiraun &  
Amy Tallulah Jones

## Q&A Chapters Continued

209

**Sweden**  
Mannheimer Swartling Advokatbyrå:  
Patrik Marcus, Cecilia Björkwall & Isabel Frick

216

**Switzerland**  
Schellenberg Wittmer Ltd: Christoph Vonlanthen,  
Lorenzo Olgiati, Giulia Marchettini & Fabio Elsener

224

**Taiwan**  
Lee and Li, Attorneys-at-Law: Ken-Ying Tseng &  
Helen Hai-Ning Huang

230

**United Kingdom**  
Travers Smith LLP: Carys Clipper, Sarah-Jane Denton,  
Michael Raymond & Laura Smith

238

**USA**  
Wachtell, Lipton, Rosen & Katz: David M. Silk &  
Carmen X. W. Lu

245

**Zambia**  
Mulenga Mundashi Legal Practitioners:  
Mulenga Chiteba, Mike Chilufya,  
Chimwemwe Mulenga Bwalya & Emmanuel Mwansa

# Cayman Islands



Tina Meigh



Julian Ashworth



Kerry Ann Phillips

Maples Group

## 1 Setting the Scene – Sources and Overview

### 1.1 What are the main substantive ESG-related regulations?

The Cayman Islands do not currently impose ESG-related obligations on financial services industry participants. As such, there are no prescribed ESG-related regulations that apply to Cayman Islands-domiciled vehicles beyond governance-related obligations. Accordingly, contracting parties may freely legislate the nature and scope of any ESG-related criteria that will apply to their arrangements.

The Cayman Islands, as an adherent to global best practices and standards, actively monitors international trends and developments in ESG. This deliberate approach recognises the need for careful and measured consideration, ensuring that any ESG-related regulatory proposals would need to provide flexibility and align with the expectations and interests of a broad range of financial services industry participants recognising the Cayman Islands' unique status as a world-leading investment funds and capital markets domicile. It is anticipated that any regulatory regime to be introduced in the Cayman Islands would be an opt-in regime and would offer flexibility in line with current local laws, allowing entities to adopt effective ESG policies and strategies suitable for their particular businesses.

In terms of governance obligations for investment funds that are regulated by the Cayman Islands Monetary Authority (“CIMA”), Cayman Islands legislation, regulations and guidance recognises that the operators of a Cayman Islands vehicle hold ultimate responsibility for effectively overseeing and supervising the activities and affairs of regulated investment funds and protecting the interests of key stakeholders. The term “operator” refers to an entity’s governing body; being the board of directors of a company, the general partner of a partnership, the manager of a limited liability company or the trustee of a trust, as applicable. The governing body should comprise sufficient appropriately qualified individuals. It is for the governing body’s members to self-assess as to an individual’s suitability and, although any such persons need not be independent of a management company, each such person must exercise independent judgement in fulfilling their duties as required by

Cayman Islands law, regulations, and the regulated investment fund’s constitutional documents.

The key legislation and regulation that imposes governance standards of which operators of a regulated investment fund should be aware include:

- (a) The Private Funds Act (As Revised), and the Mutual Funds Act (As Revised) which regulates entities constituting private funds and mutual funds for Cayman Islands law purposes.
- (b) The Directors Registration and Licensing Act (As Revised) (the “DRLA”) which provides for the registration and licensing of directors of CIMA regulated entities and assists CIMA with verifying the basic information of such directors.
- (c) The Anti-Money Laundering Regulations (As Revised) and the Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands, which relate to persons carrying out “relevant financial business in or from the Cayman Islands”, forming a business relationship, or carrying out a one-off transaction, and are aimed at preventing and detecting money laundering, and combating terrorism and proliferation financing. There is additional oversight in the form of The United Nations and United Kingdom sanctions extended to the Cayman Islands by Orders in Council and sanctions imposed by Cayman Islands authorities under Cayman Islands legislation.
- (d) CIMA’s Rule – Corporate Governance for Regulated Entities, which places an obligation on all CIMA regulated entities to establish and maintain a corporate governance framework addressing, at a minimum: (i) its objectives and strategies; (ii) the structure and governance of the governing body; (iii) appropriate allocation of oversight and management responsibilities; (iv) independence and objectivity; (v) collective duties of the governing body; (vi) duties of individual directors; (vii) appointments and delegation of functions and responsibilities; (viii) risk management and internal control systems; (ix) conflicts of interest and code of conduct; (x) remuneration policy and practices; (xi) reliable and transparent financial reporting; (xii) transparency of communications; (xiii) duties of senior management; and (xiv) the entity’s relations with CIMA.
- (e) CIMA’s Rule – Contents of Offering Document – Regulated Mutual Funds; and CIMA’s Rule – Contents of Marketing

Materials – Registered Private Funds (“CIMA’s Contents Rules”) which prescribe CIMA’s disclosure requirements for fund offering documents and marketing materials.

- (f) CIMA’s Regulatory Procedure – Assessing Fitness and Propriety which outlines CIMA’s procedure in assessing the fitness and propriety of directors and senior officers of financial service providers.
- (g) CIMA’s Statements of Guidance – Corporate Governance for mutual (open-ended) funds, private (close-ended) funds, and licensees, which aim to provide regulated entities with guidance as to CIMA’s minimum expectations for sound and prudent governance.

## 1.2 What are the main ESG disclosure regulations?

There are currently no ESG-specific disclosure regulations in the Cayman Islands.

ESG disclosures are important to incorporate into offering and other documents so far as ESG considerations are relevant to a regulated investment fund’s risk profile or business affairs. CIMA recognises that robust approaches for identifying, measuring, monitoring and managing material ESG-related risks are important. As such, CIMA requests ESG-focused registered investment funds to self-identify voluntarily by way of a short notification in the investment strategy disclosure contained within such investment fund’s registration application, and to fund annual return forms.

With respect to governance obligations, the main regulations are those listed in (a), (d), (e) and (g) of question 1.1.

The disclosures required in these regulations are varied and, in summary, relate to the disclosure of (a) conflicts and the involvement by parties affiliated with the investment manager and the relevant entity; (b) material adverse effects which may impact the entity or its investors; (c) changes to information filed with CIMA; and (d) certain investment objectives, strategies, policies and procedures in offering materials.

On the subject of disclosure requirements which assist in combatting greenwashing and social-washing and enhancing transparency, pursuant to the Mutual Funds Act, a mutual fund’s offering document to be issued to investors and filed with CIMA must (subject to certain exceptions) describe the fund’s equity interests in all material respects, and contain such other information as is necessary to enable a prospective investor in the fund to make an informed decision as to whether or not to invest. In addition, the pre-existing statutory obligations with regard to misrepresentation and the general common law duties with regard to proper disclosure of all material matters continue in effect.

The above statutory requirements are supplemented by CIMA’s Contents Rules which require, among other matters, disclosure in the offering documents/materials with respect to the fund’s investment objectives and strategies, risk factors, conflicts of interest, service providers and fee levels, material agreements, net asset value calculation in accordance with CIMA’s Rule – Calculation of Asset Values, and other financial reporting matters.

## 1.3 What voluntary ESG disclosures, beyond those required by law or regulation, are customary?

ESG disclosures vary greatly by location of managers, operator(s) and/or investor base. Such disclosures may include consideration of principal adverse impacts of investment decisions on sustainability factors, among other matters. ESG disclosures will typically follow the form of those incorporated in equivalent onshore documents or which reflect arrangements which

have been contractually agreed with counterparties. By way of example, voluntary regimes currently in existence with respect to ESG include the Global Reporting Initiative, the Financial Stability Board’s Task Force on Climate-related Financial Disclosures, and the International Sustainability Standards Board (“ISSB”) (which consolidates the Climate Disclosures Standards Board, the Sustainability Accounting Standards Board and Integrated Reporting). In addition, certain ESG-related regulations have introduced voluntary disclosures; for example, Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011, as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks, namely: (i) a climate-transition benchmark; and (ii) a specialised benchmark that brings investment portfolios in line with the Paris Climate Agreement regarding the goal to limit the global temperature increase. The categories are voluntary labels designed to assist investors who are looking to adopt a climate-conscious investment strategy.

## 1.4 Are there significant laws or regulations currently in the proposal process?

As mentioned, the Cayman Islands government, through the Ministry of Financial Services, is currently reviewing ESG-related trends and developments in the global market, and may eventually propose a voluntary framework which parties may choose to adopt if they wish to implement an ESG component to their contractual arrangements. In parallel, CIMA may develop a standardised disclosure and supervisory regime for regulated investment funds that voluntarily elect to be subject to ESG investment criteria and reporting obligations.

## 1.5 What significant private sector initiatives relating to ESG are there?

From a private sector perspective, many global financial institutions, including the Maples Group, are highly focused on the impact that ESG factors and responsible investment have on the financial services sector and are continuing to implement voluntary initiatives, establish internal ESG advisory steering groups and collaborate with (i) clients and investors to develop and offer solutions and ESG products to achieve their respective ESG objectives, and (ii) governments, regulators, industry leaders and associations, and other key stakeholders locally and in various other jurisdictions, to help shape the Cayman Islands financial services industry’s response to developments in ESG and sustainable finance regulation.

## 2 Principal Sources of ESG Pressure

### 2.1 What are the views and perspectives of investors and asset managers toward ESG, and how do they exert influence in support (or in opposition) of those views?

Specific views and approaches towards ESG vary among investors and asset managers as well as among the jurisdictions in which they are based. Notably, Europe has been an early adopter in implementing ESG regulatory obligations. In contrast, in the United States ESG has become the subject of political debate with some states implementing bans on ESG funds and bonds.

That said, investors and asset managers using Cayman Islands structures are increasingly electing to adopt and integrate ESG principles into their business affairs on the premise that

ESG considerations are ethical and can prove to be financially prudent in the long run.

Those in support of ESG actively seek investment opportunities and regulatory frameworks aligned with strong ESG criteria, which encourages more entities to adopt ESG practices and service providers to develop more products to support this agenda. A number of asset managers are implementing ESG initiatives, seeking to align stakeholders' interests and avoid short-term investments and results, in return for long-term incentives aligning investment practices with social responsibilities and principles in order to meet the demands of certain investors. Such investors are expecting meaningful reports on adherence to ESG criteria and the impact that such ESG factors have on the valuation and performance of companies in which they are indirectly invested.

### 2.2 What are the views of other stakeholders toward ESG, and how do they exert influence in support (or in opposition) of those views?

ESG and sustainable finance is a dynamic area that is continuously evolving and growing to meet the expectations of a wide number of stakeholders, including shareholders, policymakers, regulators and the government.

As noted, the Cayman Islands government and CIMA are considering legislative and regulatory initiatives that longer-term could provide a framework and supervisory regime for industry participants who wish to be subject to ESG criteria. Notwithstanding these initiatives, the current Cayman Islands legal and regulatory framework is sufficiently flexible to allow investment managers and other financial industry participants to voluntarily legislate for ESG-compliant products, covenants and other solutions to achieve their respective ESG and sustainable finance objectives.

### 2.3 What are the principal regulators with respect to ESG issues, and what issues are being pressed by those regulators?

CIMA is the primary regulatory authority in the Cayman Islands responsible for supervising regulated entities in the Cayman Islands. CIMA is engaging with industry on ESG matters, and recent information circulars and notices stress the importance of robust investor education with respect to evolving risks and issues associated with ESG-related investments, and the importance of fund operators identifying, measuring, monitoring and managing material ESG-related risks where applicable to their investment strategies.

The Cayman Islands government has indicated that policies within the ESG legislative framework would aim to target "greenwashing". Greenwashing is the practice of misrepresenting sustainability-related practices or features of investment products, and can occur in the lack of disclosure, the name of the fund, how it is marketed, and/or misleading claims about a product's sustainability-related performance, among other matters.

Pursuant to a draft Climate Change Policy, in a local context, the Cayman Islands government more generally aims to reduce the islands' vulnerability to climate change, to promote low-/zero-carbon economic activity and to establish a governance framework for climate action. The government is also considering blue economy opportunities, such as maintaining and restoring mangrove forests as carbon sinks, for blue carbon credits.

The Cayman Islands government and CIMA have a particular focus on governance practices generally, specifically focusing on governance practices and management of regulated entities.

CIMA's approach places an emphasis on transparency through disclosure, oversight, and diligence. The jurisdiction is also firmly committed to combatting anti-money laundering and terrorist and proliferation financing through a multitude of governance frameworks and regulations.

### 2.4 Have there been material enforcement actions with respect to ESG issues?

There have been no material enforcement actions with respect to ESG issues in the Cayman Islands to date.

CIMA has various powers to ensure a high level of compliance by regulated entities and their operators (including to replace management or to deregister entities in certain circumstances), including with respect to governance matters.

CIMA regularly takes material enforcement action against entities and/or their operators through on-site inspections, collaboration with other regulators and monitoring of regulated entities. Examples of methods of material enforcement is through:

- (i) placing regulated entities into controllership or official liquidation;
- (ii) publicly sanctioning and cancelling the registration of entities;
- (iii) publicly sanctioning and cancelling the registration of operators (which removes their ability to act on regulated entities);
- (iv) on-site inspection of corporate governance and AML/CFT policies and procedures of regulated entities, requiring updates to the same and/or taking further actions as they see fit; and
- (v) imposing administrative fines for breaches of rules and/or regulations.

CIMA also reviews registration documents for all entities, conducts due diligence on their operators and requires a regulated entity to notify them of material changes.

### 2.5 What are the principal ESG-related litigation risks, and has there been material litigation with respect to ESG issues, other than enforcement actions?

There have been no material decisions by the Cayman Islands courts in relation to ESG issues as at the date of writing.

The principal litigation risks are likely to arise from shareholder activism and related investor claims against companies and their directors, particularly in relation to materially false or misleading ESG disclosures or representations made in prospectuses or investor reports. This could give rise to claims in contract (breach of contract and misrepresentation) and tort (negligence, negligent misstatement and fraud). In serious cases of mismanagement, investors can petition to have even a solvent company wound up on just and equitable grounds, though such circumstances on ESG grounds would be novel in a Cayman Islands context.

### 2.6 What are current key issues of concern for the proponents of ESG?

The key issues for the proponents of ESG are as follows:

- (a) uncertainty as to form and timing for the implementation of clear and standardised ESG regulations and guidance; and
- (b) a lack of transparency and reporting of ESG related data and metrics.

The lack of robust, comparable and reliable ESG data is essential for assessing the environmental impact of investments and for steering financial market participants towards sustainable objectives. It helps investors and stakeholders make informed

decisions and understand a company's alignment with global sustainability goals included those outlined by the Paris Climate Agreement and the European Green Deal.

### 2.7 Have ESG issues attracted shareholder activism, and from whom?

While ESG issues driven by shareholder activism have not led to any current litigation in the Cayman Islands, investors in ESG-subject Cayman Islands-domiciled vehicles are increasingly looking to standardise reporting by those vehicles against any ESG investment limitations or other commitments which they have adopted.

## 3 Integration of ESG into Strategy, Business Operations and Planning

### 3.1 Who has principal responsibility for addressing ESG issues? What is the role of the management body in setting and changing the strategy of the corporate entity with respect to these issues?

There are a few operating companies established in the Cayman Islands with exposure to ESG being primarily via a regulated investment fund's investment strategy and other voluntary sustainable financing initiatives.

In those structures, responsibility for addressing ESG issues rests with the operators of Cayman Islands entities. These operators have various duties and are generally responsible for the management and affairs of the entities.

In the case of investment funds, operators often delegate day-to-day management to the investment managers, who work in collaboration with the operators to integrate ESG considerations into the fund's investment objectives and strategies. In other cases, operators may establish committees or designate officers to manage ESG responsibilities. Notwithstanding delegation, operators retain ultimate responsibility and are required to properly review the conduct of any delegate and ensure compliance with any ESG mandates which have been established.

Operators (or management bodies) play a crucial role in identifying emerging ESG themes and aligning business goals with investor demands with respect to ESG. To set and change the strategy of a corporate entity with respect to ESG matters, management bodies should establish practices to create accountability structures for ESG, define purpose and culture, and enhance transparency to investors.

### 3.2 What governance mechanisms are in place to supervise management of ESG issues? What is the role of the board and board committees *vis-à-vis* management?

There are a number of mechanisms to supervise the management of ESG issues. These can be considered in the context of internal and external supervision.

With respect to internal supervision, governance mechanisms vary based on the nature and scale of each company. That said, in all cases, the board of directors holds a central role in driving ESG development within their respective companies, and their oversight on ESG issues is instrumental in helping companies manage ESG-related risks and opportunities. As noted in question 3.1, responsibility for ESG management primarily falls on the shoulders of the directors, who must always take account of their fiduciary duties in the performance of their functions and in the delegation of any responsibilities to committees or other persons.

The addition of independent directors to the board can also enhance governance by providing objective perspectives and a wealth of industry experience, mitigating conflicts of interest, and enhancing due diligence efforts.

In supervising ESG issues, boards and committees assess ESG impacts, define key performance indicators to measure progress, allocate responsibilities, and ensure information sharing.

Turning to external supervision, both regulated entities and their directors are subject to supervision by CIMA. Regulated entities have an audit obligation, requiring the appointment of auditors approved by CIMA. Furthermore, directors are subject to the DRLA, and CIMA assesses the fitness and propriety of directors through CIMA's Regulatory Procedure mentioned in question 1.1. CIMA also has the power to inspect regulated entities, replace management and appoint controllers, among other powers, in order to ensure a high level of compliance.

### 3.3 What compensation or remuneration approaches are used to align incentives with respect to ESG?

Compensation and remuneration approaches used to align incentives with respect to ESG typically follow and are determined by onshore practices and considerations, as these arrangements would typically be governed by onshore law. Such practices may include tying bonuses to specific ESG performance metrics, particularly those linked to sustainability and long-term shareholder value. Compensation committees may also use discretion to adjust pay based on sustainability achievements.

### 3.4 What are some common examples of how companies have integrated ESG into their day-to-day operations?

In the Cayman Islands, it is commonplace for open-ended hedge fund companies to appoint at least one independent director. This is also becoming an increasingly common theme for closed-ended private funds. As previously mentioned, independent directors are appointed for the purposes of transparency and ensuring good governance and objectivity, and generally ensuring that each fund has a depth of experience within its management body with respect to the Cayman Islands' regulatory regimes.

In a Cayman Islands context, ESG is most commonly accommodated in governance and advisory boards, and oversight of underlying portfolio companies. In that context, the governing body of a Cayman Islands-regulated investment fund will have oversight responsibility for ensuring that portfolio companies which are not typically structured in the Cayman Islands implement policies which align with their ESG objectives, including by way of revising reward systems, linking performance metrics with ESG criteria, and connecting this to employee compensation. In addressing social issues relating to diversity and gender equality, many companies are establishing committees and policies dedicated to fostering diversity within their management structure and workforce more broadly. With respect to environmental considerations, companies are actively seeking ways to reduce energy consumption and implement environmentally conscious practices.

### 3.5 How have boards and management adapted to address the need to oversee and manage ESG issues?

The board of directors and management teams of Cayman Islands-based companies have assumed a critical role in steering companies towards effectively overseeing and managing ESG issues. Many boards are actively considering their approaches

to ESG matters with a strong focus on how ESG can contribute to the long-term success of the companies.

Boards and management teams are actively aligning ESG initiatives with their company's strategic direction. They are developing oversight structures for ESG issues which may involve the full board, existing committees, or newly formed ESG committees. They are also implementing ESG policies, practices and strategic controls to create sustainable long-term value for companies. They recognise the need to remain agile and adaptable in their oversight and management approaches due to the dynamic and ever-evolving nature of the ESG landscape.

## 4 Finance

### 4.1 To what extent do providers of debt and equity finance rely on internally or externally developed ESG ratings?

In the Cayman Islands, the landscape regarding ESG ratings and their impact on debt and equity finance is evolving in line with global trends. Issuers of debt and equity finance are increasingly incorporating both internally and externally developed ESG ratings into their decision-making processes.

In the past decade, we have seen an uptick in the use of ESG information, with both financiers and investors recognising the tangible value that ESG ratings bring to investment outcomes by improving performance and reducing volatility returns. The ratings enhance existing factors such as liquidity, volatility and performance. Investors are now giving due consideration to a company's ESG rating. Companies with lower ESG ratings may face scrutiny and criticism while those with higher ratings often experience increased demand from investors and subsequent influx of investment capital.

### 4.2 Do green bonds or social bonds play a significant role in the market?

Green bonds play an increasingly significant role in the market, with global green bond issuance reaching a record high of US\$351 billion in the first six months of 2023, according to data compiled by Bloomberg.

Green bonds are used to finance or refinance green projects or assets, and are structured to increase sustainable investing of fund projects that have positive environmental and/or climate benefits. Green bonds enhance transparency for investors by clearly outlining the green projects being funded and they offer investors an opportunity to engage with corporate environmental strategies.

While the Cayman Islands' green bond market is in its early stages, there is an increasing number of ESG-focused and sustainable financing transactions in both securitisations and the wider finance space. It is evident that the jurisdiction is aligned with the global trend of promoting sustainable and environmentally responsible investment practices. With the increased investor appetite for ESG and green bonds, we have seen the emergence and active promotion of dedicated ESG and green market segments on international stock exchanges, including the Cayman Islands Stock Exchange. Blue bonds (instruments used to finance marine-focused projects) are also gaining traction in the region.

### 4.3 Do sustainability-linked bonds play a significant role in the market?

Like green bonds, sustainability-linked bonds ("SLBs") (instruments where the financial and/or structural characteristics are

tied to a predefined sustainability/ESG objective), have been gaining traction as an emerging financial instrument. SLBs aim to encourage and incentivise issuers to improve their ESG performance over time. They are structured in a way that financial terms are directly tied to specific sustainability targets or key performance indicators set by the issuer, ultimately promoting responsible and sustainable business practices.

### 4.4 What are the major factors impacting the use of these types of financial instruments?

The use of green bonds, social bonds and SLBs has been influenced by internationally recognised standards and guidelines.

These standards, namely the industry-accepted green bond principles ("GBPs"), social bond principles ("SBPs") and sustainability-linked bond principles ("SLBPs"), established by the International Capital Market Association (the "ICMA"), provide guidelines relating to green bonds, social bonds and SLBs, respectively, including disclosure and reporting guidelines, and play a pivotal role in shaping the landscape for these financial instruments.

While adherence to the GBPs, SBPs and SLBPs is voluntary for issuers and their advisors, they provide a robust framework of best practices to incorporate forward-looking ESG outcomes and promote integrity in the development of the SLB market, as well as providing issuers with guidance on the key components involved in SLBs.

The GBPs, SBPs and SLBPs underscore the importance of transparency, accuracy and integrity of information disclosed by issuers to stakeholders through core components and key recommendations.

### 4.5 What is the assurance and verification process for green bonds? To what extent are these processes regulated?

The Cayman Islands Stock Exchange ("CSX"), a leading, globally focused, specialist exchange for various sophisticated products owned by the Cayman Islands Government and subject to regulation by the Cayman Islands Stock Exchange Market, has established the CSX ESG Market, a separate market segment for ESG securities and sustainability-linked bonds.

The CSX ESG Market offers a comprehensive platform for sustainable debt financing, expanding upon the specialist listing rules devised by the CSX for Clean Technology Companies in 2013, where issuers of ESG and sustainable securities can market their securities with a unique profile, clearly marking these as distinct from other standard securities, and publish any material information and reports.

Securities listed on the CSX ESG Market follow the CSX's standard listing process but with the following additional elements requiring: (i) a declaration form with a description of the ESG characteristics of the portfolio; and (ii) an external review by a suitably qualified independent third party who is specialised in assessing the framework of bonds' environmental or social objectives and providing an assessment of the use of proceeds.

While there is no preference as to which framework should be used by the independent third-party reviewer, the CSX accepts external reviews consistent with the ICMA Guidelines ("Guidelines") for External Reviewers.

These Guidelines provide voluntary guidance relating to professional and ethical standards for external reviewers, as well as to the organisation, content and disclosure for their reports, and have been developed with the objective of promoting best practice in the provision of external review services for green,



social, sustainability and sustainability-linked bonds. The Guidelines complement the GBPs, SBPs, Sustainability Bond Guidelines and SLBPs, and reference other existing relevant guidance.

## 5 Trends

### 5.1 What are the material trends related to ESG?

In the Cayman Islands, ESG trends are mirroring global developments, albeit driven by investor appetite rather than a mandatory regulatory regime.

The inflows in ESG products are increasing with the launch of new funds, as well as the repurposing of non-ESG funds. The events of recent years appear to have acted as a catalyst in broadening the types of impact funds, incorporating ESG strategies, that are being pursued. In the fixed income market, green bonds are becoming more popular. Asset managers are increasingly recognising the importance of integrating ESG factors into their portfolio selection, reflecting the rising demand from investors who routinely inquire about ESG considerations. In addition, socially responsible and ESG exchange-traded funds have gained significant traction among both investors and asset managers.



**Tina Meigh** is head of the Cayman Islands Finance team at Maples and Calder, the Maples Group's law firm. She also leads the Fund Finance and Derivatives practice groups and has extensive experience in all aspects of banking and securitisations. Tina represents hedge funds, private equity funds and banks on fund finance and other lending transactions, bank products, deal structures and all types of secured transactions. She advises a large number of international associations and financial institutions on derivatives and issues surrounding related collateral packages in the context of insolvency in the Cayman Islands. She also has significant experience of general corporate and commercial matters and the establishment of offshore investment funds.

**Maples Group**  
PO Box 309, Ugland House  
Grand Cayman, KY1-1104  
Cayman Islands

Tel: +1 345 814 5242  
Email: [Tina.Meigh@maples.com](mailto:Tina.Meigh@maples.com)  
URL: [www.maples.com/en/people/t/tina-meigh](http://www.maples.com/en/people/t/tina-meigh)



**Julian Ashworth** is a partner in the Cayman Islands Funds & Investment Management team at Maples and Calder, the Maples Group's law firm. His practice focuses on private equity, hybrid and hedge fund structures and downstream transactions, including financing and security agreements, secondary transactions and fund restructurings. He advises sponsors and management companies on profit sharing and funding arrangements and Cayman Islands regulatory matters. Julian is also involved in corporate finance matters, including M&A transactions, joint ventures, co-investments and restructuring matters.

**Maples Group**  
PO Box 309, Ugland House  
Grand Cayman, KY1-1104  
Cayman Islands

Tel: +1 345 814 5413  
Email: [Julian.Ashworth@maples.com](mailto:Julian.Ashworth@maples.com)  
URL: [www.maples.com/en/people/j/julian-ashworth](http://www.maples.com/en/people/j/julian-ashworth)



**Kerry Ann Phillips** is a partner in the Cayman Islands Corporate and Latin America teams at Maples and Calder, the Maples Group's law firm. Her practice areas include a wide range of corporate and commercial transactions such as restructurings and reorganisations, structuring and maintenance of investment funds (both private equity and hedge funds), note issues and other structured finance and capital market transactions. She also advises on general regulatory law, and through her Latin American practice advises clients both originating from and investing into the region.

**Maples Group**  
PO Box 309, Ugland House  
Grand Cayman, KY1-1104  
Cayman Islands

Tel: +1 345 814 5578  
Email: [KerryAnn.Phillips@maples.com](mailto:KerryAnn.Phillips@maples.com)  
URL: [www.maples.com/en/people/k/kerry-ann-phillips](http://www.maples.com/en/people/k/kerry-ann-phillips)

The Maples Group, through its leading international law firm, Maples and Calder, advises global financial, institutional, business and private clients on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey and Luxembourg. With offices in key jurisdictions around the world, the Maples Group has specific strengths in areas of corporate commercial, finance, investment funds, litigation and trusts. Maintaining relationships with leading legal counsel, the Group leverages this local expertise to deliver an integrated service offering for global business initiatives.

[www.maples.com](http://www.maples.com)



# International Comparative Legal Guides

The **International Comparative Legal Guide (ICLG)** series brings key cross-border insights to legal practitioners worldwide, covering 58 practice areas.

## **Environmental, Social & Governance Law 2024**

features six expert analysis chapters and 26 Q&A jurisdiction chapters covering key issues, including:

- Principal Sources of ESG Pressure
- Integration of ESG into Strategy, Business Operations and Planning
- Finance
- Trends
- Green and Sustainability-linked Bonds