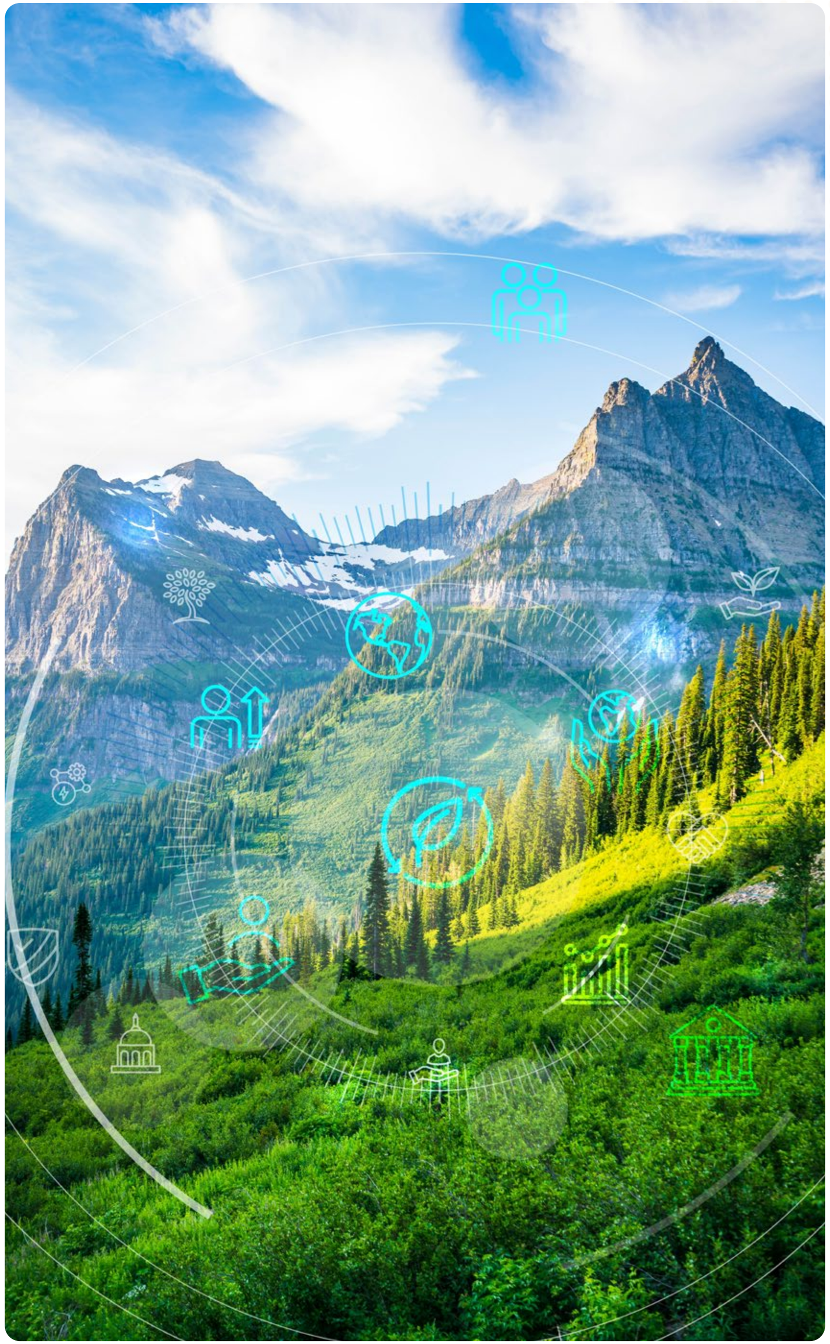

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Market Intelligence

ESG ENGAGEMENT & LITIGATION
2024

Global interview panel lead by Steven Friel of Woodsford

Lexology GTDT Market Intelligence provides a unique perspective on evolving legal and regulatory landscapes.

Led by Woodsford, this *ESG Engagement & Litigation* volume features discussion and analysis of emerging trends and hot topics within key jurisdictions worldwide.

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United Arab Emirates

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Suneer Kumar leads the corporate and commercial team at Alsuwaidi & Company. He is active across sectors, including government and quasi-government, real estate, employment, information technology, and oil and gas. He advises national and international organisations, multinational corporations and high-net-worth individuals on licensing, restructuring, M&A, employment, real estate, agency, distributorship and franchise. Suneer has incorporated over 250 different entities in free zones, onshore and offshore for individuals, multinational corporations and juridical persons.

1 Which companies have ESG obligations in your jurisdiction, and to whom do they owe these obligations? What is the source and nature of these obligations?

The United Arab Emirates (UAE) has been progressively emphasising ESG integration in its business domain since our firm's last update in 2021. This pivot is fueled both by regulatory directives and an amplified recognition among stakeholders of the vital role of sustainable and ethical business operations.

Entities in the UAE with ESG responsibilities include:

- listed companies: those trading on stock exchanges such as the Dubai Financial Market (DFM) and the Abu Dhabi Securities Exchange (ADX) frequently face more rigorous ESG disclosure standards;
- banks and financial institutions: aligned with global benchmarks and best practices, numerous financial entities in the UAE have started weaving ESG values into their operational fabric and investment strategies;
- free zone entities: several free zones in the UAE, notably the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM), encompass regulations that occasionally encapsulate ESG metrics; and
- government and state-affiliated bodies: in resonance with the UAE's sustainable development aspirations, outlined in Vision 2021, various government and state-associated entities have taken the ESG mantle, either willingly or as an integral directive.

ESG obligations are directed to investors and shareholders, regulatory and oversight bodies, and the broader society and general populace.

The roots and characteristics of these ESG mandates include:

- regulatory directives: regulatory bodies may stipulate ESG-related disclosure mandates, especially for publicly listed companies;
- self-imposed commitments: a growing number of UAE entities are willingly aligning with global ESG benchmarks, such as the UN Principles for Responsible Investment;
- pressure from stakeholders: the global ESG wave has stakeholders, from investors to employees, urging businesses to commit to sustainable actions;
- global standards and treaties: being active in global conventions, the UAE often adopts ESG standards in sync with international norms;
- nationwide vision and strategies: the UAE's policy blueprints like Vision 2021 and role as host country for the 28th United Nations Climate Change Conference of the Parties of the United Nations Framework Convention on Climate Change 2023 (COP28)

underscore the imperatives of ecological stewardship, responsible business conduct and societal betterment; and
- local directives: regulatory bodies such as the Securities and Commodities Authority (SCA) and ADX proffer guidelines that sometimes address ESG components.

With ESG norms continually evolving, one should be in sync with the latest local regulations and seek insights from UAE-based experts to remain abreast of contemporary ESG commitments.

2 Which regulators and other public bodies in your jurisdiction take an interest in ESG and related collective engagement and litigation? What is the extent of their involvement in ESG issues?

In the dynamic landscape of the UAE, a cohort of regulators and public organisations spearhead ESG endeavours. Their ambit of action ranges from formulating stringent regulations to fortifying adherence and championing exemplary practices in sustainability and governance. A succinct overview of these pivotal ESG torchbearers follows.

Key players in UAE's ESG sphere include:

- the SCA: as the chief sentinel of the UAE's capital markets, the SCA delineates corporate governance contours, incorporating facets of ESG. Its mandate encompasses enforcing disclosure mandates for publicly listed entities, including ESG disclosures;
- the DFM and the ADX: as the twin nerve centres of the UAE's stock trading landscape, both have ardently championed ESG reporting. Their advocacy manifests in the form of frameworks and guidelines that coax listed entities to be transparent about their ESG milestones;
- the Environment Agency - Abu Dhabi (EAD): the environmental vanguard of Abu Dhabi, the EAD is tasked with the mission

"With ESG norms continually evolving, one should be in sync with the latest local regulations and seek insights from UAE-based experts."

of environmental stewardship, biodiversity conservation and propelling sustainable developmental winds across the emirate;
- utility powerhouses (Dubai Electricity and Water Authority and Abu Dhabi Water and Electricity Authority): these form the bedrock of the UAE's green transition, endorsing sustainable energy alternatives and advocating water prudence;
- the Dubai Carbon Centre of Excellence (DCCE): an emblem of Dubai's commitment to sustainability, the DCCE is entrusted with gauging the carbon footprints of diverse Dubai entities;
- financial free zones (DIFC and ADGM): these financial citadels accentuate green financing, sustainable finance and ESG-anchored business paradigms for entities within their folds; and
- UAE Ministry of Climate Change and Environment: the linchpin in the UAE's ecological strategy, this ministry orchestrates initiatives encompassing climate change, preservation and sustainable evolution.

Their spectrum of ESG engagement includes:

- regulatory blueprinting: many cited organisations shoulder the responsibility of crafting, rolling out and enforcing ESG-centric laws and protocols;
- promotion and advocacy: these entities often promote ESG best practices, provide training and organise events or campaigns to raise awareness about sustainability and governance issues;
- oversight and transparency: entities, especially financial, are often nudged to unveil their ESG trajectories, ensuring transparency;
- direct engagement: in certain cases, especially pertaining to environmental concerns, these bodies directly engage with companies or projects to ensure that they adhere to set standards; and
- supporting initiatives: the UAE has numerous sustainability and green initiatives. Many public bodies support, fund or collaborate on these projects.

In summary, while the UAE has made significant progress in integrating ESG principles into its business and regulatory landscape, the concept of collective engagement and ESG-related litigation is still evolving. As ESG gains more traction globally, it is expected that its prominence in the UAE's regulatory and corporate landscape will continue to grow.

3 How do minority shareholders engage with public companies to ensure that they comply with their ESG obligations?

In the UAE, minority shareholders have several avenues to engage with public companies and ensure that they comply with their ESG obligations. The engagement methods largely derive from legal frameworks, regulations and best practices that govern shareholder rights in the country. Here are some of the ways minority shareholders can engage:

- annual general meetings (AGMs): all public joint-stock companies in the UAE are required to hold AGMs where shareholders, regardless of their shareholding size, can raise questions, voice concerns and discuss the company's performance, including on ESG-related matters;
- voting rights: even as minority shareholders, individuals have the right to vote on various resolutions during AGMs. While their vote might carry less weight than that of majority shareholders, collective voting by minority shareholders on ESG-related matters can impact decisions;
- right to propose agenda items: depending on the company's articles of association and the prevailing laws, minority shareholders often have the right to propose items for the agenda of the AGM, provided they meet certain thresholds or criteria;
- access to company information: shareholders have the right to access certain company documents, including annual reports, which can provide insights into the company's ESG initiatives and compliance;
- engaging with the board: shareholders can engage directly with the board of directors, voicing concerns or seeking clarifications related to the company's ESG strategy and performance;
- collaborative action: minority shareholders can collaborate, forming groups or coalitions, to push for specific ESG actions, changes or disclosures from the company. There is strength in numbers, and collective action might amplify their voice;
- using media and public platforms: if companies are not responsive to direct engagement, minority shareholders can use media and other public platforms to draw attention to their concerns, provided they do so responsibly and within the bounds of the law;
- seeking regulatory intervention: in cases where companies are not fulfilling their legal or regulatory ESG obligations,

QUESTIONS

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shareholders can approach relevant regulatory bodies, such as the SCA, for intervention;

- legal recourse: as a last resort, if minority shareholders believe the company's actions (or inactions) are harming their interests or if the company is not complying with its ESG obligations as mandated by law or its own policies, they might consider legal action; and
- proxy advisors and institutional investors: for minority shareholders who are institutional investors or who can influence institutional investors, using the services of proxy advisors can be an effective way to navigate and influence corporate decisions, including those related to ESG.

It's essential for minority shareholders to be well-informed about their rights and the company's ESG commitments. Engaging constructively, understanding the local corporate governance landscape and seeking expert advice can lead to more effective engagements with public companies in the UAE.

4 When significant breakdowns in ESG cause loss to a company's investors, what regulatory, litigation and other mechanisms are available to the investors to hold the company to account?

The UAE has a robust regulatory framework that governs corporate behaviour and offers mechanisms for investors to hold companies accountable, especially when significant ESG breakdowns occur. Here are some regulatory, litigation and other mechanisms available in the UAE:

- the SCA: this is the main regulator for listed companies in the UAE. In case of ESG-related disclosures that may have been misleading or false, investors can lodge complaints with the SCA, which can investigate and take appropriate action;
- civil litigation: investors can pursue civil litigation against a company for breach of contract, misrepresentation or other civil wrongs. The UAE courts would weigh the evidence presented and can award damages;
- criminal proceedings: certain breaches, especially if they involve fraud, misinformation or other deliberate acts that harm investors or the public, may attract criminal penalties in the UAE. The concerned parties can report such breaches to the police or public prosecution;
- engaging with regulators: the UAE has several regulators depending on the sector. For instance, environmental breaches can be reported to the Ministry of Climate Change and Environment or local environmental agencies;
- alternative dispute resolution (ADR): for disputes that might arise between companies and their stakeholders, including investors, the parties might consider ADR mechanisms, such as arbitration or mediation. The UAE has several arbitration centers, like the Dubai International Arbitration Centre or the Abu Dhabi Commercial Conciliation and Arbitration Centre; and

> "Highlighting ESG breakdowns in the media can put pressure on companies to address the issues and can serve as a deterrent against future breaches."

- media and public opinion: although not a formal mechanism, public opinion can be influential in the UAE. Highlighting ESG breakdowns in the media can put pressure on companies to address the issues and can serve as a deterrent against future breaches.

5 When significant breakdowns in ESG cause loss to a company's customers, what regulatory, litigation and other mechanisms are available to the customers to hold the company to account?

The UAE has a robust regulatory framework that governs corporate behaviour and offers mechanisms for customers to hold companies accountable, especially when significant ESG breakdowns occur. Here are some regulatory, litigation and other mechanisms available in the UAE:

- civil litigation: customers can pursue civil litigation against a company for breach of contract, misrepresentation or other civil wrongs. The UAE courts would weigh the evidence presented and can award damages;
- criminal proceedings: certain breaches, especially if they involve fraud, misinformation or other deliberate acts that harm investors or the public, may attract criminal penalties in the UAE. The concerned parties can report such breaches to the police or public prosecution;
- consumer protection laws: the UAE's consumer protection laws safeguard the rights of consumers. If an ESG breakdown leads to issues that harm customers, they can seek redress under these laws;
- engaging with regulators: the UAE has several regulators depending on the sector. For instance, environmental breaches can be reported to the Ministry of Climate Change and Environment or local environmental agencies;
- alternative dispute resolution (ADR): for disputes that might arise between companies and their stakeholders, including customers, the parties might consider ADR mechanisms, such as arbitration or mediation. The UAE has several arbitration centers, like the Dubai International Arbitration Centre or the Abu Dhabi Commercial Conciliation and Arbitration Centre; and
- media and public opinion: although not a formal mechanism, public opinion can be influential in the UAE. Highlighting ESG breakdowns in the media can put pressure on companies to address the issues and can serve as a deterrent against future breaches.

There were no high-profile cases in the UAE specifically involving ESG breakdowns leading to significant loss of customers. However, it's worth noting that the region has been increasingly emphasising transparency, good governance and sustainability, especially in light of global ESG trends.

6 What developments are there likely to be in ESG collective engagement and litigation in your jurisdiction in the next five years?

The UAE first published its Guiding Principles on Sustainable Finance in 2020, which aims to fortify the UAE's sustainability agenda and includes the introduction of UAE's sustainability priorities. Since then, the UAE has actively rolled out key developments regarding sustainable finance regulation in the UAE, and one of such initiatives is the launching of the UAE Sustainable Finance Working Group (SFWG), which consists of 11 representatives from Federal Ministries, financial regulators and UAE exchanges.

The SFWG illuminates in its Second Public Statement, issued in November 2022, that they are continuously focused on scaling up sustainable finance in the country with three interlinked topics. These topics are, namely, strengthening sustainability disclosure, fostering sustainability-focused corporate governance, and designing the UAE's sustainable finance taxonomy according to the government's commitment to facilitating the UAE economic transition and encouraging the adoption of sustainable finance at a national level.

To this end, the SFWG have been actively consulting the evolving standards and international best practices in sustainable finance by meeting up with regulators from other regions and jurisdictions, international organisations, industry-standard-setters and consultants in the said field. The SFWG also confirmed that their approach is influenced by global policy priorities set by the G20 Sustainable Finance Roadmap.

Considering the UAE government's intention to align its regulatory implementations with international standards, and as far as ESG is concerned, the UAE will likely focus on establishing regulatory guidelines for the assessment and management of ESG- and

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climate-related risk exposures in lending and investment activities of financial institutions.

Another area of focus would be the proposal of standardised guidance on ESG- and climate-related reporting and disclosure that aligns with the Task Force on Climate-related Financial Disclosures (TCFD). In fact, development in this direction is already in the pipeline; the ADGM's Financial Services Regulatory Authority and the SFWG launched a public consultation on a new set of draft 'Principles for the effective management of climate-related financial risks' (the Principles) by UAE-domiciled financial sector firms in March 2023 that sought stakeholders' feedback.

The Principles were drawn with references made to the Basel Committee on Banking Supervision's 'Principles for the effective management and supervision of climate-related financial risks' and the Network for Greening the Financial System's 'Guide for Supervisors: Integrating climate-related and environmental risks into prudential supervision'. Both benchmarks are based on the framework released by the TCFD.

Notwithstanding this, the SFWG's Principles differ slightly from the TCFD's framework because they concern the management of climate-related financial risks specifically, whereas the framework touches on climate-related disclosures. Although the Principles are not mandatory standards, the UAE's financial regulators are given a margin of discretion in integrating the Principles within their respective jurisdictions. This is seen as a soft launch before the possible introduction of new legislation at a national level, as well as other regulatory framework to further align the UAE's legal landscape with the government's vision set out in the UAE Sustainable Finance Framework 2021-2031.

HE Dr Maryam Al Suwaidi, the CEO of the SCA, also confirms that the SCA seeks to support the UAE's commitments towards managing climate and environmental risks by making the necessary changes in the finance sector. These include introducing controls that motivate companies to issue green securities and provide investors with investment tools in line with environmental standards, while setting specific compliance standards for companies and requirements for disclosure of followed policies and procedures in the issues of ESG and sustainability.

With that said, the near future should see the full implementation of regulators' regulatory framework, strategies and execution capabilities. Sustainable finance regulation, including ESG compliance, would as a matter of course be the primary focus of collective engagement. Corporations that do not comply with the UAE's ESG regulatory framework, laws and regulations should expect action from the regulators of their respective jurisdictions. On top of compliance, shareholders, investors and customers should expect the rollout of ESG practices and sustainable business activities to be implemented by their respective boards and management teams.

With the increasing reporting requirements and developments in the regulatory sphere of sustainable finance and particularly ESG, it would appear that more ESG-related claims and disputes may arise in the near future. These would most likely be ventilated through arbitrations as they usually involve large corporations (who often opt for arbitration as their dispute resolution method) and thus the public would not be able to observe the process or access any related information. ESG disputes are usually brought by class actions. The UAE courts do not have a mechanism for class or collective actions and for this reason, the body of ESG-related cases that may develop in the UAE's legal landscape would not be the same as those that have occurred internationally. Having said that, it is possible that parties may be more inclined to ventilate their ESG claims through the common law courts, such as the DIFC and the ADGM in the UAE, in the hope that these courts would look to the common law development (such as the UK) on ESG-related issues.

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The Inside Track

How has your work in relation to ESG, collective engagement and litigation developed over the past five years?

ESG litigation is on the rise and can significantly impact a company's reputation and viability. While our firm hasn't handled many ESG violation cases yet, we anticipate a surge in such matters in the coming years. These cases will cover diverse aspects, including corporate values, risk management and relationships with stakeholders.

Historically, ESG litigation mainly focused on climate change and environmental issues, but it's now expanding. Covid-19 highlighted social concerns like workforce health, diversity and supply chain disruptions that cause financial distress. Organisations need robust governance and systems for transparent reporting.

Mergers, acquisitions and restructures now require ESG considerations. Our firm is committed to helping clients navigate this evolving landscape, offering legal expertise and raising awareness for successful ESG implementation. We believe COP28 will be a major turning point.

What was the most noteworthy ESG matter that you have worked on recently and what features were of key interest?

While we have not directly handled such ESG cases recently, our firm is well-prepared to tackle them effectively. We understand the importance of integrating ESG principles into contracts and aligning them with relevant laws and international standards. Our focus is on assisting companies in setting attainable sustainability goals within contracts to proactively manage litigation risks, protect their reputation and secure their finances. We also stress the importance of reviewing contractual relationships with partners and affiliates to mitigate ESG-related liabilities. With a strong track record of advising diverse clients in the UAE, we offer tailored legal strategies aligned with our clients' commercial objectives and commitment to sustainability, making us well-suited to excel in ESG matters.

About Market Intelligence

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Lexology GTDT: Market Intelligence provides a unique perspective on evolving legal and regulatory landscapes in major jurisdictions around the world. Through engaging, easily comparable interviews, the series provides the legal profession's thought leaders with a platform for sharing their views on current market conditions and developments in the law.

Market Intelligence offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most interesting cases and deals.

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