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# ESG: Managing Risk and Identifying Opportunities

MCCANN FITZGERALD





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“Investors, stakeholders and law-  
makers are now more focused  
on ESG matters – risks and  
opportunities – than ever before.”

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Energy

Environmental  
and Planning

Sustainable  
Finance and  
Sustainable  
Reporting

Asset  
Management  
and Funds

Litigation

Employment

Corporate  
Governance

Competition,  
Anti-trust  
and Foreign  
Investment

# Our society now recognises the importance to our future of environmental, social and governance (ESG) considerations.

This importance will only continue to grow as a consequence of a rapidly changing legal and regulatory environment and because investors, stakeholders and law-makers are now more focused on ESG matters – risks and opportunities - than ever before.

But this can represent a challenge. The breadth of issues covered by the “ESG” banner can make it challenging for businesses to understand what they must do to manage these risks and opportunities. COVID-19 has acted as an ESG accelerant and enabled an important link to be drawn between climate change, economic growth and wider sustainability and social objectives.

At McCann FitzGerald our holistic knowledge of ESG matters, coupled with our sector-focused expertise and experience, can help you navigate these challenges. Our understanding of the regulatory, political and policy drivers enables us to bring clarity to the complex outcomes of ESG metrics. We can help your organisation shape its response to those requirements, opportunities and risks, and to be innovative and resilient in doing so.

We can help you to a more sustainable future, as part of Ireland’s transition to a sustainable economy.



**Éamon Ó Cuív**  
*Partner, Finance*



**Valerie Lawlor**  
*Partner, Head of Energy*

## Energy



**- Valerie Lawlor**  
*Partner, Head  
of Energy*

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The energy sector is at the heart of the fight against climate change.

Nowhere is this more evident than in the ‘European Green Deal’, which commits EU members to the ambitious aim of reducing net emissions of greenhouse gases within the EU to zero by 2050, the legislative underpinnings of which are being developed in the year in which COP26 is taking place. The challenge now is how to turn those pledges into credible action. That said, the ‘trilemma’ of delivering security of supply, low carbon and affordable power is all the more acute in an island market.

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### Our Practice includes

- advising government and regulators, on their regulation and policy setting for the sector under EU and Irish law;
- acting for the funders, buyers and sellers of such projects, and traders of their products.
- acting for market participants engaged in the life cycle of project development across all conventional and renewable technologies (onshore/offshore/solar/battery/CHP/biomass/storage/etc);

## Environment and Planning



**- Brendan Slattery**  
*Partner, Head of  
Environmental and Planning*

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### Climate mitigation and adaptation is no easy task.

It is not possible to demonstrate the climate impact or neutrality of a project, without careful attention to the scope of covered emissions, both direct and indirect, to the appropriate breadth of upstream and downstream impact, and to consistency with pathways to 2030 and 2050 targets. It is not possible to demonstrate the resilience of a project to climate change, without careful attention to acute events, like floods and drought, and chronic events, like sea-level rise. We assist our clients to evaluate the impact of their projects on the climate, and the vulnerability of those projects to climate change.

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### Our Practice includes

- detailed review of application documents, including environmental impact assessment report chapters, for projects within the transport, energy, residential and other sectors to recommend improvements that deliver a robust basis for consent;
- supporting clients with innovative and market leading solutions that deliver improvements to existing and proposed infrastructure that benefit all our lives, like offshore wind, green gas, carbon storage, and district heating.
- advising clients on the environmental and planning controls, policies and changes that affect strategic decisions about their business, now and for the future;

## Sustainable Finance and Reporting



- Éamon Ó Cuív  
Partner, Finance

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Finance has a critical role to play in enabling sustainability objectives to be achieved.

The vast cost of transitioning to a sustainable and climate-resilient world economy is beyond the capacity of the public sector alone to meet. Private capital will have to play a key role for sustainability objectives to be achieved. Sustainable finance has emerged as one of the ways of addressing the investment gap, of unlocking private capital and channelling it into green and sustainable investments.

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### Our Practice includes

- advising issuers, dealers/managers, trustees and other financial market participants in the debt capital markets on a range of bonds and structured products having sustainable features such as green bonds, social bonds and sustainability-linked bonds;
- advising borrowers, lenders, arrangers, agents and coordinators on sustainable loan products such as green loans and sustainability-linked loans;
- advising companies on innovative and bespoke financing structures designed to facilitate investment in sustainable activities, such as nature-based solutions;
- advising clients on the emerging Irish and European sustainable finance and reporting regulatory regime including with respect to corporate sustainability reporting and other sustainability disclosures, the evolving prudential and supervisory regime, and on financial services regulatory aspects relevant to the design and marketing of products described as having sustainable credentials.

## Asset Management and Funds



**- Iain Ferguson**  
*Partner, Investment  
Funds*



**- Morgan Dunne**  
*Senior Associate,  
Investment Funds*

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Institutional capital is essential for the world to address the most pressing ESG challenges.

The need for capital is being matched by a shift in investor preference, both institutional and retail, towards investments that consider non-financial impacts as well as financial returns.

Recent EU regulatory developments, such as the introduction of the Sustainable Finance Disclosure Regulation (“**SFDR**”), signal the transition of ESG investment from voluntary initiatives to binding legal obligations. The increased transparency and comparability of investments arising from the standardisation of disclosures and a common understanding of what constitutes a ‘green investment’ introduced by EU regulations will further accelerate the shift towards investments which contribute to EU and global ESG objectives.

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### Our Practice includes

- the establishment and authorisation of funds seeking to be categorised as ‘Article 8 Funds’ and/or ‘Article 9 Funds’ pursuant to SFDR, and/or funds seeking to comply in full with the soon-to-be introduced EU taxonomy for sustainable investments (the “**Taxonomy Regulation**”);
- the bringing together of legal, regulatory, derivatives, stock exchange listing, corporate governance, tax and business advisory expertise to address our clients’ ESG requirements, and
- the provision of advice and assistance to our clients seeking to comply with their extensive ESG disclosure requirements, most of which were initially introduced under SFDR in March 2021, and are soon to be enhanced pursuant to the Taxonomy Regulation.

## Disputes & Litigation



- **Catherine Derrig**  
*Partner, Disputes*

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### The threat of ESG litigation is real.

ESG litigation has focused to date on climate change activism or litigation arising out of environmental events. However, the range of matters that can give rise to ESG litigation is much broader and a diverse variety of actors are feeling the effects; from national governments (with respect to climate policy), to infrastructure projects (on environmental or social grounds), listed companies (accused of misleading corporate disclosures, corporate governance failings, business operations leading to adverse environmental or social impact, and so on). There has been an uptick in ESG-related litigation globally and greater disclosures, both voluntary and mandatory, are giving public bodies, citizens, shareholders and other stakeholders insight into the activities and impacts of companies and their business models. Recognising, preparing for and mitigating ESG risks is an important business imperative in these times and with a view to avoiding ESG-related disputes and litigation.

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### Our Practice includes

- advising public and private sector clients on the implementation of comprehensive and robust response frameworks for ESG related risks;
- representing clients in any disputes or litigation that may arise and developing strategies to address the claims made and minimise potential adverse outcomes. Our focus has a wide lens, with our advice addressing the matter at issue and its wider commercial and reputational implications;
- advising in connection with complex and sensitive internal and regulatory investigations, enforcement actions and disciplinary proceedings related to ESG matters.



## Employment



**- Mary Brassil**  
*Partner, Employment*

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### The workplace environment and sustainable work practices are rapidly changing.

ESG is quickly becoming a priority issue for businesses following a paradigm shift in the traditional employer / employee relationship and in the workplace environment. As new complex areas of employment law emerge, it has become clear that navigating ESG risks and compliance issues is paramount to our clients' ability to compete and grow their businesses in a rapidly evolving legal and regulatory landscape. Our Employment, Pensions and Incentives Group has extensive experience in advising clients on ESG strategies and achieving their corporate ESG commitments, in particular through the implementation of policies relating to diversity and inclusion, health and safety, agile working and dignity at work. More recently, we have advised our clients on the proposed Senior Executive Accountability Regime, on the right to disconnect, the right to request flexible working and on the employment challenges of managing remote workers in the wake of a global pandemic.

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### Our Practice includes

- Advising public and private sector clients on the implementation of their ESG strategies, on drafting ESG policy documentation and on updating current employment policies to ensure compliance with ESG commitments;
- Advising clients on all matters arising out of the employer-employee relationship including issues relating to employment law, pensions and employee benefits;
- Advising and representing clients at all levels of employment dispute resolution procedures and assisting clients in the management of employee relations in a remote working environment.

## Corporate Governance



**- Stephen Fuller**  
*Partner, Corporate*

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The dynamic landscape of evolving ESG issues is forcing organisations to examine how they govern themselves, manage risk and engage with stakeholders.

The global trend towards greater transparency and sustainability is driving a more intense focus on corporate culture and accountability within organisations. With the ever-increasing threat to corporate reputations, it is critical for organisations to maintain the highest standards of governance and risk compliance. There is a growing recognition among boards, in particular, that ESG issues are inextricably linked to a variety of areas for which the board already has oversight, so these issues cannot be viewed in isolation. Instead, ESG issues must be evaluated as one component of what the board considers in overseeing key areas such as strategy, risk, and compliance. As shareholders become more activist, and as ESG issues become integrated into mainstream investing, the pressure to change business models and provide sufficient disclosure will continue to increase. Our Corporate Group comprises governance specialists that combine technical expertise and practical advice to clients on the full spectrum of governance issues.

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### Our Practice includes

- advising clients in relation to all aspects of the development and implementation of an effective ESG strategy, allowing us to work with stakeholders on a range of corporate governance challenges, such as directors' duties, activism and disclosure requirements;
- working with clients on the establishment of robust and practical risk management and compliance programmes as part of their ESG strategy;
- advising boards, directors and shareholders of listed, unlisted private and public sector companies on their obligations and rights under applicable governance regimes (including the UK Corporate Governance Code);
- advising clients on ESG matters arising in the context of M&A transactions.

## Competition, Anti-trust and Foreign Investment



**- Philip Andrews**  
*Partner, Head of EU,  
Competition and Regulatory*



**- Laura Treacy**  
*Partner, EU, Competition  
and Regulatory*

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### Competition law can enable better collaboration on ESG issues.

Until recently, ESG and “competition law” were not commonly used in the same sentence. However, sustainability leaders and businesses focused on addressing ESG issues are ambitious for changes to rules to remove obstacles preventing collaboration on sustainability initiatives. From a desire to co-operate to achieve green objectives, to environmental factors that are driving a deal and sustainability commitments becoming part of a State aid package, an understanding of how competition rules can impact a company’s ESG agenda is crucial.

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### Our Practice includes

- providing practical guidance on how companies can lawfully pursue their green agenda in the here and now;
- delivering clear, commercial advice so that a company’s ESG goals can be pursued with a clear understanding of the level of competition risk;
- advising on the interplay between ESG factors and competition rules including the manner in which co-operation between competitors, merger control issues and State aid can work effectively;
- advising on the role of ESG considerations in merger control.

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“The expectation – set by the European Green Deal – is that 2021 will be a year for action, in terms of enabling the transition to a co-ordinated and integrated energy system”

- **Valerie Lawlor**

*Partner, Head of Energy*

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## Meet our ESG Team

### Energy



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### Disputes & Litigation



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### Environmental



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## ESG: Managing Risk and Identifying Opportunities

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### Ireland's Green Deal meets COP26

12 Oct 2021 | 8.30am - 9.00am



SPEAKER  
**Valerie Lawlor**  
*Partner, Head of Energy*

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### The Impact of ESG on Asset Management and Funds

19 Oct 2021 | 8.30am - 9.00am



SPEAKER  
**Iain Ferguson**  
*Partner, Investment Funds*



SPEAKER  
**Morgan Dunne**  
*Senior Associate, Investment Funds*

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### Sustainable Finance and Sustainable Reporting

13 Oct 2021 | 8.30am - 9.00am



SPEAKER  
**Éamon Ó Cuív**  
*Partner, Finance*

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### ESG Risk Management and Disputes – What You Need to Know

20 Oct 2021 | 8.30am - 9.00am



SPEAKER  
**Catherine Derrig**  
*Partner, Disputes*

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### Climate Mitigation and Adaptation

14 Oct 2021 | 8.30am - 9.00am



SPEAKER  
**Brendan Slattery**  
*Partner, Head of Environmental and Planning*

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### The Growing Importance of S&G in ESG

21 Oct 2021 | 8.30am - 9.00am



SPEAKER  
**Mary Brassil**  
*Partner, Employment*



SPEAKER  
**Stephen Fuller**  
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Such advice should always be taken before acting on any of the matters discussed.