ESG Roadmap: Real Impacts on Real Property and Infrastructure

Environmental, Social & Governance ("ESG") has become an integral part of business for participants in the real estate and infrastructure sectors, and a mandatory investment criterion for many capital sources. This roadmap provides a snapshot of the key drivers of integration of ESG principles in the real estate and infrastructure sectors and highlights paramount issues for stakeholders across the globe.

Drivers of ESG

- ESG-related focus in the real estate and infrastructure industries centers on three key drivers: (i) demand from investors and fund sponsors; (ii) financial risk management; and (iii) an increasingly rigorous regulatory landscape.

- Investors and fund sponsors, especially those with ESG-related commitments, commonly consider a company's ESG policies to ensure that a target business can withstand the effects of climate-related events; attract and retain management, tenants, and customers; ensure responsible human rights practices; mitigate financial risk; and, appropriately set, monitor, and report the company's stated ESG goals and progress. As a result, real estate- and infrastructure-focused companies face pressure to perform ESG-related due diligence as assesses, implement, and govern their ESG policies.

- Jones Day regularly advises key stakeholders in ESG-related due diligence and strategic planning to account for the complex factors that may impact financial and enforcement risks.

- In respect of financial risk management, stakeholders face pressure to perform ESG-risk due diligence and assesses, implement, and govern their ESG policies. Jones Day regularly advises key stakeholders in ESG-related due diligence and strategic planning to account for the complex factors that may impact financial and enforcement risks.

- The future is now when it comes to ESG strategy. Decisions made today will impact companies for decades to come.

Jones Day provides clients with valuable insights using "gap analyses," which help identify the potential scope of the application of these rules (e.g., considering complex areas like the application to joint ventures and minority investments). We also help identify key areas in which changes to internal policies or processes are required, additional corporate disclosures are needed, or required data is lacking.

- Investors and project sponsors need also consider whether regulations from beyond U.S. borders impose ESG-related obligations or restrictions on investment activity. Australia, the European Union, Canada, and Switzerland are among the jurisdictions with far-reaching ESG-related rules. Jones Day advises key stakeholders on ESG-related litigation and disputes. Decisions made today will impact companies for decades to come.

Key Stakeholders

Key stakeholders in the real estate and infrastructure sectors— including users and operators, investors, and fund sponsors—face challenges in navigating pitfalls and leveraging opportunities to align businesses with ESG principles. Jones Day counsels global clients by providing tailored advice in virtually all areas of law that concern real estate and infrastructure, including corporate, M&A, financing, litigation and disputes, regulatory, energy, tax, labor, employment, and more. Our lawyers focus on jurisdictions and disciplines that matter to clients to maximize ESG-related opportunities while piloting ESG-related risk.

CORPORATE, M&A, AND FINANCING

- Owners should consider "responsible divestment," i.e., taking steps when divesting or disposing of assets that are poor or underperforming from an ESG metrics perspective to ensure that future owners will manage the assets consistent with the seller's ESG commitments by, e.g., retrofitting and repurposing those assets. There are an increasingly large number of assets managed or owned by public and private buyers, which help identify the potential scope of the application of these rules.

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FINANCIAL RISK

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REGULATORY SHIFTS

- At least 16 U.S. states require the reduction of greenhouse gas emissions, and more states have emissions reporting and/or inventory requirements. Washington D.C.'s Clean Energy DC Omnibus Act requires commercial and multifamily buildings to improve energy performance by 20% over a five-year compliance period. New York City passed Local Law 07 requiring most buildings over 25,000 square feet to meet energy efficiency and GHG limitations by 2024. Further, the Biden administration requires the federal government to develop or adopt building emissions standards, and a goal for all federal buildings in its portfolio to achieve a 50% emissions reduction by 2032 and to reach net-zero emissions by 2045. California's Climate Accountability Package, the most aggressive state regulation to date, jumpstarts climate reporting requirements as early as 2026, including Scoping 3 emissions. Natural gas connections in new construction also are restricted in some locations.

LITIGATION AND DISPUTES

- Green bonds (i.e., conventional bonds whose proceeds are earmarked for green investments) have become a popular financing tool because they align the interests between capital providers and ESG stakeholders seeking carbon-efficient buildings and energy sources. In addition, green bonds enable businesses to receive funding to develop and/or retrofit real estate and infrastructure projects, and investors are able to meet portfolio ESG mandates.

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MARKET DEMAND

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