25-FOLD RISE IN CLIMATE CHANGE RELATED REGULATION COULD MEAN BUSINESSES ARE FACING RISKS TO VALUE AND REPUTATION, SAYS NEW REPORT

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Firm news

By mid-2019 more than 1,600 laws and policies relating to climate change had been created across 164 jurisdictions - a 25-fold increase since 1997, when the Kyoto Treaty was signed. The result, according to a new report published by Herbert Smith Freehills, is that many companies are sitting on potential climate change-related costs and risks, all of which could negatively impact their value and reputation unless addressed.

This first-of-its-kind report, called '*Climate Change: Succeed in a lower-carbon future*', unearths the political, regulatory and commercial pressures arising from climate change and examines the opportunities for corporates leading the charge into a lower-carbon future.

Herbert Smith Freehills' new report sets out how and why companies will have to be attuned to the risks they could be facing, but also highlights the potential opportunities for businesses that futureproof their organisations through: engaging with governments, regulators and NGOs; practicing strong governance; integrating climate change risks into their wider risk management activities and measuring their impact.

The report explores how companies can thrive through innovation and investing in new asset classes. Those companies that do, can expect to thrive in the impending lower-carbon environment.

The report also highlights how:

- mounting evidence of the damage caused by climate change is pushing the issue up the political agenda, resulting in a significant number of climate change laws being added to the statute books across the world.

- there is a lack of uniformity of climate change laws across the world, meaning global businesses face a challenge navigating regulations and keeping on top of change.

- banks, institutional investors, asset managers, insurers and other capital market players are under pressure, both from shareholders and regulators, to ensure that funds are invested securely, and that finance and insurance flows to those businesses committed to a lower-carbon future.

- companies should be seeking to review and stress test their insurance policies with climate change exposures in mind to see what is available in the insurance market and to ensure that policies are as robust as possible.

- companies should also take care at renewal to consider carefully what information needs to be disclosed to insurers, particularly in relation to the climate impact of their operational activities.

- international arbitration stands to be a significant forum for climate change disputes. This can already be seen in the emergence of lawsuits aimed at influencing the behaviour of energy companies.

- companies have the majority of claims made against them in the US, and elsewhere it is mostly against governments, aimed at sharpening environmental policy. In 2019, for example, out of the 304 non-US climate change litigation cases, 278 were against governments with 26 against corporations and individuals.

The report finds that, as scrutiny increases - driven by regulation and aided by technology - disclosure is becoming critical in order to demonstrate compliance and avoid litigation. The report also provides clients with advice on ways to future-proof their businesses in preparation for a lower-carbon world and to ensure that their risk management practices measure up to the climate change challenge.

Commenting on the launch of the report, Herbert Smith Freehills Partner Silke Goldberg said: "*The risks associated with climate change go way beyond the purely environmental. In this report we consider the political, regulatory and commercial pressures arising from climate change and examine the opportunities for corporates leading the charge into a lower-carbon future.*"

Partner Ben Rubinstein, who also led on the research, added: "*Risks relating to climate change are growing for all businesses, not just those in high-emission producing sectors. But corporates that weigh up the risks, and identify where they can reduce or negate their impact on the climate, will contribute to a thriving and sustainable economy, as well as their own ongoing security, growth and profitability.*"

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