

VIRTUAL ROUND TABLE

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ENVIRONMENT LAW ROUNDTABLE 2016



MEET THE EXPERTS



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He formerly worked in the Environmental Protection Office of the Federal District (Mexico City) and then acted as legislative advisor in the Chamber of Deputies of Mexico's Federal Congress during the 60th legislature.

His professional practice comprises the matters of hazardous wastes, national waters, transference and remediation of polluted sites, environmental assessments, among others.

Mr. Evangelista has participated as invited speaker to the following events: The Annual Meeting of the U.S. American Bar Association Conference entitled, "An Overview of the Mexican Renewable Energies", held in Mexico City on November 9th, 2012; and The conference organized by Dofiscal Thomson Reuters entitled, "New Environmental Obligations for Corporations and government", held in Mexico City on June 28th, 2013.



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Alexandra is a Partner in Makarim & Taira S and has extensive experience in handling litigation and dispute resolution cases including police investigations into allegations of forestry and environmental crimes, civil lawsuits, arbitration and alternative means of resolving disputes, anti-corruption investigations, internal/independent investigations and terminations of employment, and has handled liquidation, bankruptcy and due diligence, general corporate and commercial issues, as well as power projects. She is also a registered sworn translator from English to Indonesia and vice versa.



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Mariana Arrieta is a junior associate in the environmental area of the law firm Basham, Ringe y Correa, S.C. in Mexico City. During the discharge of her duties in the firm, she has participated in voluntary inspections to verify compliance with environmental law, regulations and Mexican Official Standards applicable to industrial facilities of the food, beverage, packaging, and pharmaceutical sectors, among others, as well as in investigation projects such as the Environmental Protection Questionnaire of Coral Ecosystems, supervised by Cyrus R. Vance Center for International Justice.

Since July 2015 and, in addition, to her duties in the environmental area of the firm, she joined Fundación Basham, as coordinator. This organization provides and promotes pro-bono work and its mission is to "be consolidated as promoter of a strong and growing Mexico, with an increasing active participation of the community every day, in which effective and good quality legal advisory services be provided to organizations working in pro of the community, always based on ethical, professional, quality, professionalism, efficiency, commitment, and leadership values."



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Michael Krancer is a partner at Blank Rome LLP. He is an experienced advisor to U.S. and global energy companies with more than 20+ years of industry and policy experience at the highest levels.

Mr. Krancer served as Secretary of the Pennsylvania Department of Environmental Protection under Governor Tom Corbett, overseeing the development of shale natural gas in Pennsylvania. He served on the governor's team to attract new, environmentally-sensitive, economic development to the commonwealth.

As a prominent and popular speaker and writer, Mr. Krancer is widely recognized for his practical thought leadership on a wide range of energy policy issues.

MEET THE EXPERTS



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As Chair of the Environmental Section of Locke Lord LLP, Elizabeth Mack is the leader of one of the largest groups of dedicated environmental practitioners in a major law firm. She has substantial experience in environmental compliance, environmental litigation, and environmental transactional work. Recognized in Chambers USA and named in The Best Lawyers in America, Elizabeth brings her depth of experience to state and federal environmental matters, including such diverse federal issues as the Clean Air Act, the Clean Water Act, CERCLA, Endangered Species Act, RCRA, the Toxic Substances Control Act (TSCA), NEPA, and the Safe Drinking Water Act.



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John J. McAleese III, a partner in the Environment & Energy Practice Group, is the Managing Partner of the Philadelphia office. John concentrates his practice on environmental and energy matters. His

work includes:

- Representing clients in civil and administrative environmental litigation.
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Peter Alpert, a Partner at Ropes & Gray, has practiced environmental law for nearly 25 years. Peter's practice focuses on the remediation of contaminated land advising strategic and financial participants in M&A and financing transactions on understanding and managing environmental risk, the entitlement of complex real estate development projects, and the defense of enforcement actions brought by federal and state environmental authorities. Peter is a member of the board of directors of the National Audubon Society, a non-profit organization dedicated to the conservation of birds and the places they depend on, and to advocacy for action on climate change.



Environment Law Roundtable 2016

This year the Environment Law Roundtable has been dominated by discussions on the implications of the Paris Agreement. On a national level we also discuss the regulatory changes in the United States stemming from water drought issues and polychlorinated biphenyl (PCB's) in building materials. Other highlighted topics include: compliance issues or pitfalls organisation's need to monitor carefully and the incentives of being more sustainable. Featured countries are: United States, Mexico and Indonesia.

1. What does COP21 mean for the future of environmental law?

Evangelista: In accordance to the Paris Agreement, each State party was committed to take and apply the accorded resolutions against climate change, considering its political and economic situation. Consequently, it is very likely that the Mexican Environmental Legal Framework will be amended over the following years, in order to create and apply enough legal instruments that will continue to reduce Mexico's greenhouse gas emissions. The Paris Agreement recognises that the compromises reached until now are not enough to solve the climate change problem.

At this juncture, the parties are committed to propose, every five years, newer and stricter mechanisms to ensure the reduction of their gas emissions. Certainly, this implementation will demand a constant evolution of the public policies and the legal instruments provided for their implementation.

Krancer: The Paris Accord is the biggest act of Presidential imperious-

ness since Woodrow Wilson tried to cram the League of Nations down the throats of the American people—and it deserves the same rebuff. The “agreement” is happy talk empty promises. It's estimated that the “deal” will cost America \$170 billion which is about 0.7% of our GDP. It strands \$2 trillion in investment. It's the single largest unilateral transfer of wealth in human history—about \$100 billion by 2020. It promises America a darker, colder, higher unemployment and poorer future all without American democratic due process or proven effectiveness.

Mack: COP21, more commonly known as the “Paris Agreement,” was hailed as an important step in reducing greenhouse gas emissions with the goal of keeping the rise in global temperature to below 2 degrees Celsius. While the United States has signed the Agreement, the impact on future environmental laws in the United States looks limited. The Agreement allows each participating nation to determine how to cut carbon emissions. Although November will bring certain clarity to the political landscape, assuming Congress remains Republican (even if a Demo-

cratic President is elected), we do not expect that Washington will pass new laws addressing global warming in the near term.

Makarim: Through its Intended Nationally Determined Contribution, the Indonesian Government has made a strong commitment in its stance on the environment to unconditionally reduce 26% of the greenhouses gases emitted by business by 2020. This commitment will influence the future of environmental law, and regulations for certain sectors, inter alia Energy (Including Transport), Industrial Processes and Product Use, Agriculture, Land-Use, Land-Use Changes, and Forestry and Waste, issued to achieve the Government's targets. It is expected that to achieve the 26% reduction in greenhouse gases, stricter regulations will be implemented while allowing businesses to continue as usual.

McAleese: The Paris COP21 talk will result in a new level of regulation of air emissions that will significantly impact power generation and manufacturing in this century. With the Clean Power Plan in the United States, the regulatory

controls of the carbon emission reductions agreed to by many countries as a result of the COP21 talks are already being drafted. These new regulations add to an already robust regulatory environment in the United States, further expanding “environmental law.” The ultimate effect of the COP21 talks may be to significantly reduce environmental law because the regulatory effects resulting from the talks will accelerate the development of renewable energy, thereby eliminating the need for regulatory controls. By way of example, a coal-fired power plant requires substantial environmental regulatory control in contrast to a wind farm, which does not need any substantial environmental regulation. Thus, the replacement of a coal-fired power plant by a wind farm will result in much less need for environmental law.

Alpert: Properly and fully implemented in the United States, COP21 will necessitate political change more than it will require dramatic changes to prescriptive environmental law. In the U.S. a general conceptual framework already exists for the implementation of COP21. As interpreted in 2007 by the

Supreme Court in the *Massachusetts v. EPA* case, the Clean Air Act permits USEPA to regulate carbon emissions if the agency makes a prior finding of “endangerment” to human health. The agency issued its endangerment finding in 2009, and since then has issued regulations aimed at controlling carbon emissions from the largest industrial sources, most importantly the “Clean Power Plan” regulation in October, 2015. Every major regulation has been challenged in court, delaying or derailing these regulatory efforts. Minor technical adjustments to existing law could clarify EPA’s regulatory powers and eliminate these obstacles, but such measures, and therefore achievement of the emission reductions envisioned in COP21, are impossible in the current political environment. If the US comes short of its commitments, other existing laws will come under more strain to accommodate the adaptive measures necessary to protect vulnerable communities and sectors from the consequences of unmitigated climate change.

2. Have there been any other recent regulatory changes or interesting developments?

Arrieta: In the last few years the most relevant regulatory changes are the

following:

The Federal Law for Environmental Liability was published. This law foresees the action to claim environmental liability for causing environmental damage per se (and not in regards to the damages caused to the legal sphere of a specific individual).

During mid-2013, there was a major reform in the energy sector. One of the most important contributions in said reform was the creation of a new government entity specifically created to attend, regulate and verify compliance of all environmental and safety matters and regulations within the hydrocarbon sector.

In 2011 the Federal Code for Civil Proceedings was modified to contemplate the collective actions, and to promote the defence of affected interests and rights of a collectivity in matters of consumer relations of goods or services, public or private and in regards to the environment.

Mack: Water is a key issue for the foreseeable future. Droughts are plaguing the American West. In 2011, Texas experienced one of the worst droughts on record. While that drought is effectively over, the impacts are still being

felt today. We have found that the state regulatory agencies have stepped up enforcement related to water rights, and the prospects of obtaining a new water right are nearly non-existent for most parts of Texas.

Separately, all eyes continue to be on the Northeast related to polychlorinated biphenyl (PCBs) in building materials. Boston-based United States Environmental Protection Agency (EPA) Region 1, which covers Massachusetts, Connecticut, Rhode Island, Maine, New Hampshire and Vermont, continues to lead the nation in its watchdog efforts to ensure that property owners and redevelopers are identifying and managing PCB-impacted caulking, bricks and other materials as part of demolition (including renovation). Given the complexity of the governing federal Toxic Substances Control Act (TSCA) regulations, regulatory compliance for renovations in situations where PCB-containing caulking and other PCB-containing building materials has been identified can get very costly very quickly.

With the finalisation of EPA’s vapour intrusion guidance in June of 2015, many regulators across the country are imposing more conservative standards on development in areas of potential

vapour impacts. These requirements range from more in-depth toxicological studies, to vapour mitigation even in ventilated parking garages. We are fast approaching a time when redevelopment in urban areas will require vapour mitigation regardless of the current potential for vapour.

Makarim: Yes, Government Regulation No. 121 of 2015 on The Utilization of Water Resources was passed at the end of 2015. The regulation is a follow up to a Constitutional Court ruling in 2015 that annulled the previous law No. 7 of 2004 and re-enacted the obsolete law (No. 11 of 1974).

Under the regulation, water resources utilisation must not disturb, waive, or negate the people’s rights over water resources, the preservation of the environment is a human right, and water resource utilisation permits may be issued only to private companies which satisfy and comply with certain strict requirements. The regulation provides the requirements and procedures for issuing water resource utilisation permits and ground water resource utilisation permits to private companies. Another interesting change was the merger of the Ministry of the Environment and the Ministry of Forestry to become the Ministry of the Environ-

ment and Forestry through Presidential Regulation No 7 of 2015 regarding The Organization of State Ministries.

McAleese: Both the United States Senate and the House of Representatives have drafted significant amendments to the Toxic Substances Control Act (TSCA), and those two bills are currently going through reconciliation. In all likelihood, a reconciled bill will be signed into law resulting in a substantial change in TSCA and how manufactured and imported chemicals in the United States are regulated. The amendments will make TSCA more similar to the European Union's REACH directive in that TSCA will now require affirmative advance evaluation of the risks associated with new chemicals manufactured in or imported into the United States.

Alpert: USEPA issued the Clean Power Plan in advance of COP21. This regulation aims at a 32% reduction in overall carbon emissions from fossil-fuel fired electric generating plants by 2030, relative to emissions from these facilities in 2005. This rulemaking is the primary regulatory mechanism for the US to achieve emission reduction targets set in Paris. It was immediately challenged on technical grounds under the Clean Air Act, and its implementation has been stayed until the litigation is re-

solved, which could take several years. In the meantime, the US must rely on extra-legal mechanisms, such as macro-economic factors reducing demand for coal and social responsibility movements, to achieve significant emission reductions.

3. What are the key pieces of environmental legislation and can you outline the main regulatory authorities in your jurisdiction?

Evangelista: The most important pieces of the Mexican Environmental Legal Framework would be the General Law for Ecological Balance and Environmental Protection (aiming to coordinate federal, state and municipal powers to guarantee all citizens their right to a healthy environment), the General Law for the Prevention and Comprehensive Management of Wastes (which regulates the proper management of both hazardous and non-hazardous wastes), the Federal Law for Environmental Liability (which foresees the action to claim environmental liability for damages to the environment) and the National Waters Law (focused on regulating the exploitation and use of national waters to achieve their sustainable comprehensive development).

In this regard, the main regulatory au-

thorities who enforce the aforementioned legislation are the Ministry of the Environment and Natural Resources (SEMARNAT by its acronym in Spanish), the Federal Environmental Protection Agency (PROFEPA), the National Water Commission (CONAGUA) and the Safety, Energy and Environment Agency (ASEA).

Krancer: The Clean Water Act and the Clean Air Act (and their state analogues) are the laws that, in my view, affect more businesses across the economy than any others. In my state, Pennsylvania, the Department of Environmental Protection (of which I was formerly Secretary) enforces both programs via permitting and enforcement programs. There are other regulatory agencies, both state and federal, that have a role as well such as the Pa. Fish & Boat Commission, the PA Game Commission and on the federal level the Army Corps of Engineers.

Makarim: The key legislation governing environmental matters is the Environmental Law No. 32 of 2009 regarding the Management and Protection of the Environment. Some implementing regulations of the law include Government Regulation No. 27 of 2012 on Environmental Impact Assessment and Environmental License and Govern-

ment Regulation No. 101 of 2014 on The Toxic and Hazardous Materials and Waste Management. Implementing regulations issued under the previous regime, Law No 23 of 1997, remain in effect as long as they do not contradict or have not been replaced by new regulations. The Environment and Forestry Ministry is the main Government's authority in the forestry and the environmental sector at central governmental level. Meanwhile, at the provincial and regency/municipality level, the primary environmental authority is the Governor or Regent/Mayor.

McAleese: In the United States, there are four key pieces of environmental legislation: i) the Clean Air Act, which regulates emissions to the air, ii) the Clean Water Act, which regulates the discharge of pollutants to water, iii) the Resource Conservation and Recovery Act, which regulates the generation, storage, transportation, treatment and disposal of hazardous wastes, and iv) the Comprehensive Environmental Response, Compensation and Liability Act (also known as Superfund), which allows for the funded remediation of contaminated sites. On the federal level, the main regulatory authority is the United States Environmental Protection Agency ("EPA"). The EPA has primary authority to implement and

enforce the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act and Superfund, as well as the other federal environmental statutes. Each of the 50 states also has their own environmental protection agencies, and many states have corollary statutes to the four major federal statutes discussed above. The state agencies implement and enforce their own statutes, and, in most circumstances, have the power to implement and enforce the federal statutes within their respective states.

Alpert: The mainstays of environmental law in the US have for many decades been the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Cleanup and Liability Act. These respectively protect air quality, water quality, prevent the contamination of land, and respond to legacy contamination from the pre-regulatory era. The Clean Air act is the only of these statutes equipped to respond to the challenge of climate change. The other laws are relevant in various degrees to strategies for response and adaptation to climate change. The substantive framework for the implementation of these laws is set by the federal EPA. Most responsibility for the implementation, administra-

tion and enforcement of these laws is delegated to environmental protection authorities in the individual states.

4. Are there any compliance issues or potential pitfalls that firms need to be cautious about?

Evangelista: Yes. It is important for firms representing clients interested in developing projects in Mexico to be aware that the environmental framework in force in Mexico is comprised by a complex system of federal and local dispositions (laws, regulations, Mexican Official Standards, executive orders, etc.). As a consequence, the development of activities and projects in Mexico requires diverse permits, approvals, authorisations, licenses, records and periodical reports, both federal and local, concerning environmental matters, which must be obtained and/or filed for prior to the execution of the project (construction works) as well as prior and during the course of the operations that, if not obtained or complied with, may hamper the development of said project and even cause the onset of administrative proceedings concluding in sanctions such as fines or the closure of the project. This is why it is relevant to analyse the characteristics of the project as well as the legislation applicable in the specific

area where the project will be developed prior to starting off with any development action.

Krancer: The number one pitfall that businesses face is the systemic inability to effectively translate and communicate regulatory requirements into business requirements that troops on the ground understand and then to follow up to assure that compliance is actually happening. All too often something gets lost in translation within a company between legal and operations on the ground. And conflicting “turfs” within companies between legal, communications, legislative, and investor relations, operations often create a recipe for failure.

Mack: With regard to Texas’ emphasis on water, we have found that developers who plan to incorporate water features as part of their development (for example, a fountain or pond within a landscaped area) may find that such features require a state water rights permit and that obtaining the permit may be challenging.

Separately, when considering renovation or demolition in the Northeast, property owners and redevelopers should consider whether building materials contain PCBs and if they do,

budget for PCB management and TSCA compliance. Other EPA regions are not as proactive on PCBs in building materials, but even in those regions, where PCBs are known to exist, those regions require the same level of detailed and expensive regulatory compliance. Potential impacts from vapour coming up through the soil column must be considered for any slab on grade occupied space.

Makarim: The Environmental Law requires every business that may have a significant impact on the environment to have an Environmental Impact Assessment (Analisa Mengenai Dampak Lingkungan/AMDAL), or, for those that do not require an AMDAL, an Environmental Management Plan or Environmental Monitoring Plan (Upaya Pengelolaan Lingkungan Hidup/Upaya Pemantauan Lingkungan Hidup), and then to obtain an environmental license. Non-compliance with these requirements may be subject to imprisonment of one to three years and fine between IDR 1 billion to IDR 3 billion, or revocation of the environmental license.

McAleese: In the United States, there are many environmental statutes and regulations on the federal, state and local levels. Violation of those stat-

utes and regulations can result in severe civil penalties and fines, and, in many circumstances, the potential for criminal penalties, including incarceration. Thus, a good knowledge of environmental law is critical for industrial and commercial operators in the United States. Any operator of a business in the United States that could have a potential impact on the environment is subject to environmental regulation and therefore must be aware of the many potential pitfalls that could befall a business from non-compliance.

5. In the face of rapidly increasing concerns regarding climate change, biodiversity loss and ocean acidification, where are policy makers currently focusing their attention towards more effective governance?

Alpert: Primarily at the state level, policy makers are focused on creating economic and regulatory incentives for the development of energy sources that are renewable or less carbon-intensive, such as solar and wind generating facilities and hydrofracking. Many states have established renewable portfolio standards for large regulated utility companies. These measures are easier to pursue because of a generally bipartisan consensus that they make sense for economic reasons regardless

of their environmental benefits. Alignment is also possible around the need for effective adaptation strategies because all sides can agree, for example, that measures should be taken to protect coastal communities from inexorably rising sea levels without having to agree on the root causes of the problem.

6. Are there any incentives for companies to become more sustainable?

Krancer: The best incentives are those that come from market place discipline. Enterprise value risk is at stake every day. Shareholders and Boards of Directors expect environmental compliance and sensitivity and must insist that management does as well. The cost of a slip-up is not only environmental damage and fines but reputational damage and enterprise value loss. The “Street” imposes that discipline because companies that don’t get it right lose market value and that, in turn, puts pressure on the Board and heads roll in management.

Mack: In most instances, companies have found that becoming more sustainable can positively impact the bottom line. Millennials want sustainability. The movement began with the Baby Boomers in the 1980s, when the

federal Resource Conservation and Recovery Act (RCRA) was first passed. At that time, companies began to reduce the amount of hazardous wastes generated in order to reduce the regulatory burdens imposed by that statute. This incentive to reduce is also evident in the move toward alternative sources of energy (such as wind and solar) and efforts to reduce the amount of water consumed in the industrial process.

Makarim: Yes, the Environmental Law provides several incentives such as tax treatment, reduced charges, and performance acknowledgment, but no further implementing regulations have been issued so far. The Environment and Forestry Minister’s Corporate Performance Rating for Environmental Management program (Program Penilaian Peringkat Kinerja Perusahaan dalam Pengelolaan Lingkungan Hidup/“PROPER”) is an example of rewards given for environmental compliance. PROPER evaluates compliance by and performance of a company’s management of environmental pollution/damage and toxic and hazardous waste. Through PROPER, a company can earn a greener reputation as an environmentally friendly company. The components used for evaluation include compliance with its environmental license and management of

water or air pollution, toxic and hazardous waste. Compliance is rated with “blue” (the highest), “red” or “black” (the lowest), while performance with “green” or “gold”. In 2014 – 2015, from more than 2,000 companies assessed, around 1,400 companies were rated “blue” and about 108 companies “green”.

McAleese: There are many incentives for companies to become more sustainable. Becoming more sustainable will necessarily reduce the impact of regulatory programs on a company, thereby decreasing costs of compliance, as well as the risks associated with non-compliance. In addition, becoming more sustainable will decrease waste generation, which will result in a direct reduction to the company’s costs. While capital may be required to reach higher levels of sustainability, those capital costs can be recouped through mitigation of operating costs resulting from the greater sustainability. Finally, companies that increase their sustainability can enjoy greater social acceptance. This greater social acceptance results in higher employee retention as well as greater acceptance in the marketplace, both of which provide benefits to the company as a whole.

Alpert: Yes, but these incentives are more social and economic than legal. Many companies not directly involved in the fossil fuel extraction or electricity generation sectors perceive many benefits from reducing their carbon footprint and otherwise promoting sustainability. There is pressure towards sustainability from shareholders, consumers, and the young people that these companies need to recruit for the future. Developers of commercial real estate are under significant pressure from corporate tenants to “green” their buildings to meet stringent standards set by NGOs or, in the case of some cities, local government. Time will tell whether these “soft” incentives towards sustainability economy will be sufficient to make up for a paucity of legal and regulatory mandates.

7. How can companies effectively manage environmental reputational risk?

Krancer: As mentioned before, the ability to translate legal requirements into business requirements that are executed and tracked is probably the most important way to protect not just the reputation of the company but the enterprise value. Also, having a coordinated plan in place to respond to mis-

cues (big or small) is very important. All the pieces need to be working together; legal, communications, legislative, investor relations etc.

Makarim: One way to lessen the risk is by ensuring compliance with the environmental license’s terms and requirements. Applications for environmental licenses are published so public can provide input on whether an environmental license should be issued to that company or not. This way, the public can check how ‘green’ the company really is. Putting in place a well-managed corporate social responsibility (CSR) program and reaching out to the surrounding local community would also be an alternative to manage the risk and to raise the company’s ‘green’ image.

McAleese: On the one hand, companies can manage environmental reputational risks by having a strong environmental management program directed by the highest level officers in the organisation. Constant analysis of ways to reduce the environmental impact of the company coupled with systematic environmental compliance auditing will minimise the potential for negative environmental impact by the company. In addition, a commitment from the “C Suite” to constant improve-

ment of the sustainability of the company will further reduce the potential for harm to the company’s reputation from environmental issues.

8. What are the key trends or strategies currently being implemented?

Makarim: The Indonesian President recently focused on developing the state economy through a series of economic packages to stimulate and strengthen Indonesian economy by, among others, speeding up issuance of business licenses and other required, including in environment and exploitation of natural resources sectors. Under the second economic package, several forestry licenses were deregulated to encourage companies to invest in this sector. This involved reducing the number of licences required and the time it takes to process license applications. A Government regulation in 2015 eliminated the need for an in-principle license before obtaining a borrow-to-use permit, although, given the importance of environmental licenses, a 2016 regulation aimed to accelerate certain national strategic projects the President highlights the requirement to obtain an environmental license before commencing any activity.

McAleese: Certainly, a key trend is

the reduction of atmospheric carbon production. In the United States, the Environmental Protection Agency’s Clean Power Plan seeks to dramatically reduce atmospheric carbon production by fossil-fuel energy production. Whether the Clean Power Plan results in new emission controls, or, more likely, the retirement of coal-fired power plants, the resultant reduction of atmospheric carbon production will be unprecedented. This effort has been extended beyond the United States by the Paris COP21 talks. Either as a result of these governmental controls, or, more significantly, the economic forces recognising a business opportunity, the development and utilisation of renewable resources such as wind and solar have been exponentially increasing in the last several years. These developments in how energy is generated and utilised will continue their explosive growth for the foreseeable future.

9. What are the key drivers for responsible investment?

Evangelista: In our opinion, there are three main key drivers for carrying out a responsible investment:

The internal policy of the company. In this regard if the company has clear and strict corporate standards for en-

environmental protection and avoid and mitigate environmental damages the projects in which it would invest would be focused and limited to environmentally friendly projects, developed in areas where the least environmental damage is caused and where the most positive social impact can be generated.

Public perception. The consumer opinion is always important both internally for the company and externally for society and potential new consumers. In this sense, if consumers link the company's products with negative views this could affect gravely on the company. Therefore, it is of the essence that when investing in new projects and developments it is done so with the greatest diligence to avoid a bad reputation.

The Legal Framework of the country where the investment will be carried out. For the Legal Framework to foresee a strong skeleton towards the protection of the environment comprising a consolidated, clear and enforceable base of laws, regulations and standards is a warrantee that the projects to be developed in said country are sustainable projects focused on an environmental protection and damage mitigation policy.

10. How does responsible investment add financial value to an organisation?

Arrieta: Whenever a Project derives from a "responsible investment", meaning those ones where the social and environmental variables have been taken into account during the decision making stage; the development is not likely to have problems during the implementation stage, or even if a problem arises, it will not have meaningful relevance. There is also going to be major certainty that the project becomes operational on time, which is fundamental for those developments that become financed from the incomes obtained from their operation phase. This, without a doubt, would be useful for the financial entity and for the companies involved in the funding of the project.

11. Do investors place more emphasis and focus on environmental, social or governance issues? Why?

Evangelista: Certainly, the companies that invest in Mexico are more emphatic on the social and environmental matters than ever, whether or not they are taking into consideration corporate politics or the enforceable legal framework.

Our law firm regularly advises foreign companies that invest in Mexico, and we have noticed that during the due diligence process, the environmental matters are becoming more and more relevant and have a very important consideration on the decision making process.

Furthermore, and as a consequence of the amendments on the energy legal framework, new legal instruments have been created, such as the social impact assessment, instruments that will force companies to assess the social impacts that the energy projects may cause to the affected communities, as well as the measures that will have to be implemented to mitigate and compensate those impacts.

Even when the environmental legal framework already established that companies that require Environmental Impact Authorizations have to, whenever necessary, do public consultations among the communities that may become affected by the project's operation; some recent resolutions from the National Supreme Court of Justice, have established stricter criteria that must be considered during the public consultation stage when indigenous people are involved.

12. To what extent does corporate responsibility vs. legality affect the way environmental and human decisions are made?

Krancer: At the end of the day the only determinative factor for corporate management is to enhance the value of the enterprise. That being said, this involves a tremendous component on non-economic factors. Enterprise value is in the eyes of shareholders (i.e., Joe and Joan Q. Public) and almost all of them in our era have a well-developed ethos of social and environmental responsibility. Thus they expect their Board members to act accordingly and the Board member expect management to act accordingly. As noted before, those so-called non-economic factors actually turn out to be economic/value factors because a company with a clean environmental record is worth more than one with a bad one.

McAleese: From an environmental standpoint, all responsible organisations view legality as the floor of what must be done. In today's enforcement and media climate no substantial corporate management can afford to strive for anything less than full legal compliance. Civil and criminal sanctions can be crippling, and corporate reputational harm can have long-last-

ing effects on the value of a company. Corporations at the forefront, though, recognise the core importance of going above and beyond the legal requirements. Increasing sustainability, while not a legal requirement, is quickly becoming a corporate social requirement. Corporations that lead on sustainability realise that it gives them a competitive advantage in the marketplace and provides economic benefits. For those corporations, fulfilling legal requirements is the bare minimum—achieving better sustainability and less environmental impact on a daily basis is the standard.

Alpert: After profitability, legality may be the chief driver of corporate decisions. Good corporate citizenship cannot be claimed in the absence of legality. Corporations devote most of their outside legal spend to compliance activities, and not to the pursuit of normatively “responsible” activities not compelled by law. When it comes to environmental protection, all corporations face a basic choice between bare compliance and enhanced sustainability. Bare compliance will generally

be adequate to avoid downside reputational risk. Enhanced sustainability will in many cases attract customers, win market share, and lower operating costs over the long term if not initially. The general trend is for the market to demand an enhanced environmental ethos, and for corporations to see and pursue these rewards rather than wait for sustainable practices to be legally mandated.

13. Are there any exciting technological developments on the horizon?

Mack: The need for large amounts of water in the fracking industry has resulted in companies looking for ways to recycle fracking fluids and produced water. These initiatives show promise in not only reducing the amount of fresh water needed, but also reducing the amount of wastewater that needs to be disposed of in disposal wells.

However, these new techniques will not be accepted on an industry-wide basis until states develop regulations that promote recycling and allow for alternative uses for treated wastewa-

ter (such as for supplemental irrigation) without the need for a lengthy permitting process.

Additionally, with the low price of oil and gas, the market-driven financial incentives are not currently in place to continue to develop this technology.

McAleese: I believe that the next significant and exciting technological development will be large-scale energy storage. Solar and wind generation capabilities have rapidly advanced, but the ability to store the power generated by those sources has not kept pace. The viability of those renewable energy sources will dramatically increase if and when we are able to store the generated energy in significant quantities for substantial periods of time. This will make wind and solar much more economical and enable them to be realistic replacements for fossil-fuel generated power. Furthermore, it will broaden the ability for wind and solar to be utilised “off the grid,” giving individual commercial and residential consumers a good option to centrally-generated power.

14. In an ideal world what would you like to see implemented or changed?

Mack: We have reached the point, especially in the air permitting arena, where multiple permits must be obtained from the regulatory authority to address the same polluting source. For example, the same facility can “need” two pre-construction permits for the same permit modification, followed by an operating permit. The permitting process is lengthy, complicated and expensive. The permitting process needs to be reformed. The goal should be one permit per facility, which will satisfy state and federal law.

Similarly, in California, there are multiple regulatory agencies that have jurisdiction over the same redevelopment project. In many instances, they are operating on different timelines and each have desire to ensure that its voice is heard. The multiple layers of regulation lead to significant expense and delay. California should work to streamline its environmental processes related to redevelopment.

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