

March 8, 2022

### Pending and Proposed Deforestation Legislation Will Add New Supply Chain Due Diligence and Reporting Requirements – An Overview of U.K., EU and U.S. Federal and State Initiatives

In 2021, there were significant developments both domestically and internationally to slow down and reverse the impact of deforestation caused by companies, directly through their operations and indirectly via their supply chains. In this Alert, we discuss pending and proposed deforestation legislation across several jurisdictions that will impact a significant number of U.S.-based businesses and their supply chains.

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Transparency and supply chain management requirements under deforestation legislation also will provide impetus to other initiatives seeking to address deforestation. In particular, investor expectations in this area have been increasing and will impact a substantially larger universe of companies. Some of the more significant investor-related developments that will impact public companies and their supply chains over time also are discussed in this Alert.

#### DEFORESTATION IN CONTEXT

The Food and Agriculture Organization of the United Nations defines deforestation as the conversion of forested areas to non-forest, such as arable land, urban use, logged area or wasteland. Deforestation and forest degradation have been linked, in particular, to the production of commodities such as soy, beef, palm oil, wood, cocoa and coffee.

According to the 2020 FAO Global Forest Resources Assessment, since 1990, an estimated 420 million hectares of forest have been lost to deforestation worldwide. While the rate is slowing globally, the FAO notes that around 10 million hectares are still being destroyed on average each year. In addition to the resulting loss of ecosystems and habitats, deforestation releases carbon dioxide stored in forest biomass into the atmosphere. According to some studies, deforestation is responsible for approximately 15% of global carbon emissions. Deforestation is therefore inextricably linked to the debate over climate change and initiatives to address climate change.

Underscoring the global focus on deforestation and its importance in addressing climate change, in November 2021 at COP 26, leaders of more than 140 countries endorsed the Glasgow Leaders’ Declaration on Forests and Land Use. Although the Declaration is not legally binding, among other things, the endorsers reaffirmed their respective commitments to sustainable land use, and to the conservation, protection, sustainable management and restoration of forests and other terrestrial ecosystems, describing sustainable land use transition as essential to meeting the Paris Agreement goals of holding the increase in the global average temperature to well below 2°C and pursuing efforts to limit it to 1.5°C.

In the Declaration, the endorsers committed to working collectively to halt and reverse forest loss and land degradation by 2030, while delivering sustainable development and promoting an inclusive rural transformation. Specifically, the endorsers committed to strengthening shared efforts to:

- Conserve forests and other terrestrial ecosystems and accelerate their restoration;
- Facilitate trade and development policies, internationally and domestically, that promote sustainable development and sustainable commodity production and consumption, that work to countries’ mutual benefit and that do not drive deforestation and land degradation;
- Reduce vulnerability, build resilience and enhance rural livelihoods, including through empowering communities, the development of profitable, sustainable agriculture and recognition of the multiple values of

forests, while recognizing the rights of indigenous peoples as well as local communities, in accordance with relevant national legislation and international instruments, as appropriate;

- Implement and, if necessary, redesign agricultural policies and programs to incentivize sustainable agriculture, promote food security and benefit the environment;
- Reaffirm international financial commitments and significantly increase finance and investment from a wide variety of public and private sources, while also improving its effectiveness and accessibility, to enable sustainable agriculture, sustainable forest management, forest conservation and restoration and support for indigenous peoples and local communities; and
- Facilitate the alignment of financial flows with international goals to reverse forest loss and degradation, while ensuring robust policies and systems are in place to accelerate the transition to an economy that is resilient and advances forest, sustainable land use, biodiversity and climate goals.

To limit deforestation, many countries have already adopted laws to control the conversion or use of forested land. However, in many cases, these laws are not being enforced. Legislation discussed in this Alert seeks to address this issue.

In addition, the NGO community has been critical of the progress voluntarily being made by corporates to address deforestation, advocating for more robust legal requirements. The recently released Forest 500 2022 Annual Report, a project of Global Canopy, noted that (1) one-third (117 out of 350, or 33%) of the corporates reviewed have no deforestation commitments, (2) at most of the corporates with a deforestation commitment, the commitment is limited to selected commodities and (3) none of the corporates assessed had a comprehensive approach to human rights. The Report was even more critical of financial institutions, concluding that they “are doing little to ensure they are not driving deforestation.” According to the Report, this population set provided more than \$5.5 trillion in financing to companies in forest-risk supply chains. The Report further concluded that 93 of the 150 (62%) financial institutions that are most exposed to deforestation do not have a deforestation policy covering their investments and lending to companies in key forest-risk commodity supply chains.

The deforestation legislation discussed in this Alert is also part of the broader trends toward mandatory supply chain transparency and holding companies responsible for addressing adverse human rights impacts in their supply chains. For example, in the last several months, human rights due diligence legislation and/or regulations have been adopted in Germany ([Due Diligence in the Supply Chain Act](#)), Norway ([Transparency Act](#)) and Switzerland ([conflict minerals and child labor ordinance](#)) and in the United States at the federal ([Uyghur Forced Labor Prevention Act](#)) and state ([Garment Worker Protection Act](#)) level, as discussed in our linked Alerts. Even more recently, on February 23, the European Commission proposed its [Corporate Sustainability Due Diligence Directive](#), as discussed in our linked Alert. Deforestation intersects with human rights since, among other things, it implicates the human rights of local communities and indigenous peoples.

## PENDING AND PROPOSED LEGISLATION

### The U.K. Environment Act

The U.K. Environment Act 2021 was adopted on November 9, 2021. Under the U.K. Act, a regulated person may not use a forest risk commodity or a derived product in their U.K. commercial activities unless such person complies with relevant local laws.

The U.K. Act sets a framework for addressing deforestation, but leaves many of the details to further secondary regulations. As further discussed below, a consultation was launched by the Department of Environment, Food & Rural Affairs (Defra) on December 3, 2021 as a step toward the adoption of secondary regulations and the publication of guidance fleshing out the U.K. Act. The consultation closes on March 11, 2022.

## *Covered Commodities*

The list of “*forest risk commodities*” will be specified in secondary regulations by the Secretary of State. Under the U.K. Act, these only may include commodities produced from a plant, animal or other living organism. Commodities also only may be included if the U.K. Secretary of State determines that forest is being or may be converted to agricultural use for the purposes of producing the commodity. A “*forest*” is an area of land of more than 0.5 hectares with a tree canopy cover of at least 10%, excluding trees planted for the purpose of producing timber or other commodities. Land that is wholly or partly submerged in water, whether temporarily or permanently, is included in the measurement. The regulations are not permitted to include timber or timber products that come within the EU Timber Regulation.

The consultation contemplates a phased approach to regulations. Defra is seeking feedback on its proposal to consider seven commodities for initial inclusion: cattle (beef and leather), cocoa, coffee, maize, palm oil, rubber and soy. Defra notes that these seven commodities are responsible for an estimated 65% of the annual tropical deforestation risk associated with U.K. supply chains.

The consultation asks for feedback on three specific phase-in options:

- *Introducing two commodities in the first round of secondary legislation.* Officials estimate this would take 18-24 months to come into effect, including a minimum period of six months for businesses to prepare for regulation. During that time, the U.K. government would continue to work on how other commodities can be introduced in subsequent rounds, which could follow swiftly.
- *Introducing three to four commodities in the first round of secondary legislation.* Officials estimate this would take three to four years to come into effect, including a minimum period of six months for businesses to prepare for regulation. As with the first option, the U.K. government would continue exploring how to introduce other commodities in subsequent rounds.
- *Introducing five to seven commodities in the first round of secondary legislation.* Officials estimate this would take four to five years to come into effect, including a minimum period of six months for businesses to prepare for regulation. The consultation indicates the U.K. government could then start work to assess other forest risk commodities for inclusion in scope, including those that may become key drivers of deforestation in the next five years.

Defra notes that a wide number of commodities have played and continue to play a role in driving deforestation and habitat conversion. The consultation advocates that a phased approach to the regulations will preserve the opportunity to extend the range of commodities captured through secondary legislation, including those commodities that may become key drivers of deforestation in the future.

## *Regulated Persons*

Under the U.K. Act, a “*regulated person*” is a person (other than an individual) who (1) carries on commercial activities in the United Kingdom and (2) meets an annual turnover threshold to be specified in regulations by the Secretary of State, or is a subsidiary of another enterprise meeting these two conditions.

The consultation notes that the U.K. Act provisions are designed to have the greatest impact on addressing illegal deforestation while not placing an undue or disproportionate burden on business. As such, they will focus on larger businesses that have a greater influence on forest risk commodity supply chains, while minimizing the regulatory burden on smaller businesses.

For each of the priority commodities noted above, Defra is seeking input on where to set the turnover threshold for inclusion of U.K.-based businesses. Defra has asked for feedback on three specific thresholds – £50, £100 and £200 million.

In the consultation, Defra also seeks input on two metrics to regulate the U.K. operations of businesses that are based outside of the United Kingdom:

- *Turnover related to U.K. activity:* Businesses based outside the United Kingdom would be in scope if they exceed a threshold related only to their U.K.-based commercial activities, and not according to the scale of their global operations.
- *Global turnover:* Businesses based outside the United Kingdom would be in scope if they exceed a threshold related to their overall global operations, as opposed to the turnover generated from their U.K.-based activities.

### ***Relevant Local Laws***

As noted above, a forest risk commodity or a derived product may only be used by a regulated person in its U.K. commercial activities if the regulated person complies with relevant local laws.

Under the U.K. Act, a “*relevant local law*” means a local law that (1) relates to the ownership of the land on which the source organism was grown, raised or cultivated, (2) relates to the use of that land or (3) otherwise relates to that land and is specified in regulations made by the Secretary of State.

This requirement is included in the U.K. Act because, according to third-party information republished by the U.K. government, at least 69% of global tropical deforestation for commercial agriculture between 2013 and 2019 was conducted in violation of national laws.

### ***Due Diligence***

Under the U.K. Act, a regulated person must establish and implement a due diligence system in relation to the forest risk commodities used. Due diligence systems will, at a minimum, require regulated persons to (1) identify and obtain information about the commodity, (2) assess the risk of non-compliance with relevant local laws and (3) mitigate that risk. The U.K. Act provides that secondary regulations established by the Secretary of State may further address due diligence, including in particular (a) the information that should be obtained, (b) the criteria to be used in assessing risk and (c) the ways in which risk may be mitigated.

The consultation asks for input on whether businesses in scope should be required, through secondary legislation, to eliminate risk or reduce risk to as low as reasonably practicable. The consultation also seeks direction on topics to be addressed in guidance, including (1) requirements to comply with regulations, (2) examples of best practices to support businesses in improving their systems, (3) metrics and indicators to help assess where there are low, medium or high risks of illegal land use and ownership, (4) methods that businesses may use to assess and mitigate risk, (5) available resources to help understand legal frameworks in producer countries, (6) how businesses may use existing certifications and standards to help meet the due diligence requirement and (7) criteria to support the use of existing certification schemes and standards.

### ***Reporting***

For each reporting period, the regulated person will be required to provide the Secretary of State or another designated U.K. authority with an annual report on the actions taken by the reporting person to establish and implement a due diligence system in relation to its forest risk commodities. The reporting period generally will be the 12-month period from April 1 to March 31.

The report must be provided no later than six months after the end of the reporting period to which it relates. Under the U.K. Act, the Secretary of State may address in further regulations (1) the content and form of reports and (2) the manner in which reports are to be provided.

The U.K. Act contemplates at least some portion of the reports will be made public, as specified in secondary regulations. Public availability is intended to support further accountability and inform decision-making, for example, by responsible consumers and financial service providers.

### ***Exemptions from Due Diligence and Reporting***

A regulated person will be exempt from the U.K. Act's due diligence and reporting requirements if two conditions are met: (1) before the start of the relevant reporting period, the person gives a notice to the Secretary of State or other designated regulator that the regulated person is satisfied on reasonable grounds that the amount of the commodity used in its U.K. commercial activities during the period will not exceed the threshold prescribed in secondary regulations, and it provides any other prescribed information that may be required by secondary regulations; and (2) the amount of the commodity used in the person's U.K. commercial activities during the period does not exceed the threshold prescribed in the secondary regulations. The U.K. Act indicates that secondary regulations may, in particular, prescribe thresholds by reference to weight or volume and address how the amount of a forest risk commodity used in a regulated person's U.K. commercial activities is to be determined.

The consultation asks for input on four specific thresholds for each of the enumerated priority commodities – one, 10, 100 and 1,000 tons. The consultation also asks whether the U.K. government should set a single exemption threshold for each regulated forest risk commodity, combining raw commodity use with derived commodity use. In addition, it asks whether businesses should be able to use conversion factors to estimate the volumes of commodities used in the supply chain to understand whether they can be exempt from due diligence requirements.

### ***Enforcement***

The U.K. Act contains a framework for the Secretary of State to specify an enforcement regime through secondary regulations. The consultation notes that enforcement authorities should have three main functions: (1) monitoring compliance; (2) investigating compliance; and (3) imposing sanctions when a breach has been identified.

Under the U.K. Act, enforcement measures specified by the Secretary of State in secondary regulations may include (1) civil sanctions for failing to comply with the requirements of the Act or obstructing or failing to assist an enforcement authority in its investigation and (2) criminal offenses punishable with a fine for failure to comply with any civil sanctions or obstructing or failing to assist an enforcement authority.

In the consultation, Defra seeks feedback on the proposed maximum penalty of £250,000.

### **EU Deforestation Regulation**

On November 17, 2021, the European Commission published a proposed Regulation addressing deforestation. The Regulation aims to (1) minimize the EU's contribution to deforestation and forest degradation worldwide and (2) reduce the EU's contribution to greenhouse gas emissions and global biodiversity loss.

The Commission's proposal is described below. However, under the EU's tripartite legislative process, a final regulation will require agreement among the Council, Commission and Parliament. Therefore, the final Regulation will differ in at least some respects, and may be substantially different, from the Commission's current proposal.

Also factoring into the mix, human rights and environmental civil society organizations have been critical of certain aspects of the Regulation and want to see it strengthened. Notable areas of criticism include (1) failure to address the rights of indigenous peoples and a requirement for operators to obtain their free, prior and informed consent, (2) exclusion of the financial sector, (3) redress for affected communities, (4) the omission of rubber and maize from the list of "relevant commodities" and (5) the exclusion of deforestation in savannahs and peatlands.

### *Covered Commodities and Products*

The commodities that would be covered by the Regulation include cattle, cocoa, coffee, palm oil, soy and wood (referred to as “*relevant commodities*” in the Regulation). The Regulation also would include within its scope products listed on an Annex to the Regulation that contain, have been fed with or have been made using the relevant commodities (referred to as “*relevant products*”).

The Regulation contemplates a potential expansion to include additional ecosystems and commodities. As proposed, no later than two years after the Regulation enters into force, the Commission will be required to carry out a first review focused on evaluating the need and the feasibility of extending the scope of the Regulation to other ecosystems, including land with high carbon stocks and land with a high biodiversity value such as grasslands, peatlands and wetlands, and further commodities. The Commission would also be required to review the product Annex within two years of the effective date of the Regulation, and thereafter at regular intervals, to assess whether it is appropriate to amend or extend the relevant products listed on the Annex.

### *Prohibited Conduct*

The Regulation would address both imports into and exports from the European Union. Under the Regulation, relevant commodities and products would be deemed compliant, and therefore able to be made available on the EU market or exported from the EU market, only if they:

- Are deforestation-free;

Under the Regulation, “*deforestation*” would mean the conversion of forest to agricultural use, whether or not human-induced. A “*forest*” would mean land spanning more than 0.5 hectares with trees higher than five meters and a canopy cover of more than 10%, or trees able to reach those thresholds in situ, excluding agricultural plantations and land that is predominantly under agricultural or urban land use.

To qualify as “*deforestation-free*,” (1) the relevant commodities and products, including those used for or contained in relevant products, would be required to be produced on land that was not subject to deforestation after December 31, 2020 and (2) the wood would be required to be harvested from the forest without inducing forest degradation after December 31, 2020

(Note that the proposed Regulation also includes definitions of “agricultural plantations,” “forest degradation” and “produced” that are not described in this Alert.)

- Have been produced in accordance with the relevant legislation of the country of production; and
- Are covered by a due diligence statement.

### *Due Diligence*

Operators would be required to exercise due diligence prior to placing relevant commodities and products on the EU market, or exporting them from the EU market, in order to ensure that they are deforestation-free and have been produced in accordance with the relevant legislation of the country of production. Under the proposed Regulation, “*operators*” would include natural or legal persons who, in the course of a commercial activity, place (first make available) relevant commodities and products on the EU market or export them from the EU market. If a person established outside the European Union places relevant commodities and products on the EU market, the first person established in the European Union who buys or takes possession of the commodities and products would be considered an operator within the meaning of the Regulation.



“Traders” generally would be considered operators for the purposes of the Regulation and subject to the same requirements. However, traders that are small and medium-sized enterprises would have substantially reduced obligations (as discussed below). As proposed, a “*trader*” would be a person in the supply chain (other than the operator) who, in the normal course of a commercial activity, makes relevant commodities and products available on the EU market (i.e., supplies a relevant commodity or product for distribution, consumption or use on the EU market in the course of a commercial activity, whether in return for payment or free of charge).

Due diligence would be required to include (1) the collection of information and documents, (2) risk assessment measures and (3) risk mitigation measures. Each of these elements of the due diligence process is discussed below. Operators would be required to review their due diligence process at least once a year and, if necessary, adapt the system to account for new developments that may influence the exercise of due diligence.

*Due diligence statement.* If, as a result of its due diligence, an operator concludes that the relevant commodities and products are compliant, it would be required to furnish a due diligence statement to the relevant member state competent authorities. The due diligence statement would be required to be submitted and accessible through an online Register to be established. The statement would be required to include confirmations that (1) due diligence according to the provisions of Regulation was carried out and no or only negligible risk was found and (2) the commodity/product is compliant with the requirements of the Regulation.

*Information collection.* Under the Regulation, operators would be required to collect, organize and keep information, documents and data demonstrating that the relevant commodities and products are compliant. In particular, operators would need to maintain:

- A description, including the trade name and type, of relevant commodities and products, as well as, where applicable, the common name of the species and its full scientific name;
- The quantity (expressed in net mass and volume, or number of units) of the relevant commodities and products;
- The country of production;
- The geo-localization coordinates (i.e., latitude and longitude) of all plots of land where the relevant commodities and products were produced and the date or time range of production;
- The name, email and address of any business or person from whom the operator has been supplied with the relevant commodities or products;
- The name, email and address of any business or person to whom the relevant commodities or products have been supplied;
- Adequate and verifiable information that the relevant commodities and products are deforestation-free; and
- Adequate and verifiable information that the production has been conducted in accordance with relevant legislation of the country of production, including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity.

The foregoing information would be required to be maintained for at least five years. Upon request, the operator would be required to make collected information available to the relevant competent national authorities.

Under the Regulation, the Commission would be empowered to supplement the information required to be obtained.

Traders that are SMEs would be required to collect and keep the following information relating to the relevant commodities and products they intend to make available on the EU market: (1) the name, registered trade name or registered trademark, the postal address, the email and, if available, a web address of the operators or the traders who have supplied the relevant commodities and products to them; and (2) the name, registered trade name or registered trademark, the postal address, the email and, if available, a web address of the traders to whom they have supplied the relevant commodities and products. Traders that are SMEs would be required to keep this information for at least five years, provide it to the competent authorities upon request, and inform the competent authorities in the member state in which they made the relevant commodity or product available on the market.

*Risk assessment and mitigation.* Operators also generally would be required to carry out a risk assessment to establish whether there is a risk that the relevant commodities and products intended to be placed on or exported from the European Union are non-compliant with the requirements of the Regulation. If the operator is unable to demonstrate that the risk of non-compliance is negligible, it would not be permitted to place the relevant commodity or product on the EU market or export it from the EU market. The risk assessment criteria would include the following:

- The assignment of risk to the relevant country or its sub-jurisdictions in accordance with a country benchmarking system to be established under the Regulation, as described later in this Alert;
- The presence of forests in the country and area of production of the relevant commodity or product;
- The prevalence of deforestation or forest degradation in the country, region and area of production of the relevant commodity or product;
- The source, reliability, validity and links to other available documentation of the information required to be collected under the Regulation, as previously noted;
- Concerns in relation to the country of production and origin, such as level of corruption, prevalence of document and data falsification, lack of law enforcement, armed conflict or presence of sanctions imposed by the United Nations Security Council or the Council of the European Union;
- The complexity of the relevant supply chain, in particular, difficulties in connecting commodities and/or products to the plot of land where they were produced;
- The risk of mixing with products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring;
- The conclusions of the European Commission expert group meetings published in the Commission's expert group register;
- Substantiated concerns submitted by third parties; and
- Complementary information on compliance with the Regulation, which may include information supplied by certification or other third-party-verified schemes.

Unless the risk assessment enables the operator to ascertain that there is no or negligible risk that the relevant commodities or products are non-compliant, prior to placing the relevant commodities and products on or exporting them from the EU market, the operator would be required to adopt risk mitigation procedures and measures to manage the risk level down to no more than negligible risk. This may include, for example, requiring additional information, data or documents or undertaking independent surveys or audits.



As part of its risk mitigation under the Regulation, an operator would be required to have in place adequate and proportionate policies, controls and procedures to mitigate and effectively manage the risks of non-compliance for the relevant commodities and products identified. Specifically, this would be required to include (1) model risk management practices, reporting, recordkeeping, internal control and compliance management and, for operators that are not SMEs, the appointment of a compliance officer at management level; and (2) for all operators that are not SMEs, an independent audit function to check the foregoing internal policies, controls and procedures.

Under the Regulation, risk assessments would be required to be documented, reviewed at least annually and made available to the competent authorities upon request.

The Commission would be empowered to adopt additional requirements concerning risk assessment criteria and risk mitigation measures to be taken.

*Simplified due diligence; low-risk countries.* An operator would not be required to fulfil the risk assessment and risk mitigation requirements described above if the relevant commodities and products were produced in countries or parts thereof identified as low risk. However, if the operator obtains or is made aware of information that would indicate the relevant commodities and products are not compliant, it would be required to fulfill the due diligence requirements of the Regulation, including the risk assessment and risk mitigation requirements.

The Regulation would establish a three-tier system for assessing geographic risk. The Commission would be authorized to prepare and periodically update a list of countries or subnational jurisdictions that present a low or high risk of producing relevant commodities or products that are not deforestation-free. The risk characterization would be required to consider information provided by the country and would be based on the following assessment criteria:

- The rate of deforestation and forest degradation;
- The rate of expansion of agriculture land for relevant commodities;
- Production trends of relevant commodities and products;
- Whether the nationally determined contribution to the United Nations Framework Convention on Climate Change covers emissions and removals from agriculture, forestry and land use;
- Agreements and other instruments concluded between the country concerned and the European Union that address deforestation or forest degradation and facilitate compliance of relevant commodities and products with the requirements of the Regulation and their effective implementation; and
- Whether the country concerned has national or subnational laws in place, including in accordance with Article 5 of the Paris Agreement, and effective enforcement measures and sufficient sanctions relating to deforestation and forest degradation.

### ***Reporting***

The Regulation would require public reporting by operators that are not SMEs. Operators that are not SMEs would be required to, on an annual basis, publicly report, including on the internet, on their due diligence system, including the steps taken to implement their due diligence obligations under the Regulation.

However, to avoid duplicative reporting, the Regulation would take into account other EU reporting regimes. Reporting under the Regulation would not be required to the extent that other EU legislative instruments already provide for requirements regarding sustainability value chain due diligence. Operators required to report under these other

instruments would be able to fulfil their public reporting obligations under the Regulation by including the required information in their other reports.

### ***Enforcement; Customs Procedures***

*Member state checks.* EU member state competent authorities would be required to carry out checks to establish whether operators and traders are complying with their obligations under the Regulation and whether the relevant commodities and products placed or made available on or exported from the EU market are compliant with the requirements of the Regulation. Each member state would be required to ensure the annual checks carried out by their competent authorities cover at least 5% of the operators placing, making available on or exporting from the EU market each of the relevant commodities on their market as well as 5% of the quantity of each of the relevant commodities placed or made available on or exported from their market.

The checks on operators would be required to include:

- Examination of the due diligence system, including risk assessment and risk mitigation procedures;
- Examination of documentation and records that demonstrate the proper functioning of the due diligence system;
- Examination of documentation and records that demonstrate the compliance with the requirements of the Regulation of a specific product or commodity that the operator has placed, intends to place on or export from the EU market; and
- Examination of due diligence statements.

In addition, where appropriate, the checks would be required to include:

- On-the-ground examination of relevant commodities and products with a view to ascertaining their conformity to the documentation used for exercising due diligence;
- Any technical and scientific means adequate to determine the exact place where the relevant commodity or product was produced, including isotope testing;
- Any technical and scientific means adequate to determine whether the relevant commodity or product are deforestation-free, including Earth observation data such as from Copernicus program and tools; and
- Spot checks, including field audits, including where appropriate in third countries through cooperation with the administrative authorities of those countries.

If the relevant commodities or products were produced in a country or part thereof listed as high risk, or there is a risk of relevant commodities or products produced in high-risk countries or their component parts entering the relevant supply chain, each member state would be required to ensure that the annual checks carried out by its competent authorities cover at least 15% of the operators placing, making available on or exporting from the EU market each of the relevant commodities on their market, as well as 15% of the quantity of each of the relevant commodities placed or made available on or exported from their market from high-risk countries or parts of those countries.

For traders that are SMEs, the checks would include an examination of documentation and records that demonstrate the compliance by the trader with its record collection and recordkeeping requirements described earlier in this Alert and, where appropriate, spot checks, including field audits.

*Remedial action and penalties.* If a member state competent authority determines that an operator or trader has not complied with its obligations under the Regulation or that a relevant commodity or product is not compliant, it would be required to ensure that the operator or trader takes appropriate and proportionate corrective action, including one or more of the following:

- Rectifying the non-compliance;
- Preventing the relevant commodity or product from being placed, made available on or exported from the EU market;
- Withdrawing or recalling the relevant commodity or product immediately; and/or
- Destroying the relevant commodity or product or donating it to charitable or public interest purposes.

Member states also would be required to establish effective, proportionate and dissuasive penalties for violations or infringements. At a minimum, penalties would be required to include:

- Fines proportionate to the environmental damage and the value of the relevant commodities or products concerned, with a maximum fine amount of 4% of the operator's or trader's annual turnover in the relevant EU member states;
- Confiscation of the relevant commodities and products;
- Confiscation of the operator's and/or trader's revenues from a transaction with the relevant commodities and products; and
- Temporary exclusion from public procurement processes.

*Third-party complaints and remedies.* Third parties would be entitled to submit a substantiated concern to a competent authority alleging an operator or trader is failing to comply with the Regulation. The competent authority would be required to assess the concern and take the necessary steps, including checks and hearings of operators and traders, with a view to detecting potential breaches of the Regulation and, if appropriate, interim measures to prevent the placing or making available on and/or export of relevant commodities and products from the EU market.

*Customs procedures.* The proposed Regulation also contains detailed customs-related controls and measures for relevant commodities and products entering or leaving the EU market. That aspect of the Regulation is not described in this Alert.

## **U.S. Fostering Overseas Rule of law and Environmentally Sound Trade Act**

The Fostering Overseas Rule of law and Environmentally Sound Trade Act, or the FOREST Act, was introduced in the Senate on October 6, 2021 by Brian Schatz, a Democrat from Hawaii. An identical bill was introduced in the House two days later by Earl Blumenauer, a Democrat from Oregon.

The FOREST Act would amend the U.S. Tariff Act by adding a new section that would make it unlawful for any person to import a product made wholly or in part of a covered commodity produced from land that undergoes illegal deforestation on or after the date of enactment of the FOREST Act.

“*Deforestation*” would be defined as a loss of natural forest resulting from the whole or partial conversion of natural forest to (1) agricultural use or another non-forest land use or (2) a tree plantation.

A “*natural forest*” would be a natural arboreal ecosystem that (1) has a species composition a significant percentage of which is native species and (2) includes a native tree canopy cover of more than 10% over an area of not less 0.5 hectares or other wooded land with a combined cover of shrubs, bushes and trees of more than 10% over an area of not less than 0.5 hectares.

The term “*illegal deforestation*” would mean deforestation conducted in violation of the law (or any action that has the force and effect of law) of the country in which the deforestation is occurring, including anti-corruption laws, laws relating to land tenure rights and laws relating to the free, prior and informed consent of indigenous peoples and local communities.

The FOREST Act contemplates the adoption of additional regulations that define the term “wholly or in part” in a manner designed to limit the administrative burden on the importer of record while deterring illegal deforestation.

### ***Covered Commodities and Products***

The following commodities would initially come within the scope of the FOREST Act:

- Palm oil;
- Soybeans;
- Cocoa;
- Cattle;
- Rubber; and
- Wood pulp.

Specified products derived from these commodities, according to Harmonized Tariff Schedule headings and subheadings, also would be in scope.

At least annually, the U.S. Trade Representative would be required to review the covered commodities and covered products to assess whether commodities or products should be added or removed to ensure that the covered commodities and products are sufficient to deter illegal deforestation and that no material amount of a commodity produced from illegally deforested land enters the United States. Declarations in respect of additional covered products would be required following the first anniversary of their inclusion.

### ***Import Declaration Requirements***

Beginning on the first anniversary of the enactment of the FOREST Act, in connection with importing a covered product, the importer generally would be required to file a declaration stating that it has exercised reasonable care to assess and mitigate the risks that a covered commodity used to make the covered product was produced from land subject to illegal deforestation on or after the date of the FOREST Act’s enactment.

The term “*produce*” would include growing, harvesting, rearing, collecting, extracting or otherwise producing a commodity, other than refining or manufacturing. Within 90 days after the enactment of the FOREST Act, U.S. Customs and Border Protection would be required to publish guidance on what constitutes reasonable care for purposes of this portion of the FOREST Act.

The Administrator of the Animal and Plant Health Inspection Service, in collaboration with the heads of other Federal agencies, would be required to conduct random audits of importers filing declarations to ensure the importers are retaining supporting documentation demonstrating that reasonable care was exercised.

*Countries covered by an action plan.* Within 180 days of the enactment of the FOREST Act, the Trade Representative would be required to identify foreign countries without adequate and effective protection against illegal deforestation caused by the production of commodities likely to enter the United States. Considerations for identifying these countries are laid out in the FOREST Act. The Trade Representative would be required to reassess the list of countries at least every two years. Within three years after the enactment of the FOREST Act, the Trade Representative would be required to finalize an action plan for each listed country, identifying the specific at-risk covered commodities.

The declaration, and related diligence, for covered products that contain a covered commodity produced in a listed country covered by an action plan would be more extensive. Beginning on the first anniversary of the finalization of the action plan, importation of these products would only be permitted if the importer files a declaration that includes sufficient information to show the following:

- The supply chain and the point of origin of the covered commodity and the steps taken to assess and mitigate the risks that the point of origin was subject to illegal deforestation on or after the enactment of the FOREST Act; or  
 The “*supply chain of a covered commodity*” would consist of the end-to-end process for getting commodities or products to the United States, beginning at the point of origin and including all points until entry into the United States, including refiners, manufacturers, suppliers, distributors or vendors.  
 The “*point of origin of a covered commodity*” would be the geographical location, identified by the smallest administrative unit of land possible (such as a concession, farm, ranch, property or other type of public or private land allocation), where the covered commodity was produced. For livestock, the point of origin would include all geographic locations where that animal existed from birth to slaughter.
- If mixing or points of aggregation exist within the supply chain, all possible points of origin that could have contributed to the supply chain of the covered commodity and steps taken to assess and mitigate the risks that any possible points of origin were subject to illegal deforestation on or after the enactment of the FOREST Act.

Within 90 days after the enactment of the FOREST Act, CBP also would be required to publish guidance on what constitutes sufficient information for purposes of this portion of the FOREST Act.

CBP also may issue guidance about the potential role of third-party certifications assisting importers with meeting the requirements of the FOREST Act.

No later than the first anniversary of the enactment of the FOREST Act, CBP would be required to develop a process to make information filed with a declaration, as required by this portion of the Act, publicly available (excluding information considered to be confidential business information).

### ***Third-party Reporting Mechanism***

Within 180 days of the enactment of the FOREST Act, CBP would be required to establish a process for receiving information from other persons that a covered commodity is potentially being imported in violation of the Act.

### ***Additional Regulations***

As noted above, additional regulations under the Forest Act are contemplated. The Forest Act would require CBP and the Trade Representative to publish final regulations no later than the first anniversary of the enactment of the Act.

## ***Preferential Treatment in U.S. Government Procurement***

The FOREST ACT would provide preferential treatment to contractors that have a policy to address deforestation and are taking other related steps.

In comparing proposals for the purpose of awarding a contract involving any product made wholly or in part of a covered commodity, the relevant agency would be required to reduce the bid price by 10% if the contractor demonstrates to the satisfaction of the head of the agency that (1) it has a policy in place to address deforestation, as described below, and (2) the policy and data on monitoring and enforcement of the policy are publicly available and updated at least annually.

At a minimum, the policy would be required to include the following:

- Measures to identify the point of origin of forest-risk commodities and ensure compliance with the policy when supply chain risks are present;
- Data detailing the complete list of direct and indirect suppliers and supply chain traceability information, including refineries, processing plants, farms and plantations, and their respective owners, parent entities and farmers, maps and geolocations, for each forest-risk commodity found in products that may be furnished to the U.S. federal government;
- Measures taken to ensure that each applicable commodity does not contribute to deforestation;
- Measures taken to ensure the process of obtaining the free, prior and informed consent of indigenous peoples and local communities directly affected by the production of the covered commodities;
- Measures taken to protect biodiversity and prevent the poaching of wildlife and trade in bushmeat in all operations and areas adjacent to the production of the covered commodities; and
- Measures taken to ensure compliance with the laws of countries where forest-risk commodities in the supply chain of the contractor are produced.

## **New York Deforestation-Free Procurement Act**

On March 23, 2021, New York State Senator Liz Krueger and Assembly Member Kenneth Zebrowski introduced the New York Deforestation-Free Procurement Act. The stated purpose of the New York Act is to ensure that companies contracting with the state are not contributing to tropical or boreal intact forest degradation or deforestation, directly or through their supply chains. The Bill currently is in committee in the New York State Senate and Assembly.

The New York Act is narrower than the legislation described earlier in this Alert in that it only would apply to goods sold to the State of New York, i.e., that are part of the public procurement supply chain. If adopted, the New York Act would require state contractors and subcontractors selling products to New York State comprised wholly or in part of a forest-risk commodity to certify that the commodity was not extracted from, grown, derived, harvested, reared or produced on land where tropical or boreal intact forest degradation or deforestation occurred on or after January 1, 2022.

- For purposes of the proposed New York Act, a “***forest-risk commodity***” is any commodity, excluding tropical hardwood (these are listed out in more detail in the proposed New York Act), whether in raw or processed form, that is commonly extracted from or grown, derived, harvested, reared or produced on land where tropical or boreal intact forest degradation or deforestation occurred.

Forest-risk commodities would include palm oil, soy, beef, coffee, wood pulp, paper, logs, lumber and any additional commodities defined by the New York Commissioner of the Office of General Services.



- “**Tropical or boreal intact forest degradation or deforestation**” would be defined as direct human-induced conversion of tropical or boreal forest to agriculture, a tree plantation or other non-forest land use, or severe and sustained degradation of a tropical forest or a boreal forest resulting in significant intact forest loss and/or a profound change in species composition, structure or ecological function of that forest.
- A “**tropical forest**” would be defined as a natural ecosystem within the tropical regions, approximately bounded geographically by the tropics of Cancer and Capricorn, but possibly affected by other factors such as prevailing winds, containing native species composition, structure and ecological function with a tree canopy cover of more than 10% over an area of at least 0.5 hectares.

Tropical forests would include (1) human-managed tropical forests or partially degraded tropical forests that are regenerating and (2) forests identified by multi-objective conservation-based assessment methodologies, such as High Conservation Value areas as defined by the HCV Resource Network or High Carbon Stock forests as defined by the High Carbon Stock Approach, or by another methodology with equivalent or higher standards that includes primary forests and peatlands of any depth. Tropical forests would not include tree plantations of any type.

- A “**boreal forest**” would be a forest growing in high-latitude environments where freezing temperatures occur for six to eight months and in which trees are capable of reaching a minimum height of five meters and a canopy cover of 10%.

As proposed, the New York Act would apply to contracts entered into, extended or renewed on or after January 1, 2024.

### ***Contractor Certification Requirements***

As earlier noted, if a state contract includes the procurement of a product comprised, wholly or in part, of a forest-risk commodity, the New York Act would require the contractor to certify that the furnished commodity was not extracted from, grown, derived, harvested, reared or produced on land where tropical or boreal intact forest degradation or deforestation occurred on or after January 1, 2022. The OGS Commissioner would likely determine what form this certification would take.

In addition, large contractors would be required to certify that they have adopted a “no deforestation, no peat, no exploitation” (NDPE) policy. For purposes of the New York Act, a large contractor would be a contractor whose annual revenue, or that of its parent company, is equal to or greater than \$1 billion. A NDPE policy would need to address, at a minimum:

- Due diligence measures the contractor takes to identify the point of origin of forest risk commodities and ensure compliance with the policy where supply chain risks are present;
- Data detailing the complete list of direct and indirect suppliers and supply chain traceability information, including refineries, processing plants, farms and plantations, and their respective owners, parent companies and farmers, maps and geo-locations, for each forest-risk commodity found in products that may be furnished to the state;
- Measures taken to ensure the product does not contribute to tropical or boreal intact forest degradation or deforestation;
- Measures taken to ensure the free, prior and informed consent of directly affected indigenous peoples and local communities;

- Measures taken to protect biodiversity and prevent the poaching of endangered species in all operations and adjacent areas;
- Measures taken to ensure compliance with deforestation-prevention laws in the countries where the forest-risk commodities were produced; and
- Measures to deter violence, threats and harassment against environmental human rights defenders (EHRDs), including respecting internationally recognized human rights standards and educating employees, contractors and partners on the rights of EHRDs to express their views, conduct peaceful protests and criticize practices without intimidation or retaliation.

Smaller contractors could voluntarily adopt an NDPE policy to demonstrate compliance with the New York Act's general certification requirement.

The NDPE policy and all corresponding data would be required to be made public.

### ***Subcontractor-related Requirements***

Under the New York Act, contractors would be required to exercise due diligence in ensuring that their subcontractors comply with the Act's sourcing requirements. Contractors would be required to obtain from each subcontractor a certification that the subcontractor is in compliance with the sourcing requirements of the New York Act.

### ***Enforcement and Penalties***

If a state contractor knew or should have known that a product comprised wholly or in part of a forest-risk commodity was furnished to the state in violation of the New York Act, the contract would be voidable at the option of the state agency or authority to which the commodity was furnished and/or the contractor could be assessed a penalty of \$1,000 or 20% of the value of the furnished product, whichever is greater.

If a violation is committed solely by a subcontractor, the contractor would not be subject to the foregoing sanctions if it complied with its subcontractor-related obligations described above and it had no knowledge of the violation. Sanctions would instead be imposed against the subcontractor.

Contracts with the state would be required to provide that the contractor must cooperate fully in providing reasonable access to its records, documents, agents, employees or premises if reasonably required by authorized officials of the contracting agency or authority, the OGS, the Office of the Attorney General or the Department of Environmental Conservation to determine the contractor's compliance with the sourcing requirements of the New York Act.

### ***Additional Regulation and Guidance***

The New York Act would require the OGS Commissioner to issue regulations for implementation of the Act, including an easily accessible procedure to take public complaints. The OGS Commissioner also would be required to issue, in consultation with the Commissioner of the Department of Environmental Conservation, an informational notice or memorandum on a Deforestation-Free Code of Conduct to be used by contractors for purposes of complying with their requirements under the New York Act. The Code of Conduct would be required to include at a minimum:

- A list of forest-risk commodities subject to the requirements of the New York Act, including, but not limited to, palm oil, soy, beef, coffee, wood pulp, paper, logs and lumber.

The list would be required to be reviewed and updated every three years. When evaluating inclusion of additional commodities on the list, the OGS Commissioner would be required to consider the impact of the commodity as a driver of tropical or boreal intact forest degradation or deforestation, the state of existing supply

chain transparency and traceability systems for the commodity, and the feasibility of including the commodity under the New York Act.

- A list of products derived wholly or in part from forest-risk commodities.
- A list of products furnished to the state or used by state contractors in high-volume purchases that contain or are comprised wholly or in part of forest-risk commodities.
- A set of responsible sourcing guidelines and policies derived from best practices in supply chain transparency to the point of origin.
- Guidance to assist contractors in identifying forest-risk commodities in their supply chain and certifying that the commodity did not contribute to tropical or boreal intact forest degradation or deforestation.
- The full set of requirements for a contractor's NDPE policy.
- The process through which contractors certify to the OGS that they are in compliance with the requirements of the New York Act.

## California Deforestation-Free Procurement Act

Although no longer pending or proposed legislation, the California Act bears mentioning.

The California Act would have required a state contractor and specified subcontractors supplying products comprised wholly or in part of forest-risk commodities – including wood, paper, rubber, palm oil, beef and soy – to certify that the commodities were not grown, derived, harvested, reared or produced on land where tropical deforestation occurred on or after January 1, 2022. The California Act also would have required specified contractors to have a No Deforestation, No Peat, No Exploitation policy and to make the policy and corresponding data publicly available. In addition, the California Act would have required the Department of General Services to issue an informational notice or memorandum on a Deforestation-Free Code of Conduct to be used by contractors.

The bill that would have established the California Deforestation-Free Procurement Act was adopted by both the California Assembly and the Senate. However, on October 5, 2021, the Governor vetoed the bill. In connection with his veto, the Governor indicated that deforestation is a major contributor to the climate crisis and that he shared the bill author's commitment to preventing tropical deforestation. He nevertheless opposed the bill because of the burden it would have placed on California businesses – and particularly small businesses – looking to participate in state contracts.

In his veto, the Governor indicated that he remained committed to working with the author to advance their shared environmental goals and would consider future legislation that better targets supply chains that directly impact tropical deforestation.

## INVESTOR FOCUS ON DEFORESTATION IS INCREASING – FIVE DEVELOPMENTS TO WATCH

Transparency and supply chain management requirements under deforestation legislation also will provide impetus to other initiatives seeking to address deforestation. In particular, increasing investor expectations in this area will impact a substantially larger universe of companies.

Some of the more significant investor-related developments that will impact publicly traded companies and their supply chains over time are discussed below. As noted, these developments are in the early stages.

Other drivers that are influencing corporate behavior in this subject area include, among others, shifting corporate values, reputational considerations, commercial customer and consumer expectations and litigation risk. These other drivers are not discussed in this Alert.

### **The Publication of the Taskforce on Nature-related Financial Disclosures Framework**

Formally launched in June 2021, the Taskforce on Nature-related Financial Disclosures is focused on developing and delivering an integrated risk management and disclosure framework for organizations to report and act on evolving nature-related risks. The nature-focused TNFD is analogous to the climate-focused Task Force on Climate-related Financial Disclosures (or TCFD).

Like the TCFD, the TNFD is focused on providing comparable, financially relevant, decision-useful information. As framed by the TNFD, although more than half of the world's economic output is moderately or highly dependent on nature, financial institutions and companies currently do not have the information needed to understand (1) how nature impacts an organization's immediate financial performance or (2) the longer-term financial risks that may arise from how the organization, positively or negatively, impacts nature. By aggregating the best tools, materials and information available, the TNFD aims to allow financial institutions and companies to incorporate nature-related risks and opportunities into their strategic planning, risk management and asset allocation decisions, and to promote worldwide consistency for nature-related reporting.

The TNFD consists of various groups that together make up the TNFD Alliance. This Alliance includes a 34-member Taskforce comprising senior executives from financial institutions, corporates and market service providers, a consultative Forum with over 250 institutional supporters, two Co-Chairs, a Secretariat and a Stewardship Council representing the founders and funders of the TNFD. The TNFD has been endorsed by the G7 Finance Ministers, G20 Sustainable Roadmap and individual leaders, including UN Secretary General António Guterres, French President Emmanuel Macron, U.K. Prime Minister Boris Johnson and UN Special Envoy on Climate Action and Finance Mark Carney.

Pursuant to a work plan developed during the initiative's preparatory phase, the TNFD is currently going through five phases of work from 2021 to 2023: build, test, consult, disseminate and uptake. On October 6, 2021, the TNFD held its first plenary meeting to begin work on developing a risk management and disclosure framework for organizations to report and act on evolving nature-related risks.

### **The Launch of the Nature Action 100 Initiative**

The Nature Action 100 Initiative is a planned biodiversity initiative that seeks to engage governments and companies to reverse nature loss. The initiative hopes to build on the methods and lessons learned from Climate Action 100+, but instead focuses on terrestrial, fresh water and marine biomes, addressing their dependencies and potential impact on biodiversity such as deforestation, overfishing and pollution.

Though not yet launched, the planned initiative is being spearheaded by the World Bank, the World Benchmark Alliance, the Finance for Biodiversity Pledge, Robeco, BNP Paribas Asset Management and a core group of approximately 10 institutional investors.

### **More Shareholder Proposals**

As the investor focus on deforestation increases, shareholder proposals on this topic are likely to increase. Between 2012 and 2021, there were at least 17 deforestation-focused shareholder proposals that came up for a vote in the United States, with two coming to a vote last year. In 2021, both proposals received majority support, compared to one deforestation proposal receiving majority support in 2020.

A proposal calling for a company to issue a report assessing if and how it could increase the scale, pace and rigor of its efforts to eliminate native vegetation conversion in its soy supply chain received in excess of 98% support in 2021.

Another proposal calling on a company to issue a report outlining if and how it could increase the scale, pace and rigor of its efforts to reduce its total contribution to climate change, including emissions from its supply chain, received 76% support. Reflective of the high passage rates, these proposals received significant institutional investor support.

Five deforestation-related proposals were withdrawn in 2021. Among other things, four of these proposals requested reports to shareholders regarding if and how the companies could increase the scale, pace and rigor of their efforts to eliminate deforestation and forest degradation, native vegetation conversion and/or the conversion of native ecosystems in their supply chains. The proposals were withdrawn after the companies agreed to strengthen their supply chain-focused no-deforestation policies or otherwise take action acceptable to the proponents. A fifth proposal at a large financial institution was withdrawn by the proponent after the company agreed to a deforestation commitment that would require No Deforestation, No Peat, No Exploitation policies for its clients that produce or refine palm oil.

In addition, in 2021, more than 100 environmental groups signed on to a letter calling on the shareholders of a publicly traded, fast-moving consumer goods company to oppose a committee chair's reelection to the board due to what the signatories perceived as insufficient progress in minimizing the company's impacts on the boreal forest in Canada and the tropical rainforests of Indonesia and Malaysia. The director was reelected, with well over 90% of the votes cast voting in favor, although the director received substantially more votes against than any other director.

At the time of finalization of this Alert, one deforestation-related proposal has been publicly announced for the 2022 annual meeting season. The proposal asked the company to address risks that mining next to the Okefenokee Swamp would pose to the swamp's biodiversity, as well as the carbon dioxide stored within its peat. The proposal was withdrawn after the company publicly indicated it has no plans to mine next to the refuge and that it would not purchase titanium from a particular Okefenokee-adjacent project in the foreseeable future.

In November 2021, the Securities and Exchange Commission published guidance scaling back the ordinary business, economic relevance and micromanagement exceptions to shareholder proposals. These changes will likely drive E&S proposals – including deforestation proposals – to record levels.

### **Further Broad-based Guidance that Informs Investor Engagement**

Most investor engagement on deforestation, of course, takes a less adversarial approach than filing shareholder proposals, occurring behind the scenes. As investor focus on deforestation continues to increase, we are likely to see a corresponding increase in guidance and position papers to help investors assess and manage deforestation risk. For example, Principles for Responsible Investment has characterized deforestation as a “very material risk for investors” and has been supporting investor engagement on this topic for several years. In mid-2020, Ceres published an Investor Guide to Deforestation and Climate Change to help support investor engagement on deforestation.

### **Additional Commentary from Individual Institutional Investors**

As earlier noted, leading institutional investors are supporting at least some deforestation-related shareholder proposals. These investors also have begun to publish their expectations of issuers.

For example, in its 2022 engagement priorities published in February, BlackRock Investment Stewardship includes natural capital as an engagement priority. BIS indicated that it looks to companies to disclose detailed information on their approach to managing material natural capital-related business risks and opportunities, including how their business models are consistent with the sustainable use and management of natural resources such as air, water, land, minerals and forests. BIS also indicated it will continue to engage with companies to better understand their approach to, and oversight of, the natural capital that underpins their long-term strategy.

In February 2022, BIS also published stand-alone updated commentary on its approach to engagement on natural capital. The commentary discusses BIS's approach to engagement on natural capital and why it considers deforestation risk (along with biodiversity preservation and oceans and freshwater protection) to be a potential driver of long-term value. In the commentary, BIS indicated that, for companies that have material deforestation exposure, it seeks to understand:

- The breakdown of each site where the company is growing or sourcing agricultural commodities as a proportion of its total production/sourcing;
- Whether the company has set and implemented strong deforestation commitments and policies, covering deforestation, conversion and any human rights issues implicated;
- Any targets the company has set to ensure that its products and operations are deforestation free;
- Any existing efforts to halt and reverse past forest loss and land degradation, such as around site reclamation, Greenfields and reforestation;
- Initiatives and targets relating to protecting and regenerating the habitats which support the biodiversity on which companies depend;
- Initiatives, policies, certifications or codes of conduct that support committing to first- and second-tier deforestation and conversion-free supply chains;
- Whether the company monitors its own and its suppliers' commitments towards free prior and informed consent; and
- Systems to trace and label products to assure customers and end consumers of the sustainability of the practices associated with the product.

In addition, BIS has expressed support for the TNFD, noting its view that the forthcoming recommendations of the TNFD will be a valuable resource for companies in their reporting.

Analogous to what has occurred in relation to climate risk, as institutional investors move up the learning curve on understanding and assessing deforestation risk (disclosures under deforestation legislation are likely to play a significant part in this process), expectations around the transparency, oversight and management of deforestation risks will continue to increase and be reflected in stewardship commentary.

## About our Practice

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For further information on the practice, click [here](#).