COLLAS CRILL

Fifty billion trees in the Middle East (and what it has to do with us)

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This week, the eyes of many of us around the world will be trained on Dubai as it hosts COP28.

In September, the UAE Sustainable Finance Working Group put forward for consultation its proposed Principles for Sustainability-Related Disclosures for Reporting Entities. This comes on the heels of the UAE's Guiding Principles on Sustainable Finance, which were launched in 2020. In taking a proactive approach to transparency and disclosure, the UAE regulatory authorities have given a clear signal that they are committed to a more sustainable and diversified economy.

The UAE is by no means alone in the Gulf region when it comes to sustainability commitments. Saudi Arabia launched its Vision 2030 in 2016, with its National Environment Strategy following in 2017 and its Saudi Green Initiative in 2018. The Saudi Green Initiative sets out various goals, the most ambitious of which is to plant 10 billion trees in Saudi Arabia and 50 billion across the Middle East region in the coming decades.

The Bahrain Bourse (Bahrain's stock exchange), and the Qatar Stock Exchange have both issued voluntary ESG reporting guidelines for listed companies, with the Qatar Stock Exchange indicating that a mandatory reporting regime is likely in the future.

Some may be surprised that a region that possesses 48% of the world's oil reserves is now pivoting to a sustainability and renewable energy agenda. But this is also a region that is famous for its ambition and vision, and while it's necessary to keep the lights on during the transition, there is a strong commitment to that transition.

The Gulf faces habitability risks due to extreme heat and droughts, as well as the threat of sea level rises inundating reclaimed land. But it possesses three vital elements required for the move to renewable energy: capital, almost constant sunshine, and large tracts of vacant land.

It is also the birthplace of Islamic finance, a system that promotes fairness, equity and risk-sharing, while avoiding unjust enrichment and harmful investments. ESG enthusiasts will recognise the social justice principles, but there are other parallels. One of the main tenets of Islamic finance is the prohibition of interest, as making money from money is not allowed. In order to generate wealth, parties must engage in legitimate trade and investment, without taking advantage of less fortunate parties:

- While investment in weapons, alcohol, adult entertainment and pork products is not off limits in conventional finance, these industries are increasingly recognised as harmful - for people and planet - and

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many investors are becoming more conscious of where their money is being spent.

- Some Shariah scholars will permit investment in companies that have associations with haram activities, so long as those activities are merely incidental to the company's main purpose or form only a de minimis percentage of the company's overall gross income or value. In the event haram income is received by an Islamic fund, it may be 'purified' by the fund donating an equivalent amount to charity. Compare this with the practice of carbon offsetting, which works on the same principle of balancing a harm with a good.
- Islamic financing structures are approved by a Shariah board, while sustainability coordinators oversee financial products in the ESG space.
- Both industries also have their detractors. Commodity murabaha in particular have faced criticism that they are a synthetic way around the interest prohibition, while greenwashing is a common criticism of financial products that are labelled as 'green' or 'sustainable' but do not live up to their promises.

So how does this all relate to the work Collas Crill does in the Caribbean and the Channel Islands?

Caribbean

From a Cayman Islands perspective, we often work with Middle Eastern investors and managers, who are attracted to our jurisdiction because it is the world's leading fund domicile after the United States and a major capital markets jurisdiction. While the ADGM and the DIFC were set up to offer a regional alternative to the more established jurisdictions, we often work side-by-side with these financial centres (for example, an ADGM entity may invest into a Cayman Islands partnership structure). Cayman still represents the gold standard in access to international capital and US managers are also most likely to domicile funds in the Cayman Islands to attract international investors.

Further, the Cayman Islands have an established and reliable stock exchange, which currently has listed more than 7,390 securities (including Shariah compliant funds and sukuk) and maintains a market capitalisation of more than US$804 billion.

International investors favour jurisdictions like the Cayman Islands and the British Virgin Islands because their legal systems are based on English common law, but are more adaptable and can respond quickly to developments in the financial sector. The Cayman Islands and BVI courts are highly experienced in the resolution of corporate matters and, because both are United Kingdom Overseas Territories, the ultimate recourse is to the Privy Council of the House of Lords.

Other advantages of the Cayman Islands and BVI include political neutrality for investors, ease, speed and low cost of incorporation, and light but effective regulation. Both jurisdictions are stable and isolated microstates that are truly offshore, and their reliance on global financial services business means that any material adverse change in their corporate laws would be unthinkable.

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The Cayman Islands Monetary Authority has so far taken an observer approach when it comes to sustainable finance, meaning that there is currently no added layer of ESG regulation (and therefore no interoperability issues) to consider when structuring investments here. The Cayman Government has expressed its ambition for the Cayman Islands to become a domicile of choice for sustainable financial products, so as a consensus forms in global sustainability standards, the Cayman Islands will continue to adapt.

Channel Islands

7500 miles away from the Cayman Islands, the Guernsey Financial Services Commission has shown a keen focus on sustainability issues, having joined The Network for Greening the Financial System in September 2019. Beyond liaising with the broader finance community, the GFSC has established two new fund products; the Guernsey Green Fund and the Natural Capital Fund, both of which are intended to provide assurance for investors that funds marketed with sustainability credentials are not greenwashed and deliver on their promises.

Industry in Guernsey comes together to work on these issues through Sustainable Finance Guernsey which, since 2020, has held an annual sustainable finance week, leading to a range of further developments in this field. For example, the International Stock Exchange, based in the Channel Islands, launched a sustainable listings segment in July 2021 to provide support for green-focused listings. Meanwhile Guernsey-regulated fiduciaries are required by their Code of Corporate Governance to consider climate-related risk and work continues to develop the concept of 21st century fiduciary duties locally.

A short hop (or ferry ride) further, the Jersey Financial Services Commission has stated that it is committed to supporting the global move towards more sustainable finance that considers environment, social and governance factors. In 2020, Jersey launched a new strategy to support the development of sustainable finance across all sectors of its financial services offering. The strategy aims to (among other things) deepen industry expertise and create a world-class sustainable finance ecosystem in Jersey. Jersey's lending institutions are embracing sustainable finance by offering their customers a wider range of sustainable products and fund managers in Jersey are following suit by placing greater emphasis on sustainable investing criteria.

In 2021, Jersey became a member of the Network for Greening the Financial System. It also introduced a new disclosure framework, to mitigate the risk of greenwashing and ensure sustainability credentials are trustworthy and built on integrity. Jersey also aims to use its growing fintech sector to support the development and implementation of sustainable finance principles.

How can we help?

Sustainability is on the radar of every jurisdiction in which Collas Crill operates. As our clients navigate the international maze of developing standards, acronyms and terminology, our regulatory teams are always happy to assist and advise on structuring.

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While estimates vary on the price of transitioning to net-zero, the sheer scale of the challenge requires a global effort, in which international financial centres must play a key role.

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