

20 August 2019

Sustainable Lending: Finance of the Future

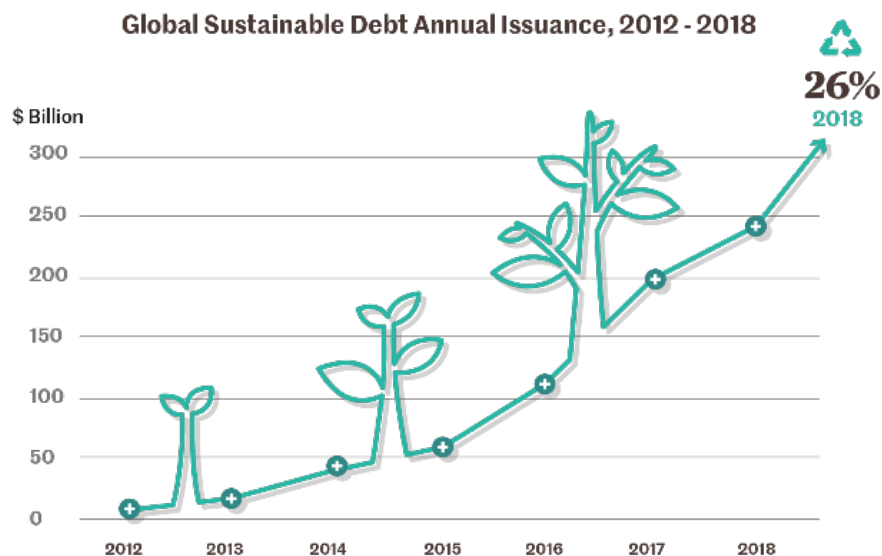


The sustainable financing market has grown substantially in recent years as businesses respond to concerns about climate change and, in many cases, pivot toward a more sustainable development path. Governments and regulators around the world are increasingly focused on issues relating to sustainability. The Paris Agreement¹ signed in 2016 represents the first-ever worldwide accord on a pragmatic path to tackle climate change. In the wake of these developments, climate financing has emerged as one of the leading opportunities for the increased involvement of credit market participants.



Source: OECD, 2017

The success and resilience of the green bond market over the last decade has encouraged borrowers and lenders to tap the sustainable lending market as a source of financing. This has coincided with the rising environmental consciousness among investors, shareholders and regulators, all of whom are placing increasing pressure on borrowers and lenders to pay attention to environmental and sustainability risk factors in their businesses and to demonstrate their serious commitment to improve the status quo. As of February 2019, more than 20 financial institutions have announced divestment and exclusion policies in relation to financing new coal plants and mines.



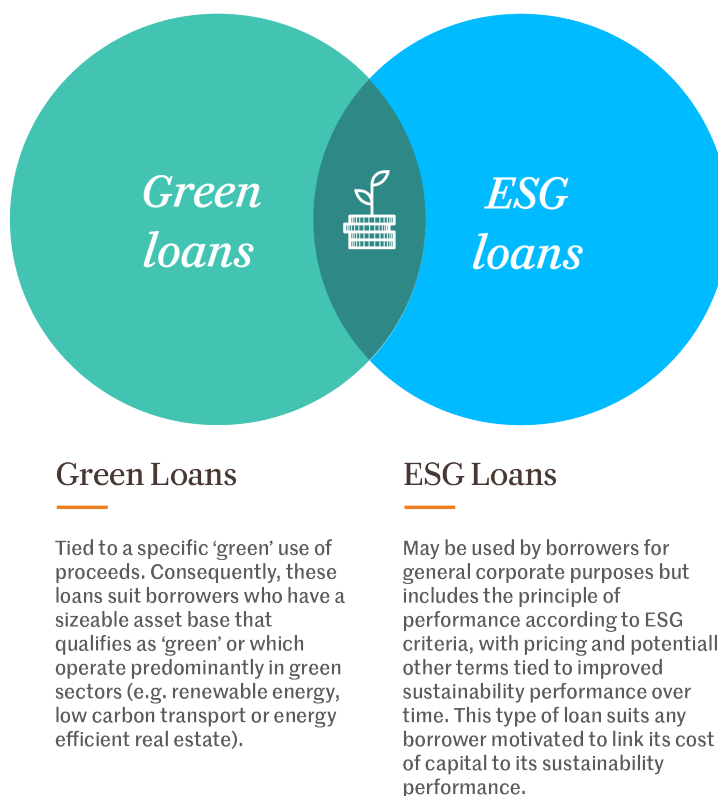
Source: BloombergNEF, Bloomberg LP

This article discusses the two most recent milestone developments in the sustainable loan market, provides insight into key features of sustainable loan documentation and highlights some of the key challenges that face this market. Annexed to this article is a factsheet which sets out some of the key sustainable finance developments across Asia, Europe and North America in the last two years.

¹ The Paris Agreement is an agreement within the United Nations Framework Convention on Climate Change (UNFCCC), dealing with greenhouse-gas-emissions mitigation, adaptation, and finance, effective in 2016. The central aim of the Paris Agreement is to strengthen the global response to the threat of climate change by keeping a global temperature rise this century below 2 degrees Celsius above pre-industrial levels. <http://www.worldbank.org/en/results/2016/10/07/bangladesh-ensuring-a-reliable-and-quality-energy-supply>

‘Green loans’ and ‘ESG loans’ – are they the same?

Following on the heels of the green bond market, the sustainable products currently available in the loan markets are mainly green loans and environmental, social and governance-linked (or sustainability-linked) (“**ESG**”) loans. While the two products are fundamentally different, the terminologies are often conflated.



The Green Loan Principles and Proposed Implementation

In March 2018, the Loan Market Association (“**LMA**”) together with the Asia-Pacific Loan Market Association (“**APLMA**”) and the Loan Syndications and Trading Association (“**LSTA**”) launched the “Green Loan Principles” with the support of the International Capital Market Association. These principles aim to create a high-level framework of market standards and guidelines to promote greater consistency across the wholesale green loan market. The four key components of the framework focus on: (i) the use of proceeds, (ii) the process for project evaluation and selection, (iii) the management of proceeds and (iv) ongoing reporting.

Use of proceeds

The ‘Purpose’ clause in the loan agreement must set out clearly how the proposed loan proceeds are to be utilised for green activities and projects. While the scope of this requirement is an evolving construct, the Green Loan Principles refer to a number of common examples. These include renewable energy (electricity generation from non-fossil fuel sources and investment in renewable energy technologies), green buildings (development of green buildings with accredited green standards) and energy efficiency (investment in technology, products or systems demonstrating a clear, measurable improvement in energy efficiency). To mitigate the risk of ‘green-washing’, various international banks and financial institutions have or are in the process of developing green finance frameworks that set out clear criteria for the ‘green’ transactions they wish to support.²

² Barclays, Credit Agricole CB, HSBC, ING and Macquarie are some examples of the financial institutions which have published such frameworks.

In connection with a borrower's commitment to use the loan proceeds for a green activity or project, the borrower may be required to deliver an action plan (in form and substance satisfactory to the finance parties) that sets out the precise application of loan proceeds. Such an action plan may form a part of (i) the information package required to be delivered as a condition precedent to signing or utilisation and (ii) the ongoing suite of compliance undertakings under the loan agreement.

Some lenders may also seek the inclusion of a mandatory prepayment requirement if the loan proceeds are applied in a manner which is inconsistent with the approved purpose, although this is often resisted by borrowers.

Process for evaluation and selection

The lenders or the sustainability consultant (usually known as a "second party opinion provider") advising the lenders will typically analyse (i) the borrower's environmental sustainability objectives and (ii) whether the borrower has a robust process to ensure that the proceeds of the loan are applied in accordance with the requirements of the loan agreement and is capable of identifying and managing potential environmental risks associated with the proposed green project. An evaluation report is likely to be required by the lenders as a part of their initial assessment of the proposed transaction.

In many cases the lenders will also include undertakings in the loan agreement which require the borrower to conform to the agreed standards and processes. For example, this may include an obligation to attain a green building certification within a certain time period or to maintain certain monitoring processes during the tenor of the loan.

Management of proceeds

Borrowers may be required to open a dedicated account for disbursement of loan proceeds and to track the allocation of these proceeds to the green purpose of the loan facility. Account structures of this kind and the related financial discipline will be very familiar to lenders and borrowers engaged in project finance.

However, this may not be required if the borrower's business is entirely 'green' in nature (such as renewable energy or green real estate) or if the second party opinion provider is satisfied with the commitment and capability of the borrower to track the allocation and application of green loan proceeds.

Ongoing reporting and compliance

The loan agreement will typically include enhanced information undertakings relating to the environmental aspects of the borrower's business and the allocation of loan proceeds. Borrowers may deliver this information through their websites, annual reports or sustainability reports published internally or by third party consultants on a periodic basis.





There may also be a requirement for ongoing certification of a business or an asset by an independent third party, for example, in accordance with rating systems for the design, development, operation and maintenance of green buildings developed in various jurisdictions.

The Sustainability Linked Loan Principles and Proposed Implementation

A year later in March 2019, the LMA, APLMA and LSTA launched the Sustainability Linked Loan Principles. These are intended to promote development of a versatile sustainable finance product while preserving the integrity of ESG loans. The core components of this framework are: (i) the borrower's overall ESG strategy, (ii) measuring and supporting the sustainability of the borrower's business through target setting and (iii) ongoing reporting and independent review.

Relationship to the borrower's overall ESG strategy and measuring the sustainability of the borrower's business

Prior to commencement of documentation, borrowers and lenders must agree sustainability performance targets ("SPTs") (e.g. through external ratings and/or equivalent metrics) to measure improvements in the borrower's sustainability profile.

The range of SPTs span diverse categories, such as energy efficiency (e.g. through the reduction in greenhouse gas emissions or selection of cleaner sources of electricity), conservation of biodiversity (e.g. taking positive action to protect biodiversity and ecosystems), investing in social investment programmes (e.g. increasing charitable contributions and pro-bono work) and improving the workforce environment (e.g. enhancing gender diversity, equality and employee satisfaction).

Pricing adjustment

ESG loans typically include performance elements which reduce the margin on the loan if the borrower satisfies or is on track to satisfying its SPTs. More recently, to enhance the incentive for borrowers to meet their SPTs, lenders have introduced penalty elements which increase the margin when the borrower does not meet its SPTs. While this has motivated borrowers further to achieve compliance with SPTs, it creates an interesting dynamic in which lenders achieve better returns from borrowers which are not meeting their SPTs. In light of this, certain alternative structures are being developed. These include requiring borrowers to make additional payments into a separate secured bank account when it does not meet its SPTs and restricting the borrower from withdrawing these sums unless it can demonstrate that the proceeds will be invested in improving its sustainability profile. The proposition that ESG loans provide borrowers with potentially lower pricing is supported by some publicly available market information as illustrated by the infographic below.



*Based on publicly available reports on transactions closed in these regions.

Reporting and independent review

Compliance with SPTs is usually conducted by third party agencies such as Sustainalytics and Viego Eiris which assess the borrower's performance by reference to specified objective criteria relevant to the SPTs under review (and agreed in the loan agreement at the outset of the transaction).

As with green loan agreements, lenders will likely require the inclusion of information undertakings which oblige borrowers to provide periodic updates to the finance parties on completion of milestones and compliance with agreed SPTs.

Challenges for the sustainable finance market

While there are good reasons for both lenders and borrowers to consider sustainable loans, a number of key issues will remain relevant as the market develops.

1. Financial incentives and capital relief

- (i) Unlike ESG loans, the pricing of green loans is not directly linked to the 'green' performance of the borrower, so improved performance does not lead directly to lower pricing. Borrowers may therefore perceive that there is no clear-cut financial incentive to raise green loans. However, there is some evidence that higher demand for 'green' loans has a beneficial effect on pricing from the borrower's perspective, and this is likely to be better understood as the green loan market develops and meaningful statistics become more widely available. For example, analysis conducted by Natixis³ suggests that green bond issuers have experienced indirect economic benefits as they have been able to better withstand difficult market conditions due to the profile and investment priorities of green bond investors.
- (ii) Conversely, from financial institutions' perspective, in certain markets where pricing is already highly competitive, and in the absence of regulatory support for capital relief, the scope for offering lower interest rates on green loans or ESG loans may be more limited. Most central banks currently oppose calls for them to support sustainable finance by reducing capital requirements for such lending on the basis that, without clear evidence that sustainable finance carries lower risks, such a policy "could compromise the key objective of maintaining capital buffers".⁴ Regulators are also concerned that the desire for more favorable capital treatment could lead to 'greenwashing' of loans. In this respect, the publishing of the Green Loan Principles and the Sustainability Linked Loan Principles is an important milestone in the development of a common framework for structuring and assessing green and ESG loans. As market practice develops and monitoring and reporting methodologies become more consistent and understood, central banks may be more willing to offer incentives.

2. Onerous documentation, monitoring and reporting requirements

There is a perception among some borrowers that green loans or ESG loans involve more onerous business controls and disclosure obligations and require specialist internal teams to drive and monitor compliance. However, it would be worth bearing in mind that:

- (i) several international banks have already mandated the inclusion of environmental and social undertakings as a matter of policy in all loan transactions, so green loans and ESG loans merely add a further layer that would, in any event, be consistent with borrowers' existing or aspirational internal policies;
- (ii) an increasing number of international banks, ratings agencies and other transnational bodies are making efforts to formulate and standardise sustainable finance frameworks to mitigate these perceived burdens;


³ <https://www.epfsf.org/images/stories/PDF/2017/Beyond%20Green%20Bonds%20-%20Sustainable%20Finance%20Comes%20Of%20Age,%2026%20April%202017.pdf>
⁴ De Nederlandsche Bank, Dutch central bank.

- (iii) second opinion providers have grown more accessible and are able to assist lenders and borrowers to evaluate borrowers' integration of social, environmental and governance factors into their strategy, operations and management – with a focus on promoting economic performance, responsible investment and sustainable value creation; and
- (iv) regulators are beginning to encourage sustainable financing, for example, by making grants available to fund the cost of second opinion providers or green certification for green and sustainable bonds.⁵ It is hoped that these incentives will be extended to the loan market in due course.

Conclusion

The Green Loan Principles and the Sustainability Linked Loan Principles provide loan market participants and regulators in the European, Asian and North American markets with an important framework to guide expectations, standardise market practice and enhance the consistency and integrity of the asset class. Alongside other industry and regulatory initiatives which are gaining momentum, borrowers and lenders have a unique business opportunity to improve the sustainability of their businesses and drive positive outcomes. As such, we anticipate substantial and continued involvement in the sustainable finance market in the next few years, particularly in the global loan markets.

Contacts

 <p>Andrew Brereton Partner Corporate, Finance and Investments Singapore: +65 6303 6036 abrereton@kslaw.com</p>	 <p>Ye Cecilia Hong Partner Corporate, Finance and Investments New York: +1 212 556 2169 chong@kslaw.com</p>	 <p>Nikhil Markanday Partner Corporate, Finance and Investments London: +44 20 7551 7506 nmarkanday@kslaw.com</p>
 <p>Soumya Bhagavatula Associate Corporate, Finance and Investments Singapore: +65 6303 6033 sbhagavatula@kslaw.com</p>	 <p>Michael L. Urschel Partner Corporate, Finance and Investments New York: +1 212 556 2285 Atlanta: +1 404 572 2775 murschel@kslaw.com</p>	 <p>Mark Wesseldine Partner Corporate, Finance and Investments London: +44 20 7551 2126 mwesseldine@kslaw.com</p>

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This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."

ABU DHABI	CHICAGO	HOUSTON	NEW YORK	SILICON VALLEY
ATLANTA	DUBAI	LONDON	PARIS	SINGAPORE
AUSTIN	FRANKFURT	LOS ANGELES	RIYADH	TOKYO
CHARLOTTE	GENEVA	MOSCOW	SAN FRANCISCO	WASHINGTON, D.C.

⁵ MAS Sustainable Bond Grant Scheme.

* All product and company names are trademarks™ or registered® trademarks of their respective holders. Use of them does not imply any affiliation with or endorsement by them.

Fact Sheet



EUROPE

July 2019 The UN's Environment Programme Finance Initiative and the European Banking Federation are forming a working group to set voluntary guidelines for banks, based on the EU taxonomy (described below). This working group will identify sustainable activities in banking lending portfolios and assess the application of the EU taxonomy for banks. The working group aims to issue its first draft in October 2019.

June 2019 - The European Commission-appointed Technical Expert Group on Sustainable Finance (TEG) has published a far-reaching set of recommendations for taxonomy of sustainability economic activities. The EU taxonomy is a list of economic activities with performance criteria for their contribution to six environmental objectives – namely, (i) climate change mitigation, (ii) climate change adaptation, (iii) sustainable use and protection of water and marine resources, (iv) transition to a circular economy, waste prevention and recycling, (v) pollution prevention and control and (vi) protection of healthy ecosystems. The establishment of this classification system marks a significant step towards a more orderly and standardised transition to a low carbon and climate resilient economy. It bridges the gap between commitments to the Paris Agreement and actual investment practice, helps reduce costs for market players in analysing the sustainability of an investment, and eliminates the reputational risk which may arise when market participants have to define sustainability for themselves. In the coming months, we expect more institutional investors (particularly in Europe) to align their sustainability frameworks with the EU taxonomy. The next key step will be to work across other large financial markets to harmonise the different approaches.

April 2019 - Luxembourg signed an agreement to back a UN Environment-convened network that helps the world's major financial centers to increase green and sustainable finance. This further cements Luxembourg's position as a substantial driver of sustainable finance. Its commitment to financial innovation and sustainable finance has led to the launch of a wide range of initiatives, including the first Stock Exchange dedicated to green, socially responsible and sustainable securities: The Luxembourg Green Exchange (LGX) in 2016. The LGX has the largest market share of listed green bonds worldwide. Luxembourg leads the European market when it comes to responsible investment funds, with a market share of thirty-nine per cent. Sixty-nine per cent of worldwide assets in microfinance investment vehicles are Luxembourg domiciled funds.



ASIA

May 2019 – In Japan, a total of 162 Japanese companies set up a consortium (which includes banks, insurance firms and asset managers) to help support the Task Force on Climate-Related Financial Disclosures (TCFD) to improve reporting of the financial impacts of climate-related risks and opportunities. Japan aims to hold the world's first TCFD summit in late 2019, where Japan will announce its own guidelines and discuss the issue with its foreign counterparts. To further support environmental innovation, the Japanese government also intends to make amendments to its state insurance scheme to help Japanese companies fund new overseas sustainable investment projects.

May 2019 – The Hong Kong Management Authority published measures to support mitigation of climate change risk and sustainable finance. One of those measures includes prioritising their capital allocations towards asset managers who can provide ESG solutions. The Central Bank of Sri Lanka launched the ‘Roadmap for Sustainable Finance in Sri Lanka’ to provide a broad direction to financial regulators and financial institutions to effectively manage ESG risks associated with projects they finance and promote assistance to businesses that are greener, climate-friendly and socially inclusive.

April 2019 – Southeast Asian governments, the Asian Development Bank and major development financiers launched the “ASEAN Catalytic Green Finance Facility”, a new initiative to spur more than \$1 billion in green infrastructure investments across Southeast Asia. The new facility provides loans and necessary technical assistance for sovereign green infrastructure projects such as sustainable transport, clean energy, and resilient water systems.

December 2017 – Eight central banks and supervisors (including the Monetary Authority of Singapore) collectively committed to establish a Network of Central Banks and Supervisors for Greening the Financial System. The network aims to start a discussion around the magnitude of the risk that global warming poses to the financial system. In less than eighteen months, the network has rapidly grown to thirty-six members, including representation from other Asian countries such as China, Japan, Malaysia and Thailand.



NORTH AMERICA

June 2019 – The New York State Assembly passed the most aggressive clean-energy target in the United States, requiring New York to generate 100% of its electricity from zero-emissions sources by 2040.



GLOBAL

November 2018 – Twenty-eight leading banks from around the globe came together to establish the Principles for Responsible Banking under the United Nations Environment Programme Finance Initiative. Under the auspices of this initiative, they have all committed to transforming the banking industry so it plays a leading role in achieving society’s goals. The highly anticipated launch of the Principles for Responsible Banking is now set for the last quarter of 2019 in New York City, during the annual United Nations General Assembly.

June 2019 – Eleven major shipping banks, representing a bank loan portfolio to global shipping of approximately US\$100 billion, will, for the first time, integrate climate considerations into lending decisions to incentivise maritime shipping’s decarbonisation. The official launch of the Poseidon Principles was held in New York. The Poseidon Principles are a global framework for assessing and disclosing the climate alignment of financial institutions’ shipping portfolios.