

CBFL EXECUTIVE PROGRAMME ON SUSTAINABLE FINANCE

11, 17, 24 May 2023
4 - 6pm (SGT) via Zoom Meeting

CBFL EXECUTIVE PROGRAMME ON SUSTAINABLE FINANCE
(conducted via Zoom Meeting on 11, 17 and 24 May from 4.00pm to 6.00pm SGT)

Module I: Introduction to Law and Sustainable Finance


Iain MacNeil
Alexander Stone Professor of Commercial Law
University of Glasgow School of Law

Module II: Policy and Regulatory Framework for Sustainable Finance


Virginia Harper Ho
Professor of Law
City University of Hong Kong School of Law

Module III: Sustainable Finance: A Corporate Perspective


Irene-Marie Esser
Professor of Corporate Law and Governance
University of Glasgow School of Law

Moderator


Lin Lin
Associate Professor
National University of Singapore, Faculty of Law





Centre for Banking & Finance Law
Faculty of Law



Public CPD Points: 2 points per module
Practice Area: Banking and Finance
Training Level: General

The Centre for Banking & Finance Law (CBFL) at National University of Singapore, Faculty of Law (NUS Law), conducted a three-part Executive Programme on Sustainable Finance between 11 – 24 May 2023. The modules were conducted by (i) Professor Iain MacNeil (University of Glasgow) on *Introduction to Law & Sustainable Finance*; (ii) Professor Virginia Harper Ho (City University of Hong Kong) on *Policy and Regulatory Framework for Sustainable Finance*; and (iii) Professor Irene-Marie Esser (University of Glasgow) on *Sustainable Finance: A Corporate Perspective*. Associate Professor Lin Lin (NUS Law) moderated the programme which explores the dynamic relationship between finance and environmental law, sustainable investing regulations, and corporate governance. Over 30 legal practitioners, academics as well as industry partners attended this programme.

Module I – Introduction to Law and Sustainable Finance

Iain MacNeil

Alexander Stone Professor of Commercial Law

University of Glasgow, School of Law

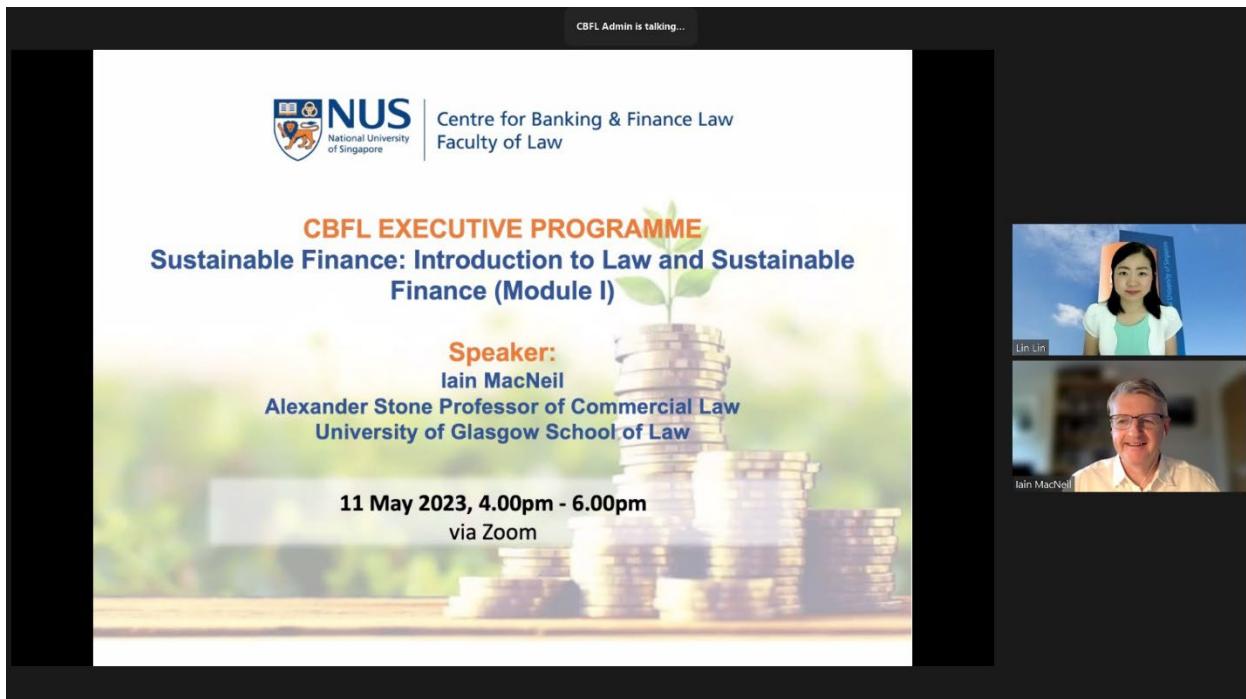
The CBFL Executive Programme on Sustainable Finance, commenced on May 11, 2023, with an intriguing online lecture titled “*Sustainable Finance: Introduction to Law and Sustainable Finance*” and presented by Professor Iain MacNeil from the University of Glasgow, School of Law. The primary objective of the lecture was to provide participants with a foundational understanding of sustainable finance law and regulation.

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Professor Iain MacNeil covered essential topics, emphasising the alignment of law and markets in advancing sustainable goals through finance. Key actors and emerging policy initiatives were highlighted as catalysts for fostering sustainable finance practices, with particular emphasis on the legal frameworks and market environments that enable sustainability.

He offered a systematic examination of the subject by integrating themes from corporate governance, capital markets law, and financial regulation. Participants gained insights into the evolution of sustainable finance, tracing its roots to the concept of sustainable development and its systemic relevance. They explored the role of financial activities in promoting sustainability by connecting the real economy with finance through investment chains, the banking system, and government financing.



From a historical perspective, Professor MacNeil explained how the current dominant paradigm of Environmental, Social, and Governance (ESG) frameworks could be seen as an evolutionary step ahead in the intellectual debate on sustainability from Corporate Social Responsibility (CSR) practices. In exploring the legal and market context for sustainable finance, he highlighted the role of private law in providing a suitable legal framework. The lecture raised questions about the implementation of the legal concept of fiduciary duty in financial intermediation, particularly in relation to ESG investing, and the balancing of long-term sustainability risks with financial returns.

In acknowledging the need for regulation to complement private law, the lecture also provided an overview of the main regulatory actors and initiatives in sustainable finance, with a focus on the European Union's

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leading role in developing a comprehensive regulatory framework. Professor MacNeil discussed both hard law sources, such as the Taxonomy for sustainable activities and the Sustainable Finance Disclosure Regulation (SFDR), as well as ‘soft-er’ law elements like the Non-Financial Reporting Directive, which combine both mandatory and voluntary approaches to disclosure. The EU’s SFDR was highlighted as a significant step in ensuring informed decision-making and mitigating greenwashing in investments.

The lecture concluded with thought-provoking questions about the reliability and effectiveness of ESG investing and the role of the law in supporting sustainable finance. It emphasized the importance of ongoing research and collaboration among stakeholders to navigate the complex landscape of sustainability, finance, and law.

Overall, the inaugural session of the CBFL Executive Programme on Sustainable Finance provided participants with a solid foundation and deeper understanding of sustainable finance. It set the stage for two subsequent modules that delved further into this important and nascent field, paving the way for a future where finance and sustainability go hand in hand.

Module II – Policy and Regulatory Framework for Sustainable Finance

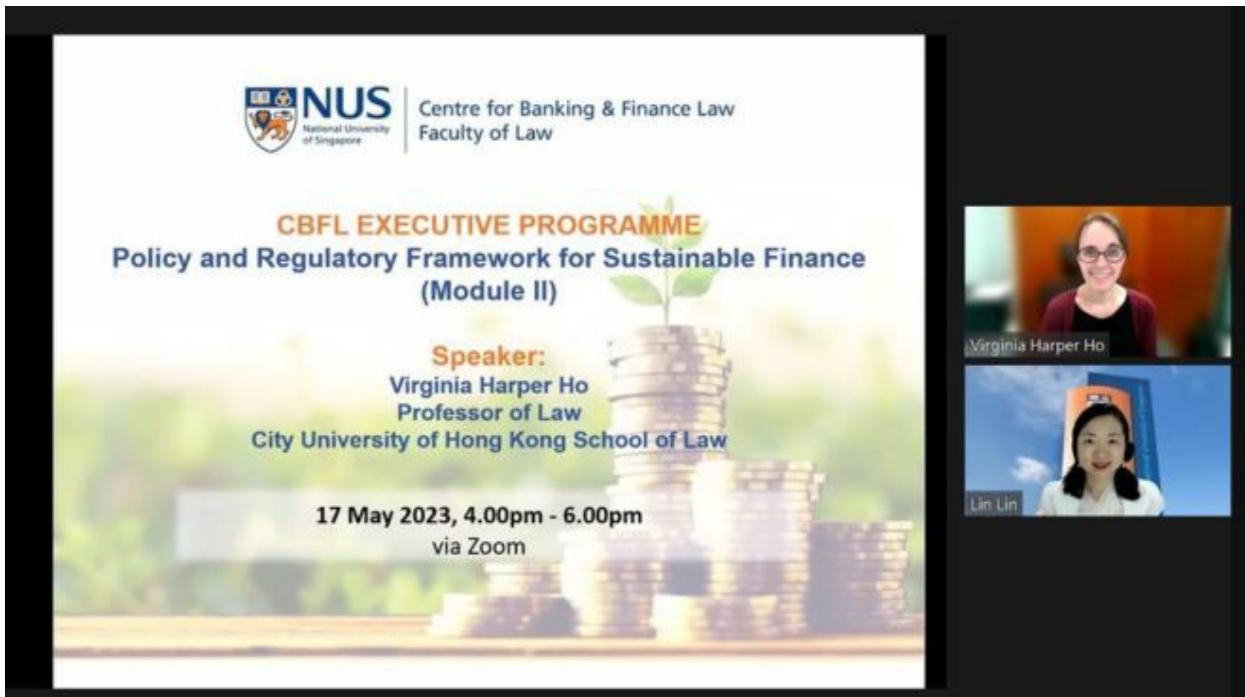
Virginia Harper Ho
Professor of Law
City University of Hong Kong

Held on May 17, 2023, the second module featured a thought-provoking lecture titled “*Policy and Regulatory Framework for Sustainable Finance*” by **Professor Virginia Harper Ho** from the City University of Hong Kong School of Law. Moderated by **Associate Professor Lin Lin**, this session explored the current regulatory landscape of sustainable finance, focusing on the shift from voluntary actions to mandatory regulations in climate and sustainability reporting for financial institutions, or ‘regulatory hardening’—as defined by Professor Harper Ho. From a comparative perspective, the lecture dealt with the emerging regulatory approaches of the EU, the UK, the US, and Asian countries.

In the first part of her lecture, Professor Harper Ho looks at the EU regulatory approach, which promotes transparency to protect market participants, ensure accurate asset pricing, and guide capital allocation towards sustainable practices. The upcoming European Sustainability Reporting Standards (ESRS) and the Corporate Sustainability Reporting Directive (CSRD) aim to strengthen regulations of sustainable finance products and ensure compliance with internationally recognised climate and sustainability standards. In the area of investing, concerns about greenwashing necessitate accurate marketing, commitment fulfilment, clear claims, and consistent ESG taxonomies. Asset managers regulation follows the Sustainable Finance Disclosures Regulation (SFDR), which incorporates both product-level and entity-level requirements for reporting sustainable characteristics, goals, impact, and outcomes.

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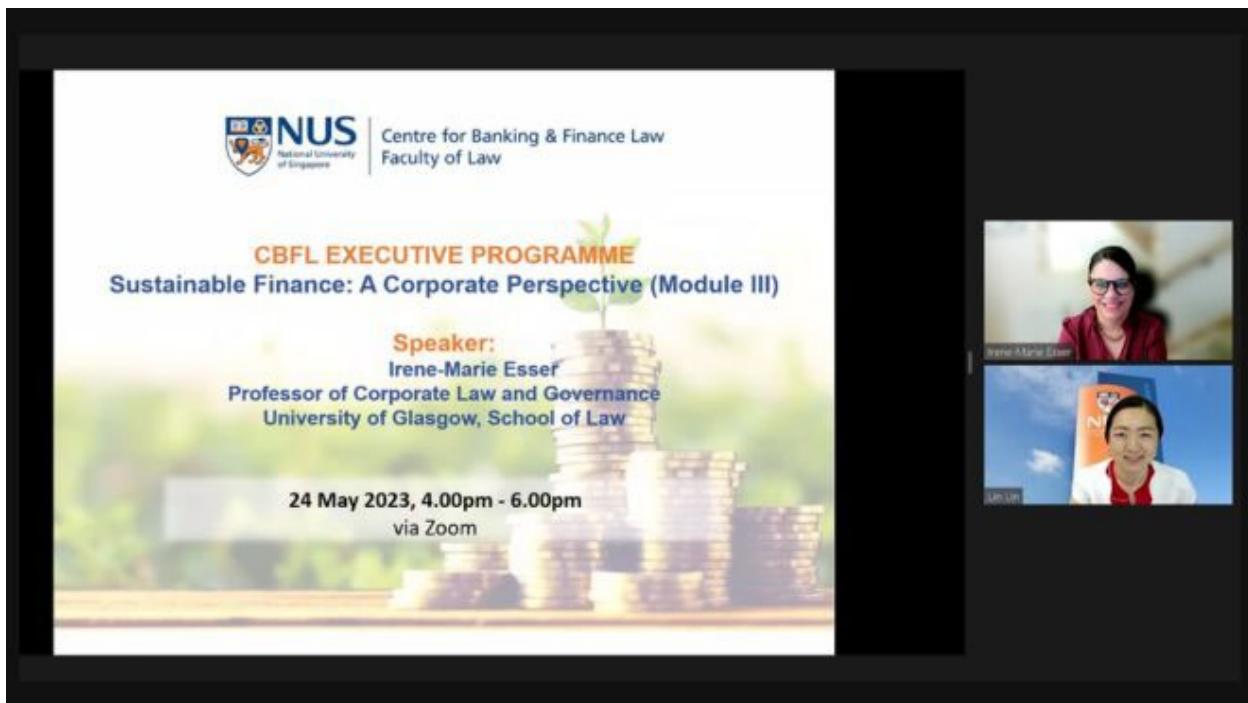
Moving on to the US and UK regulatory approaches, in the second part, Professor Harper Ho discussed the prominence of market-based governance in these regions. Both regimes focus on financial product labelling to facilitate informed market choices. The US operates on a voluntary basis, while the UK has implemented mandatory requirements aligned with the Task Force on Climate-related Financial Disclosures (TCFD) and is working towards developing a Sustainability Disclosure Requirements (SDR) framework. The UK is also developing a UK Green Taxonomy based on the EU Taxonomy. In the US, asset managers prioritize investor protection and transparency in ESG investing, with detailed disclosure requirements for products emphasizing ESG goals. However, achieving cross-border compliance poses challenges due to differing legal frameworks and categorizations of ESG-oriented financial products across jurisdictions. Additionally, both in the UK and US, traditional fiduciary duties may not fully encompass ESG considerations thus potentially constituting a source for friction towards the fulfilment of ESG goals.

Concluding the lecture, Professor Harper Ho turned her attention to emerging trends in Asian countries, which have been influenced by developments in Western regions. There has been a noticeable shift in Asia from voluntary guidelines and codes towards a 'comply or explain' approach, and in some cases, a more mandatory approach to sustainable finance. China has actively participated in the development of sustainable finance standards and its policies have interacted with EU regulatory initiatives. Hong Kong, as a prominent financial hub in Asia, has implemented initiatives such as a mandatory 'comply or explain' regime for TCFD and entity-level guidance for asset managers.

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As a main takeaway of this section, it is important to recognize that while regulations play a crucial role, private regulations and voluntary standards also influence the sustainable finance regulatory landscape. Non-governmental initiatives driven by industry leaders and organizations contribute to the development of best practices and guide market participants in their sustainability efforts. The combination of public regulations and private standards forms a comprehensive and evolving framework for sustainable finance.



Module III – Sustainable Finance: A Corporate Perspective

Irene-Marie Esser
Professor of Corporate Law and Governance
University of Glasgow

On May 24, 2023, the third and last Module of the **CBFL Executive Programme on Sustainable Finance** featured **Professor Irene-Marie Esser** from the University of Glasgow, School of Law, presenting on "*Sustainable Finance: A Corporate Perspective*" by. Moderated by **Associate Professor Lin Lin**, the lecture explored the role of private corporations in promoting sustainability goals and discussed strategies to align private interests with broader sustainable development goals. The module covered directors' duties, non-financial reporting, corporate purpose, due diligence obligations, and stakeholder engagement.

The session began by examining **directors' duties** in UK corporate law by reviewing the scope of Section 172 of the Companies Act 2006. While directors are expected to promote the success of the business, primarily

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referring to long-term financial success for shareholders, one may wonder whether stakeholder interests, including ESG considerations, should also inform corporate decisions.

Non-financial reporting was highlighted as a tool to extend corporate accountability beyond shareholders and financial returns. It integrates stakeholder interests into board decision-making through the concept of double materiality. However, assessing the actual impact of non-financial reporting on stakeholders is crucial, considering compliance, impact on communities, human rights, and information quality. Active stakeholder participation and engagement are necessary for the reported information to be effective.

The **corporate purpose** was discussed as another lever for pursuing stakeholder interests. While UK law confirms shareholder primacy, there is a growing awareness that corporations should embrace a broader purpose beyond profit. An intriguing debate exists, with one perspective emphasizing profitable solutions to societal and environmental problems and the other questioning the necessity of such reform, asserting that shareholders already influence the board's strategy.

Furthermore, **due diligence** holds significant potential for making an impact, exemplified by the proposed European Directive on Sustainable Due Diligence. This directive requires companies to identify and prevent environmental and social risks throughout their supply chains, engaging with suppliers and publicly reporting efforts to enhance transparency.

Lastly, **stakeholder engagement**, was emphasized as a crucial tool for a company's long-term sustainable performance. The UK's Stewardship Code sets principles and rules for institutional investors, who disclose their compliance levels. Enhancing stakeholder involvement requires explicit participation tools for various stakeholders and greater emphasis in soft law frameworks.

In conclusion, Professor Esser introduced some emerging approaches to ensure that companies are more sustainable, including her proposal developed with Professor MacNeil, i.e. the '**ESG Entity Model**'. This approach focuses on ESG goals at the entity level, internalizing externalities and revamping the CSR movement. It integrates stakeholder interests by linking ESG goals to directors' remuneration and sustainability strategy.

Overall, the last Module of the CBFL Executive Programme provided valuable insights into the corporate perspective of sustainable finance, emphasizing the importance of private corporations in driving sustainability and exploring effective strategies to align private interests with broader sustainable development goals. Attendees actively participated through breakout sessions, engaging in discussions and sharing perspectives on fundamental questions in this challenging area of sustainable finance.

Written by [Alessio Azzutti](#)