

# Business Law and the Transition to a Net Zero Economy

Engert / Enriques / Ringe / Varottil / Wetzer

2022

ISBN 978-3-406-78274-9

C.H.BECK

schnell und portofrei erhältlich bei  
[beck-shop.de](https://beck-shop.de)

Die Online-Fachbuchhandlung [beck-shop.de](https://beck-shop.de) steht für Kompetenz aus Tradition. Sie gründet auf über 250 Jahre juristische Fachbuch-Erfahrung durch die Verlage C.H.BECK und Franz Vahlen.

[beck-shop.de](https://beck-shop.de) hält Fachinformationen in allen gängigen Medienformaten bereit: über 12 Millionen Bücher, eBooks, Loseblattwerke, Zeitschriften, DVDs, Online-Datenbanken und Seminare. Besonders geschätzt wird [beck-shop.de](https://beck-shop.de) für sein

umfassendes Spezialsortiment im Bereich Recht, Steuern und Wirtschaft mit rund 700.000 lieferbaren Fachbuchtiteln.

Engert/Enriques/Ringe/Varottil/Wetzer

Business Law and the Transition to a Net Zero Economy

The logo for beck-shop.de features the text "beck-shop.de" in a bold, lowercase, sans-serif font. Above the dot of the "i" in "shop" are three small, solid circles of increasing size from left to right. Below the main text, the words "DIE FACHBUCHHANDLUNG" are written in a smaller, uppercase, sans-serif font.

**beck-shop.de**  
DIE FACHBUCHHANDLUNG

**beck-shop.de**  
DIE FACHBUCHHANDLUNG

# Business Law and the Transition to a Net Zero Economy

edited by

Andreas Engert

Luca Enriques

Wolf-Georg Ringe

Umakanth Varottil

Thom Wetzer

beck-shop.de  
DIE FACHBUCHHANDLUNG

2022



*Published by*

Verlag C.H.Beck oHG, Wilhelmstraße 9, 80801 München, Germany,  
email: [bestellung@beck.de](mailto:bestellung@beck.de)

*Co-published by*

Hart Publishing, Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, United Kingdom,

online at: [www.hartpub.co.uk](http://www.hartpub.co.uk)

and

Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3–5, 76530 Baden-Baden, Germany,

email: [nomos@nomos.de](mailto:nomos@nomos.de)

Published in North America by Hart Publishing

An Imprint of Bloomsbury Publishing 1385 Broadway, New York, NY 10018, USA

email: [mail@hartpub.co.uk](mailto:mail@hartpub.co.uk)

  
**beck-shop.de**  
DIE FACHBUCHHANDLUNG  
[www.beck.de](http://www.beck.de)

ISBN 978 3 406 78274 9 (C.H.BECK)

ISBN 978 1 5099 5896 2 (HART)

ISBN 978 3 8487 8698 5 (NOMOS)

© 2022 Verlag C.H.Beck oHG

Wilhelmstr. 9, 80801 München

Printed in Germany by

Druckerei C.H.Beck Nördlingen

(Adresse wie Verlag)

Typeset by

Reemers Publishing Services GmbH, Krefeld

Cover: Druckerei C.H.Beck Nördlingen

  
[chbeck.de/nachhaltig](http://chbeck.de/nachhaltig)

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without the prior permission of Verlag C.H.Beck, or as expressly permitted by law under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to C.H.Beck at the address above.

## Preface

Climate change is now widely recognised as one of society's most profound challenges. In facing that challenge, the role of businesses is central. Scientific evidence leaves little doubt that business activity has been, and in some cases continues to be, a major driver of emissions. Businesses are affected by the consequences of climate change too, with climate risks posing an increasingly material financial risk to businesses, their shareholders and other corporate stakeholders. Critically, corporations also have a central role to play in mitigating climate change by reducing, if not eliminating, their net emissions and by driving the innovation and adaptation that are necessary to bring about a net zero economy.

Across all these domains, the operation of business law affects whether businesses will rise to that challenge or retard progress. Governments, regulators, corporations, shareholders and financial institutions as well as credit rating agencies have begun enacting or adopting laws, policies and practices that are designed to leverage business law as a tool to drive the net zero transition. This volume brings together leading thinkers to evaluate the contribution that business law has made, and could make, to help drive such change.

The editors of the Oxford Business Law Blog (OBLB) selected the theme of 'Business Law and the Transition to a Net Zero Carbon Economy' for the 5<sup>th</sup> Annual Oxford Business Law Blog Conference, which was held in virtual mode on 25-27 May 2021. The conference was organized in collaboration with the University of Oxford Faculty of Law and Oxford Sustainable Law Programme, the University of Hamburg Faculty of Law, the Freie Universität Berlin Department of Law and Empirical Legal Studies Center, the National University of Singapore Faculty of Law, its EW Barker Centre for Law & Business and its Asia Pacific Centre for Environmental Law, and the European Corporate Governance Institute (ECGI).

Speakers at the conference were invited to submit written contributions, which were then published as blog posts on the OBLB. The contributions were then curated for this volume. Thematically, these contributions are organized under four parts: Climate Change Disclosures and Net Zero Commitments, Climate Change: Exit or Voice, Climate Change in the Boardroom, and Climate Change in the Courtroom.

We thank all the contributors for their presentation and discussions at the conference as well as for their contributions to this volume. We also thank Horst Eidenmüller, Geneviève Helleringer and Kristin Van Zwieten of the University of Oxford Faculty of Law, Elaine McPartlan of ECGI and Johannes Jiang of Freie Universität Berlin Department of Law for their help with the organization of the conference. Carlo Brunold, Jannes Drechsler,

*Preface*

Paul Oudin and Georgios Pantelias, as associate editors of the OBLB, and Filippo Silano of Universität Hamburg Faculty of Law provided excellent editorial assistance in preparation of the contributions towards publication in this volume.

Andreas Engert, Luca Enriques, Georg Ringe,  
Umakanth Varottil & Thom Wetzer

September 2021

**beck-shop.de**  
DIE FACHBUCHHANDLUNG



## Table of Contents

Preface .....	V
List of Authors.....	IX
<b>Part A. Climate Change Disclosures and Net Zero Commitments</b> .....	<b>1</b>
Chapter 1. Corporate Climate: A Machine Learning Assessment of Climate Risk Disclosures ( <i>Julian Nyarko and Eric Talley</i> ) .....	3
Chapter 2. The Sprawling Problem of Financial Greenwashing ( <i>Madison Condon</i> ) ...	6
Chapter 3. Corporate Carbon Reduction Pledges: Beyond Greenwashing ( <i>John Armour, Luca Enriques, and Thom Wetzer</i> ).....	9
Chapter 4. Can and should Corporations Commit to a Voluntary Carbon Tax? ( <i>Jill Fisch</i> ).....	16
Chapter 5. EU vs Greenwashing: The Birth Pangs of Transparency, Comparability, Cooperation and Leadership ( <i>Geneviève Helleringer</i> ).....	19
<b>Part B. Climate Change: Exit or Voice?</b> .....	<b>25</b>
Chapter 6. Exit vs. Voice ( <i>Eleonora Broccardo, Oliver Hart, and Luigi Zingales</i> )....	27
Chapter 7. Do Responsible Investors Invest Responsibly? ( <i>Rajna Gibson Brandon, Simon Gloßner, Philipp Krueger, Pedro Matos, and Tom Steffen</i> ) .....	30
Chapter 8. Corporate Governance, the Depth of Altruism and the Polyphony of Voice ( <i>Jeffrey N Gordon</i> ) .....	32
Chapter 9. Say No to Climate Change, Say Yes to ‘Say on Climate’ ( <i>Felix Jaeger</i> )..	39
<b>Part C. Climate Change in the Boardroom</b> .....	<b>45</b>
Chapter 10. Green Boardrooms? ( <i>Brett McDonnell, Hari Osofsky, Jacqueline Peel, and Anita Foerster</i> ) .....	47
Chapter 11. Sustainability and Corporate Stakeholders ( <i>Martin Gelter</i> ).....	50
Chapter 12. UK directors’ duties in a changing climate and the net zero transition ( <i>Ellie Mulholland</i> ).....	56
Chapter 13. Climate change, directors’ duties, controlling shareholders, and state-owned enterprises ( <i>Ernest Lim</i> ) .....	60
Chapter 14. Director’s Duties and Climate Change Risk – Standard of Care, Foreseeability and Enforceability ( <i>Luh Luh Lan</i> ) .....	63
<b>Part D. Climate Change in the Courtroom</b> .....	<b>67</b>
Chapter 15. The Climate Judges ( <i>Gerhard Wagner</i> ) .....	69
Chapter 16. The German Constitutional Court’s KSG Judgment: Emphasising the Time Dimension of the Path to Carbon Neutrality ( <i>Martin Eifert</i> )....	75
Chapter 17. <i>Milieudefensie v Shell</i> : Do oil corporations hold a duty to mitigate climate change? ( <i>Benoit Mayer</i> ).....	79
Index .....	85

**beck-shop.de**  
DIE FACHBUCHHANDLUNG

## List of Authors

John **Armour**, Professor of Law and Finance, University of Oxford, and a fellow of ECGI

Eleonora **Broccardo**, Associate Professor, University of Trento

Madison **Condon**, Associate Professor, Boston University School of Law

Martin **Eifert**, Professor of Public Law, Humboldt University of Berlin

Andreas **Engert**, Professor of Law, Free University of Berlin, and a Research Member of ECGI

Luca **Enriques**, Professor of Corporate Law, University of Oxford, and a Research Fellow of ECGI

Jill **Fisch**, Saul A Fox Distinguished Professor of Business Law, University of Pennsylvania Law School, and a Director of ECGI

Anita **Foerster**, Senior Lecturer in Business Law & Taxation, Monash University

Martin **Gelter**, Professor of Law, Fordham University School of Law, and a Research Member of ECGI

Rajna **Gibson Brandon**, Professor of Finance at the University of Geneva and Research Fellow at the European Corporate Governance Institute

Simon **Gloßner**, Postdoctoral Research Associate, University of Virginia

Jeffrey **Gordon**, Richard Paul Richman Professor, Columbia Law School, and Visiting Professor, Oxford University, and a Fellow of ECGI

Oliver **Hart**, Lewis P and Linda L Geysler University Professor, Harvard University

Geneviève **Helleringer**, Professor at ESSEC Business School; IECL Lecturer in French Law and Business Law, University of Oxford

Felix **Jaeger**, former MJur student, University of Oxford, and Senior Associate, Osborne Clarke

Philipp **Krüger**, Associate Professor, University of Geneva; Senior Chair, Swiss Finance Institute, and a Research Member of ECGI

Luh Luh **Lan**, Associate Professor, NUS Business School and at the Faculty of Law, National University of Singapore, and a Member of ECGI

Ernest **Lim**, Professor of Law, National University of Singapore

Pedro **Matos**, Professor, University of Virginia, and a Research Associate at ECGI

Benoît **Mayer**, Associate Professor, Faculty of Law, The Chinese University of Hong Kong

Brett **McDonnell**, Dorsey & Whitney Chair in Law, University of Minnesota

Ellie **Mulholland**, Director, Commonwealth Climate and Law Initiative, and Senior Associate, MinterEllison

Julian **Nyarko**, Assistant Professor of Law, Stanford Law School

*List of Authors*

Hari M **Osofsky**, Dean and Myra and James Bradwell Professor of Law, Professor of Environmental Law and Culture (Courtesy), Northwestern Pritzker School of Law

Jacqueline **Peel**, Professor of Law, University of Melbourne

Wolf-Georg **Ringe**, Professor of Law and Finance, University of Hamburg; Visiting Professor, University of Oxford, and a Research Member of ECGI

Tom **Steffen**, Quantitative Researcher, Osmosis Investment Management

Eric **Talley**, Isidor and Seville Sulzbacher Professor of Law, Columbia Law School, and a fellow of ECGI

Umakanth **Varottil**, Associate Professor of Law, National University of Singapore, and a fellow of ECGI

Gerhard **Wagner**, Professor of Private Law, Commercial Law and Law and Economics, Humboldt University of Berlin

Thom **Wetzer**, Associate Professor of Law and Finance, University of Oxford, and Founding Director, Oxford Sustainable Law Programme

Luigi **Zingales**, Robert C McCormack Distinguished Service Professor of Entrepreneurship and Finance, University of Chicago Booth School of Business

  
**beck-shop.de**  
DIE FACHBUCHHANDLUNG