Climate Change and the Law

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Climatic change is a global factor that multiplies risks for business, with many legal implications. As climate change is now taken to be certain by the Intergovernmental Panel on Climate Change (UN, 2021), discussion has turned to its extent and effects on various fronts, such as infrastructure, agribusiness, logistics chains, worker safety, productivity and trade agreements in many economic sectors. We are facing significant, unprecedented challenges as society and the economy move toward "decarbonization" of the economy, with reputational, political, financial and legal impacts.

For this reason, there are high expectations around the 26th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP26) in Glasgow, Scotland, especially with respect to rules and procedures to implement article 6 of the Paris Agreement. Article 6 provides for transfer of carbon credits through market instruments, which will allow the parties to the Agreement to cooperate to achieve their respective nationally-determined contributions – NDCs.

There are two types of instruments for transfer of carbon credits: (i) "Internationally Transferred Mitigation Outcomes", or the transfer of reductions that exceed NDCs from one nation to another, by means of bilateral agreements, and (ii) trade in carbon credits through the "Sustainable Development Mechanism", which is based on carbon credit projects that will generate additional emissions reductions. The creation of operational international carbon markets is considered a priority topic for the private sector.

Another central point, especially for developing countries, is the discussion over a new global target for climate financing. Article 9 of the Paris Agreement established an obligation for developed countries to provide financial resources to assist developing countries with their mitigation and adaptation measures, without, however, quantifying that obligation.

Discussion is also underway over expanding countries' climate change ambitions to encompass adaptation and building resilience to the impacts of climate change, in addition to mitigation. For more vulnerable countries, the debate on "loss and damage", or financial compensation for damage caused to the environment by developed countries, is an especially important topic. There is also the expectation that other issues that are particularly relevant to Brazil, such as deforestation and redirecting investment in energy from fossil fuels to renewable sources, will be on the table at COP26.

In short, new perceptions of our planet's limits influence the design and implementation of public policies (payment for environmental conservation is a good example) needed to avoid the collapse of contemporary civilization, if not life as we now know it. Those perceptions also influence new economic approaches and redirect the flow of capital around the world and the development of new businesses, accelerating acquisitions and other transactions focused on decarbonisation.

Regardless of whether the expectations around COP26 are fulfilled, the fact is that society has been demanding more concrete actions to reduce the impacts of economic development and consumption on the environment, driving an increase in regulation to promote decarbonisation, mitigation and adaptation. Business has not been left behind. Not only are companies being managed and regulated in function of perceived climate risk, new markets – like the carbon market – have emerged, sometimes accompanied by new proposals for taxation.

Regulations on climate risk analysis in the financial sector is also moving forward, along with financial structures for funding investments that have sustainable impacts. On the social side of the climate equation, the vulnerability of social groups has brought human rights issues into play in climate litigation, which has become another point of attention in private organizations' business plans.

Offering a legal view of these challenges, this e-book on Climate Change presents varied, multidisciplinary approaches to climate-related issues, focusing on private organizations and the structuring of new businesses and markets. Without in any way exhausting the subject, we hope to contribute by pointing out new trends and pathways in the interface between the law and climate change from a Brazilian perspective.

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