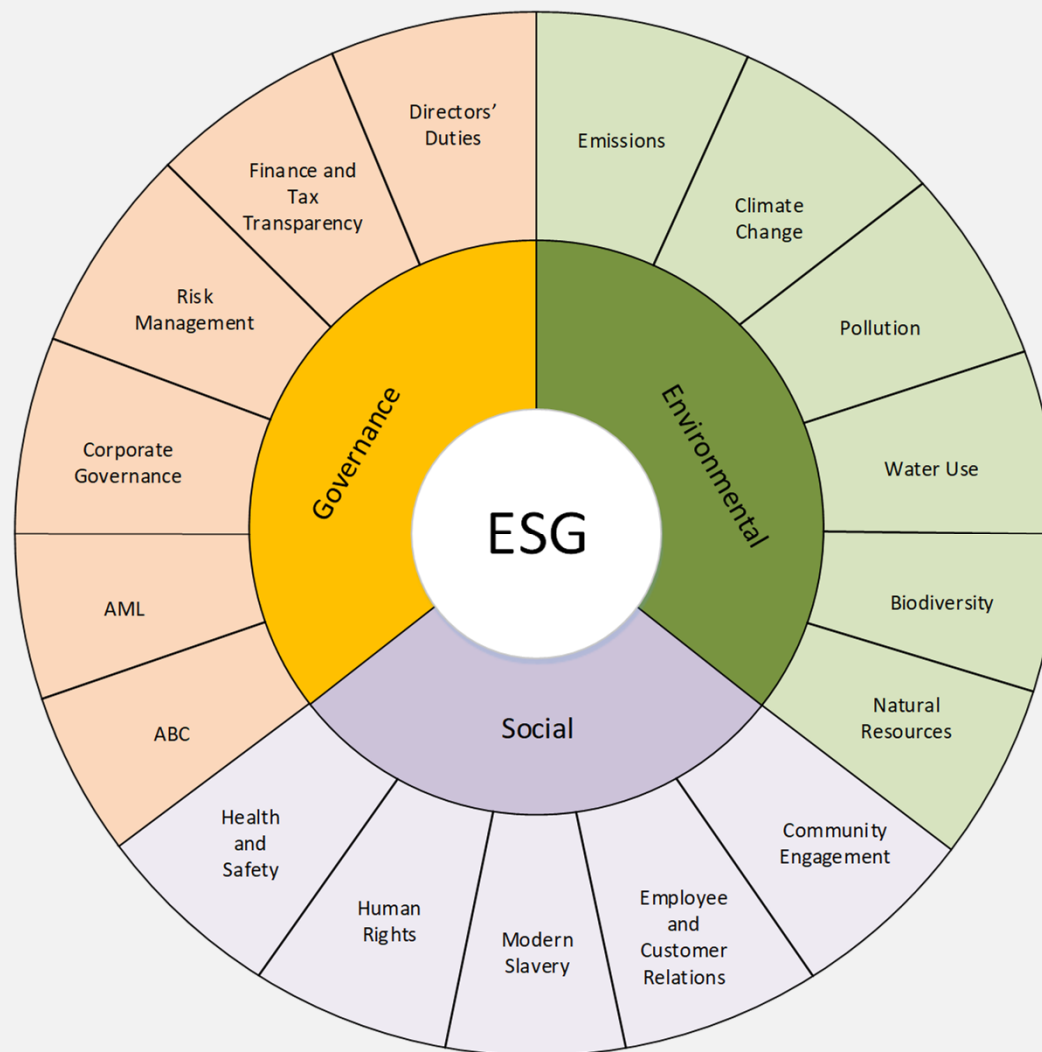


ESG in the UK and EU: Identifying and Managing Compliance, Governance, Litigation and Enforcement Risks

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ESG – A Broad Panacea



A Framework for Responsible Business Practice

At its core, ESG is a framework for responsible business practice

- **Environmental**

- Utilisation of natural resources and the effect of operations on the physical environment, both in direct operations and across supply chains.

- **Social**

- Includes social capital issues including, but not limited to, data security, diversity and inclusion, human rights and customer welfare, and human capital issues such as labour practices, employee health and safety.

- **Governance**

- Centred on business ethics including corporate governance, executive compensation and shareholder rights as well as supply chain management and other risk management and compliance areas (bribery, fraud, financial crime).

ESG Demands and Expectations

- **Disclosure and Reporting**
 - ESG disclosures and reporting
 - ESG impact reporting, utilising metrics and design of alternative strategies
- **Risk management and strategy**
 - Developing ESG policies, practices and strategies
 - Early warning systems and remediation processes
 - ESG management plans and codes of conduct for projects and transactions
 - Board and c-suite awareness and understanding of regulatory landscape and litigation risks
- **Due Diligence**
 - Transactional
 - Supply chain
 - Third parties
- **Disputes**
 - Securities litigation
 - Disclosure and reporting litigation
 - Litigation 'for change'
- **Investigation and crisis management**
 - ESG goes beyond legal and financial exposure

A Labyrinth of Rules, Regulations and Standards

	Environmental “E”	Social “S”	Governance “G”
EU	<ul style="list-style-type: none"> ▪ Sustainable Finance Action Plan <ul style="list-style-type: none"> ▪ Sustainable Finance Disclosure Regulation ▪ Taxonomy Regulation ▪ Climate Benchmarks Regulation ▪ Corporate Sustainability Reporting Directive (replaces Non-Financial Reporting Directive) ▪ EU Global for Retail Financial Products (voluntary) ▪ EU Green Bond Standard (voluntary) ▪ Proposal to regulate providers of ESG ratings and assessment tools 	<ul style="list-style-type: none"> ▪ Loi de Vigilance ▪ Proposed human rights DD law ▪ Child Labour DD law ▪ The Supply Chain Law ▪ Resolution for Corporate Due Diligence and Corporate Accountability → Directive? ▪ Whistleblowing Directive ▪ German Equal Treatment Act ▪ Money Laundering Directives ▪ Unfair Commercial Practices Directive 	<ul style="list-style-type: none"> ▪ Amendments to MiFID II, IDD, AIFMD, Solvency II Companies Directives
UK	<ul style="list-style-type: none"> ▪ FCA Policy statement 2020 for Premium Listed companies in the UK enhancing climate related disclosures* ▪ FCA consultations on proposals for climate-related disclosures by asset managers and standard listed companies* ▪ UK Government consultation on mandatory climate related disclosures* [Updates / amends UK implementation of NFRD] 	<ul style="list-style-type: none"> ▪ Modern Slavery Act 2015 ▪ Public Interest Disclosure Act 1998 ▪ Bribery Act 2010 ▪ Corporate Manslaughter and Corporate Homicide Act 2007 ▪ Equity Act 2010 ▪ Money Laundering Regs. 	<ul style="list-style-type: none"> ▪ PRA Supervisory and Policy Statements (2019) ▪ FCA Policy Statement 2019 ▪ UK Corporate Governance Code 2018 ▪ Companies Act 2006 ▪ UK Stewardship Code 2020 ▪ Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008

International Voluntary Standards

- Task Force on Climate Related Financial Disclosures (TCFD)
- UN Sustainable Development Goals
- UN Principles for Responsible Investment (UNPRI)
- UN Guiding Principles for Business and Human Rights
- **Application of Paris Accord to companies?**
 - ICJ judgement against Royal Dutch Shell
 - *“Companies have an independent responsibility, aside from what states do. Even if states do nothing or only a little, companies have the responsibility to respect human rights.”*

Current Obligations: TCFD Disclosures & ESG Reporting

- **Listing Rule for TCFD Recommendations**

- FCA published new Listing Rule 9.8.6R(8) (LR) at the end of 2020.
- Requires commercial companies with a UK premium listing to include a compliance statement in their annual financial report, stating whether they have made disclosures consistent with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD).
- If they have not done so, there is a requirement to: (1) explain why they have failed to do so; and (2) outline any steps they are taking, or are planning to take, to enable them to make consistent disclosures in the future, including anticipated timings.

- **EU Non-Financial Reporting Directives**

- The United Kingdom adopted legislation implementing the Directive, under the Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016.
- Large public-interest companies (more than 500 employees) must publish a non-financial information statement in their annual management report in relation to ESG.
- Namely: environmental protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery and diversity on company boards (in terms of age, gender, educational and professional background).
- EU published the Corporate Sustainability Reporting Directive in April 2021 to replace the NFRD.

ESG Reporting: Examples

Rolls Royce

- Key areas required by the Directive: Environmental matters, Employees, Social matters, Human Rights and Anti-Bribery and Corruption
- Sets out the governance, strategy and managing risk and opportunity
- Also makes Disclosures in line with the Taskforce on Climate Related Financial Disclosures (TCFD)

Non-financial information statement

The following chart summarises where you can find further information on each of the key areas of disclosure required by the EU Non-Financial Reporting Directive.

	Related Group policies	Related principal risks
Environmental matters See pages 39 to 42	– Health, Safety & Environment	– Climate Change – Safety
Employees See pages 43 to 46	– Security – People	– Talent and Capability – Safety
Social matters See page 44	– Charitable Contributions & Social Sponsorships	– Political Risk
Human rights See page 47	– People – Human Rights	
Anti-bribery and corruption See page 47	– Anti-Bribery & Corruption	– Compliance

- Our business model provides an insight into the key resources and relationships that support the generation and preservation of value within Rolls-Royce. See pages 10 and 11.
- Non-financial key performance indicators allow us to assess progress against objectives and monitor the development and performance of specific areas of the business. These are set out on page 13.
- Further information on Group policies can be found on www.rolls-royce.com.
- Full details of the Group's principal risks can be found on pages 48 to 52.
- Disclosures in line with the Taskforce on Climate Related Financial Disclosures (TCFD) are detailed on page 39.

Non-financial performance

	Target	2020
Improving health & wellbeing		
Health & hygiene Target: By 2020 we will help more than a billion people to improve their health and hygiene. This will help reduce the incidence of life-threatening diseases like diarrhoea ^(a)	1 billion	On ground reach: 625 million TV reach: 715 million
Nutrition Target: By 2020 we will double (i.e. up to 60%) the proportion of our portfolio that meets the Highest Nutritional Standards, based on globally recognised dietary guidelines	60%	61% [†]
Reducing environmental impact		
Greenhouse gases Target: Halve the greenhouse gas impact of our products across the lifecycle (from the sourcing of the raw materials to the greenhouse gas emissions linked to people using our products) by 2030 (greenhouse gas impact per consumer use; 2010 baseline) ^{(c)(d)}	(50%)	(10%)
Target: By 2020 CO ₂ emissions from energy from our factories will be at or below 2008 levels (≈145.92) despite significantly higher volumes (reduction in CO ₂ from energy in kg per tonne of production since 2008)*	≈145.92	36.94 [†]
Water Target: Halve the water associated with the consumer use of our products by 2020 (water impact per consumer use; 2010 baseline) ^(c)	(50%)	0%
Target: By 2020 water abstraction by our global factory network will be at or below 2008 levels (≈2.97) despite significantly higher volumes (reduction in water abstraction in m ³ per tonne of production since 2008)*	≈2.97	1.52 [†]
Waste Target: Halve the waste associated with the disposal of our products by 2020 (waste impact per consumer use; 2010 baseline) ^(c)	(50%)	(34%) [†]
Target: By 2020 total waste sent for disposal will be at or below 2008 levels (≈7.91) despite significantly higher volumes (reduction in total waste in kg per tonne of production since 2008)*	≈7.91	0.34 [†]
Sustainable sourcing Target: By 2020 we will source 100% of our agricultural raw materials sustainably (% of tonnes purchased)	100%	67%
Enhancing livelihoods		
Fairness in the workplace Target: By 2020 we will advance human rights across our operations and extended supply chain by:		

Unilever

- Divides the key areas into (i) policy (ii) position and performance (iii) risk (iv) impact
- Measures the level of risk and sets out the proposed way forward for management of risk
- Adoption of the TCFD recommendations

Upcoming and Recent Developments: (i) EU Regulations

- **EU Disclosure Regulation (Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector): March 2021**
 - Aim is to achieve more transparency on how financial market participants and advisers (defined as manufacturers of financial products) consider sustainability risks in their investment decisions and insurance or investment advice.
 - Applies to all financial market participants and advisers and lays down harmonised rules for:
 - the integration and consideration of sustainability risks and adverse;
 - sustainability impacts in their decision making or investment advice processes; and
 - the provision of sustainability related information with regard to financial products.
- **Taxonomy Regulation: January 2022**
 - Establishes a glossary for the classification of environmentally sustainable activities in the EU.
 - **Four conditions** for when a fund is considered "environmentally sustainable": (i) "contributes substantially" to one or more environmental objectives, or directly enables other activities to make a substantial contribution to one or more of those objectives; (ii) does not "significantly harm" any of the environmental objectives; (iii) is invested in compliance with the minimum specified safeguards listed in the Taxonomy Regulation; and (iv) complies with technical screening criteria established by the Commission (which are yet to be published). Market participants who do not take account of the sustainability criteria will have to say so.
 - Neither regulation has been, or is expected to be onshored into UK law. However, where UK firms offer funds and services in the EU, it is likely that the disclosure obligations will apply.

Upcoming Developments: (ii) TCFD Disclosures

- On the 9th November 2020, the UK Government's Finance Minister, Rishi Sunak, announced that climate risk reporting will become mandatory for large companies (as defined by the Companies Act 2006, i.e. meeting at least two of the following criteria: turnover of more than £36m; balance sheet total of more than £18m; more than 250 employees and financial institutions in the UK).
- 1400 companies already voluntarily comply with the TCFD recommendations.
- Companies will be required to go through a formal process of identifying and then disclosing details of material risks and opportunities arising from climate change under differing future climate scenarios.

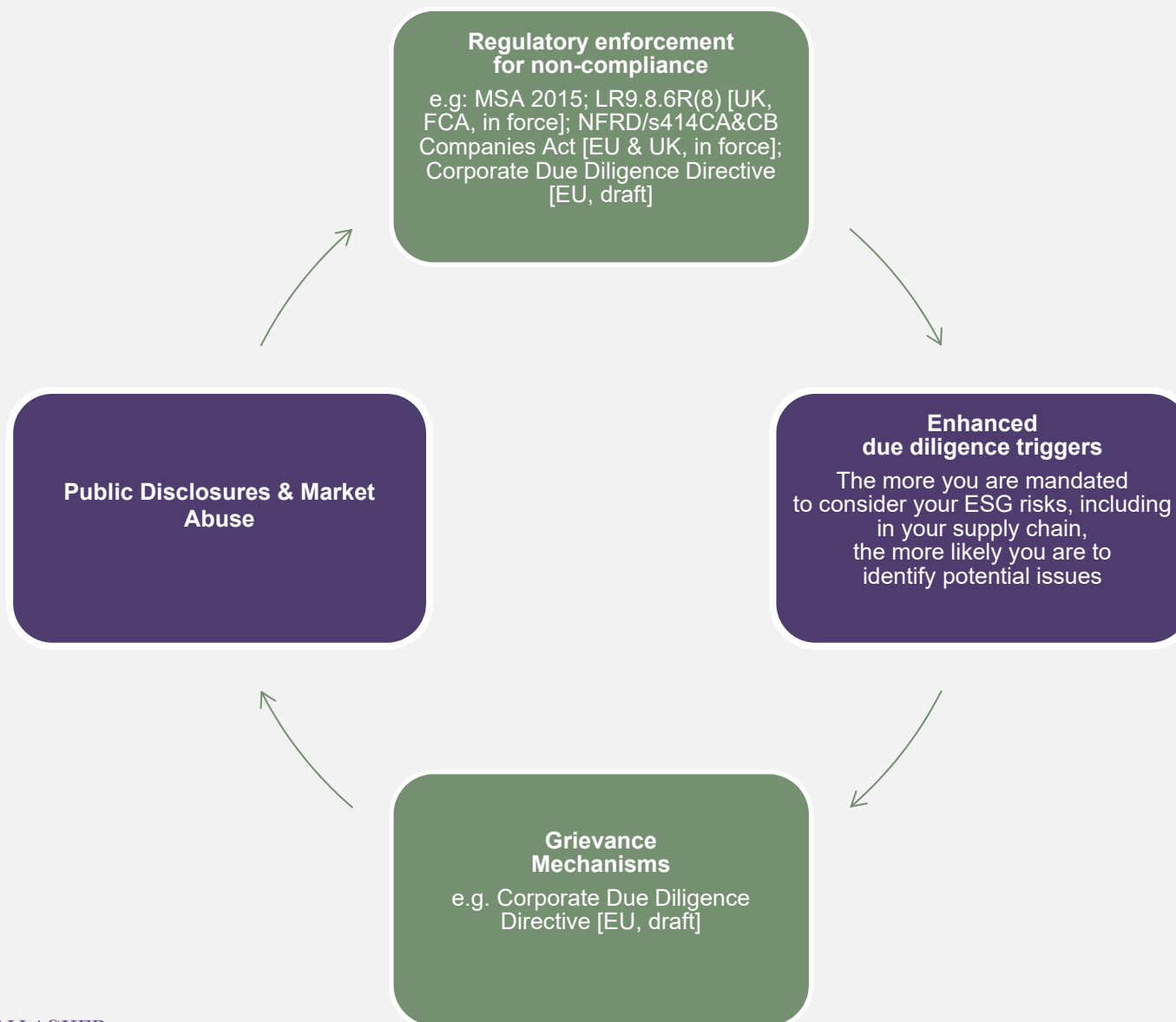


- Four recommendations for disclosures, which broadly will cover:
 - **Governance:** The organisation's governance and climate-related risks and opportunities.
 - **Strategy:** The actual and potential impacts of climate-related risks and opportunities on the organisation's businesses, strategy and financial planning.
 - **Risk Management:** The processes used by the organization to identify, assess and manage climate-related risks.
 - **Metrics and Targets:** The metrics and targets used to assess and manage relevant climate-related risks and opportunities.

Panel Discussion

- **Key ESG risks within businesses**
 - Looking beyond shareholders to employees, customers and the community
- **Risk assessment and developing effective ESG programmes**
 - Lessons learned from financial crime compliance programmes
- **Governance and responsibility**
 - A complex exercise
 - Role of the Board and Company Secretary
- **Litigation risk**
 - Economic compensation
 - Litigation for change
 - Criminal liability
- **An unified approach in Europe and the UK**
 - A common aim but different areas of challenge and focus

ESG Enforcement Risks





Thank You

Key Contacts



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Grégoire Bertrou is a partner in Willkie's Litigation Department in Paris. His practice focuses on domestic and cross-border litigation and dispute resolution, particularly with regard to M&A transactions, corporate law and general commercial matters.

Grégoire has close to 20 years of experience as a trial lawyer representing clients before French civil and commercial courts. He has also acted in more than 40 international arbitration proceedings, both as counsel and arbitrator, in relation to disputes involving M&A transactions, investments, joint ventures and commercial disputes in general.

Grégoire also regularly represents clients in complex compliance and enforcement matters, including internal investigations and the resolution of administrative and enforcement proceedings involving either French authorities (Public Prosecutor, AMF, CNIL, DGCCRF, etc.) or foreign authorities (DOJ, OFAC, etc.).

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Peter Burrell is a partner and heads Willkie's Litigation, Compliance, Investigations & Enforcement and White Collar Defence Practice Groups in the London office.

Peter is recognised as one of the UK's leading specialists in corporate crime and compliance matters. His practice includes advising on compliance issues relating to money laundering, bribery and corruption, sanctions and fraud; conducting complex internal corporate investigations; and defending companies and individuals in investigations and enforcement actions by the UK's Serious Fraud Office, Financial Conduct Authority, HM Revenue and Customs, and other law enforcement and regulatory agencies. He also handles complex High Court litigation and arbitration proceedings in London, with a particular focus on financial fraud, securities disputes and financial reporting issues.

Chambers UK (2021) and *The Legal 500 UK (2021)* cite Peter as a leading practitioner in his areas of practice in the UK.

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Bruno Cova's practice is a combination of transactional and litigation, its common thread being pathological situations impacting clients. On the transactional side, Bruno works on restructurings and distressed M&A, while his non-transactional work focuses on corporate governance and compliance, internal investigations and defending corporations and their senior managers before regulators and in the context of criminal proceedings.

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Henrietta de Salis is a partner in Willkie's London office and a member of the following practice groups: Asset Management, Corporate & Financial Services, Structured Finance & Derivatives, and Data Privacy & Security.

Henrietta is a financial services lawyer providing advice and transaction support to banks, securities firms, asset and investment managers, funds and intermediaries — including broker-dealers, custodians, trading platforms, private equity firms, wealth managers and insurers — on UK and European financial services legislation and compliance matters in both the wholesale and retail markets.

Henrietta is recognised as a 'Notable Practitioner' in *IFLR1000* (2020) for 'Financial Services Regulatory'.

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Rita Mitchell is a partner in Willkie's Compliance, Investigations & Enforcement and White Collar Defence Practices in London. Dual-qualified in the US and the UK, her practice includes advising and defending corporations in a variety of criminal and civil investigation and enforcement matters, conducting complex, worldwide internal investigations in relation to bribery, corruption, fraud, sanctions, human/business rights, and money laundering, advising on and developing and benchmarking compliance programs, conducting pre-merger and third party due diligence, and providing day-to-day counseling and training on compliance with US and English laws, including the US Foreign Corrupt Practices Act (FCPA) and UK Bribery Act 2010 (Bribery Act).

Rita is ranked by *The Legal 500 UK* (2021) as a 'Leading Individual' for 'Regulatory investigations and corporate crime (advice to corporates)'.

Rita was included on the *Global Investigations Review* 2018 listing of the "Top 100 Women in Investigations," and was also recognised in *Who's Who Legal Investigations-Future Leaders* in both 2019 and 2020 as "a highly regarded name" and an "up-and-coming star."

Rita is the co-leader of the London Chapter of the Women's White Collar Defense Association.

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Simon Osborn-King is a partner in Willkie's Litigation and Compliance, Investigations & Enforcement Practices in London. Simon has a broad-ranging domestic and cross-border investigations, commercial litigation and arbitration practice.

Simon has significant experience in complex regulatory, criminal, and internal investigations and enforcement proceedings facing multinational corporations, financial institutions and individuals across a wide spectrum of business sectors. Simon has defended clients before the U.K. Financial Conduct Authority and Serious Fraud Office, US Department of Justice, European Commission, Italy Public Prosecutors' Office, Japan Financial Services Agency and Korea Fair Trade Commission.

Simon was recognised in the 2020 edition of *Global Investigations Review's* '40 under 40', which celebrates the next generation of leading investigations specialists from around the world.

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Matthias Schrader's practice focuses on domestic and international litigation and arbitration matters.

Matthias has acted as counsel to both claimants and respondents in a wide variety of commercial litigations and arbitrations before various courts and leading arbitral institutions. He has also successfully negotiated out-of-court settlements of complex disputes for a variety of commercial and private clients. Furthermore, Matthias has represented sovereigns in litigations as well as international investment arbitrations.

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Michael Thorne is a senior associate in Willkie's Litigation Department. His practice covers a range of criminal, regulatory and civil matters with particular focus on compliance and enforcement, internal investigations and white-collar defense.

Michael is recognised by *The Legal 500 UK* (2021) for 'Regulatory investigations and corporate crime (advice to corporates)' with clients describing him as a "stand-out solicitor" who is "practical and gets stuck in".

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