

Role of Legal Professionals in Shaping ESG Standards

In today's rapidly evolving legal landscape, the intersection of Environmental, Social, and Governance (ESG) factors has become more crucial than ever. As legal professionals, mastering this dynamic landscape requires not only a deep comprehension of traditional legal frameworks but also a proactive commitment to sustainability, corporate responsibility, and ethical governance.

“[B]usinesses that respond most effectively to ESG are not only more likely to survive but also to be in a position of strength 10 or 20 years from now”



Ensuring Compliance

- In-house counsels are uniquely positioned within a business to lead discussions on shaping an effective ESG strategy. Their expertise helps minimise risks, maximise opportunities, and ensure the company upholds ethical standards.
- Traditionally, legal due diligence may centre on an investee company's obligations, liabilities, and corporate structure. Information falling under the scope of ESG typically fits within these categories. For example, legal due diligence may assess whether the company complies with the Malaysian Code on Corporate Governance, or in some cases, it might even involve an audit exercise as to whether the company may be liable for any lawsuits stemming from its labour practices.

Advising on ESG Policies

- Legal counsel can assist in developing and implementing corporate governance structures and policies that align with sustainable development goals and stakeholder expectations. For example, legal expertise may be required in complex governance factors such as executive remuneration, accounting standards, and board diversity.
- Drafting contracts, agreements, and commercial leases that include specific clauses addressing ESG concerns would also necessitate legal input. These clauses may encompass environmental compliance, social impact assessments, labour standards, and ethical sourcing requirements.



Engagement

- Legal professionals may participate in policy advocacy efforts to influence government policies related to ESG. This could involve engaging with government agencies, industry associations, and policymakers to propose regulatory reforms or amendments that promote sustainable business practices.

Corporate Social Responsibility (CSR)

- Both CSR and ESG aim to promote ethical business practices, but integrating the two can provide a comprehensive approach to sustainability. Companies can use CSR to engage with their communities and demonstrate their commitment to ethical practices, while leveraging ESG metrics to attract investors and ensure regulatory compliance.



The ESG transformation period is a golden opportunity to enhance the knowledge, abilities, and exposure of in-house team members. While it poses challenges, it also presents opportunities for both businesses and their in-house legal advisers.

This alert summarises the key points discussed by the author, Nurul Aisyah Hassan, during her recent presentation at the ESG National Conference organised by CLJ Malaysia on 19th June 2024.

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