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Local Connections. Global Influence.

Environmental, Social and Governance

April 2023 Newsletter

Introduction

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The environmental, social and governance (ESG) landscape is currently progressing at a tremendous pace. Each year, more elements are brought to the forefront and are considered by markets, investors and governments as part of their decision-making. ESG was primarily adopted as a risk management tool, but it has since evolved beyond only risk, and it now serves as a roadmap for sustainable growth and an effective business opportunity.

The constant evolution of ESG has forced companies to adapt and increase their internal capabilities for reporting ESG-related metrics.

> According to a Harvard study, by 2021, 86% of S&P 500 firms regularly issued some form of an ESG-related report – a significant increase from just 35% of publicly traded companies in 2010. This shows that ESG disclosure and reporting is not a matter of "when" anymore; it is a matter of "how".

This ESG newsletter will focus on key topics in the space that we believe all our clients should have on their radar. It will also showcase trends from different sectors, while highlighting some leaders and laggers when it comes to ESG leadership. We believe it is part of our responsibility to help our clients effectively navigate the ESG land mines and ensure that they are in the best position to take advantage of the opportunity this new area presents.

As part of our continuous efforts in the ESG space, we believe it important to help our clients understand the implications of ESG and that it is not just a trend, but something that is here to stay. ESG and diversity, equity and inclusion (DEI) are no longer niche considerations. They are now integrated across multiple industries with the potential to drive real-world change and long-term sustainable growth.

The Emergence of Greenwashing as an ESG Risk

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We are seeing more and more media reports about companies "greenwashing" their products and services, as well as some new variations on this theme (such as "greenhushing", which we will come back to later). One recent report by a data analyst looked at different types of ESG risks for companies and found that a good proportion of them were linked to claims of greenwashing. That proportion grew even higher in specific consumer-facing sectors, such as food and drink.

What Is Greenwashing?

Put simply, it is making a claim about the environmental impact or credentials of your business, service or product that is (or could be) misleading. Claims can mislead by being untrue or inaccurate, but also by being vague, by omitting relevant information, or by failing to consider the full life cycle impacts of the subject of the claim.

Why Is It an ESG Risk?

An increasingly aware group of stakeholders, consumers and regulators are keeping companies in check by calling out and challenging greenwashing when they spot it. The method of challenge can vary considerably, from regulatory action and fines to social media and publicity campaigns, but all can have significant impacts on a business's financial performance, its reputation and the demand for its particular products and product groups. For example, a company could invest heavily in developing a new product that it considers to have environmental advantages or benefits, but does not take care to ensure that the green claims it makes about the new product are clear and can be substantiated. This could adversely impact the business's reputation, as well as the market for the product, and could even put it at risk of a legal challenge.

What Greenwashing Trends Are We Seeing?

One key area of focus is around carbon offsetting and carbon neutrality claims. There is widespread misunderstanding of what carbon offsetting means and, therefore, what a claim about a product being offset or achieving a carbon-neutral status actually means. Many consumers align claims of zero-carbon or net zero, with claims of carbon neutrality and offsets, leading to fairly widespread confusion. This, in turn, has led to similarly widespread criticism of such claims as greenwashing. France recently introduced legislation banning most claims of carbon neutrality altogether. It is particularly important when considering this type of claim to make sure the claim is very clear and does not mislead or overstate matters (for example, have carbon emissions been reduced as well as offset, and what sort of offsetting is involved). Nongovernmental organisations (NGOs) go further and advocate that all offsetting claims are greenwashing, no matter how substantiated or clear they may be, because of the basic premise of a carbon offset and the lack of clear and robust frameworks for the issue of offset credits. Therefore, even a clear and substantiated carbon offsetting claim can come in for criticism and should be carefully considered.

How Can You Avoid Greenwashing?

There is no overarching legal framework or global treaty for green claims, so the detailed rules and requirements can vary in different jurisdictions. The legal frameworks are usually grounded in consumer protection and trading standards law, with some specific legislative additions. There are often government codes or guidance documents available, such as the Competition and Markets Authority (CMA) Green Claims Code in the UK. Despite some variations, a number of fairly universal principles should always be respected, such as ensuring that claims are accurate, clear, fair and meaningful. Claims should not omit or hide relevant information and must consider the full life cycle of the product or service. You should always test your proposed environmental claims in this way and check that they can be evidenced or substantiated, an exercise that we often assist our clients to carry out.

But Do Not Be Afraid to Highlight Genuine Environmental Benefits

In response to a greenwashing backlash, a new trend is emerging that has been dubbed "greenhushing", where businesses are wary of making well-founded and genuine claims about their environmental credentials for fear of being challenged. This could lead to important benefits and features of products not being highlighted when this is a valid way to promote that product. Businesses need to find a balance between ensuring that a product claim is not greenwashing and having the confidence to make appropriate and properly justified claims about their environmental credentials.

Forewarned Is Forearmed – The Importance of Horizon Scanning for ESG

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Improving environmental, social and governance (ESG) practices can be the route to sustainable business success for any business, both in terms of value and financial performance.

As business leaders look at being "sustainable", it is important to think not just about the environmental meaning of the word, but also at whether our businesses will be around for the future – something that inevitably will depend upon having customers, suppliers, investors, finance providers, employees, facilities and numerous other stakeholders.

In order to achieve this, we need to take steps within our businesses to make the right decisions for today and also to keep a close eye on the changes that will be relevant to our markets, customers, suppliers, investors and all stakeholders in the future, all while keeping watch on the horizon for both regulation and legal changes as well as crucial changes in behaviours, attitudes and expectations, all of which will affect the ability of businesses to sustain operations in the foreseeable future.

> Horizon scanning is a technique for detecting and identifying emerging developments, trends and changes through the systematic analysis of a variety of source materials. It is used by businesses, organisations and governments to identify risks and opportunities across their own environments.

When future-proofing your business, an ESG horizon scanning exercise can be invaluable in being able to correctly assess organisational preparedness. Identifying risks and opportunities, both new and recurring, will allow business leaders to spot and prepare for incoming ESG issues before they affect their organisations, thus enabling their business to remain on the path to sustainability. This can also allow generation of competitive advantage, enabling businesses to keep and gain customers, finance providers, employees, suppliers and other stakeholders.

Being ready to flex and react quickly to opportunities as they appear can be a real cultural advantage for many businesses and their stakeholders. Forward-looking attitudes create positive behaviours that seize opportunities, while addressing and reducing risks to make businesses more resilient in different future environments. This is also an effective tool for leadership teams to see how they are currently positioned, relative to ESG market trends.

Horizon scanning also helps us "stress test" whether we are adequately prepared for potential opportunities as well as threats. The opportunity element is so often forgotten when we think of change and focus on risk at the decision-making level.

For example, with the growing demand of regulations and disclosure in both the UK and the EU, both will expand their scopes to include more organisations that operate in those jurisdictions. In the US, there is greater traction on the Securities and Exchange Commission (SEC) proposal that will enact greater disclosure requirements for companies around ESG metrics. The global trends show that regulation is moving quicker than anticipated to adopt investor-led ESG frameworks.

The pace of change will continue in the ESG arena; therefore, keeping an eye on the horizon and remaining open and flexible to react to all potential changes are critical to any business seeking sustainability in its widest sense. There are many available sources of information, which can seem overwhelming, but we would be happy to discuss with you our tailored approach to focus awareness of what is coming over the horizon for your business in order to make it more manageable.

Of course, the earlier a business identifies what might appear on the horizon that is relevant, the more likely it is that your voice will be heard where there is legislation under consultation and, on a formal or informal basis, to share your opinion. Early and effective engagement can be key to making sure your business is future-ready.

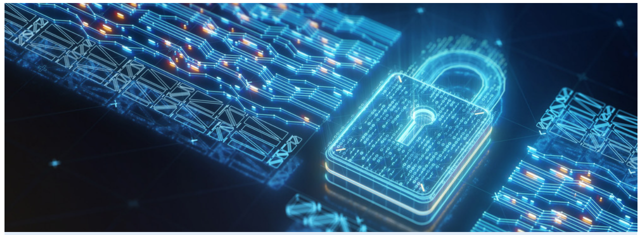
In the Know

Pensions

- Corporates face more challenging questions from UK pension trustees. When setting their investment strategy, UK pension trustees must have a policy on financially material considerations, including environmental, social and governance (ESG) considerations.
- The largest occupational pension schemes, such as those with an asset value of £1 billion or more, also are required to undertake governance, disclosure and reporting measures in line with the recommendations of the Taskforce on Climate-related Financial Disclosures. This means that there is increasingly greater scrutiny of, and a desire for engagement with, corporates by pension fund institutional investors.
- Pension trustees are also now expected to examine the ESG policy of their sponsoring company when assessing the financial ability and willingness of that company to continue providing support to the pension fund. Generally, corporates and their pension trustees should engage proactively on ESG policy. Diverging policies could prove embarrassing for both and result in reputational damage.

Labour and Employment

- Corporates face increasing pressure to account for how they manage their people, as well as the impact they have on the communities and society around them and how this is factored into their overall business objectives.
- Whether they pay fairly, develop and look after their workforce, and are inclusive and diverse, the scrutiny comes from all quarters and is fast becoming a competitive driver. It is, therefore, no wonder that diversity, equity and inclusion (DEI) issues are top of the agenda for many businesses and form a key part of their "S" in ESG strategy.
- As part of support in helping clients tackle these issues, we have crafted a menu of DEI Training Solutions with these challenges in mind, allowing you to select the modules most relevant for the needs of your workforce at every stage of your DEI journey.



Data Protection, Cybersecurity and Digital Assets

- The EU and UK General Data Protection Regulation (GDPR) state that the protection of personal data is a fundamental right. US state laws focus on protecting consumers from the sale of personal information, but the common theme is respect for individual rights in the face of ever more sophisticated processing of big data.
- When dealing with customers, employees, contractors or suppliers, businesses must ensure that their processing of personal data is fair, transparent and lawful. They must explain why data is collected, how it will be processed, with whom it will be shared and how long it will be kept.
- Individuals have the right not to be subject to solely automated decisions with the potential to affect their rights or freedoms. Navigating the global patchwork of data protection and privacy laws is a daunting task, and the stakes are high: European data protection authorities have issued a total of €1.64 billion in fines since January 2022. However, fines are only part of the story.
- Failure to protect data subjects' rights can have severe reputational impact and increase vulnerability to cybersecurity issues such as ransomware attacks. With expert help, effective data protection can enhance your reputation and unlock the value of personal data.

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