The previous version of the Guide for General Counsel on Corporate Sustainability Version 2.0 – Executive Summary

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This second Guide responds to the widespread growth in interest in sustainability and the growing demand from the legal community for practical guidance on how to integrate sustainability considerations into business as usual. It collects together practical guidance from GCs and expert practitioners on core elements of sustainability, including business integrity, ESG and fiduciary duties, human rights and supply chain risk management, the role of grievance mechanisms, and ways in which businesses can respond to crisis situations.

**02. CORPORATE SUSTAINABILITY AND FIDUCIARY DUTIES**

Concepts of fiduciary duty or investor duties, including loyalty, care and prudence, exist in most jurisdictions. Increasingly, investors, regulators, non-governmental organizations (NGOs) and other stakeholders are seeking the integration of environmental, social and governance (ESG) factors into investment decision-making processes based on the notion that sustainable decision-making and investing supports responsible business practices.

A shifting regulatory landscape

New regulations are being introduced in this area. In addition, NGOs have also been building the case for ESG factors to play a greater role in fulfilling fiduciary duties, as reflected in the development of new voluntary standards and increasing business convergence around them.

Clarifying expectations: Consider an ESG policy

An ESG policy can help ensure that asset owners and asset managers factor ESG considerations into investment decisions consistently, in a clearly defined way that can be tracked, measured and evidenced.

Similarly, board-level ESG policies can help ensure that ESG features prominently on the corporate agenda and proper consideration is given to ESG factors in corporate decision-making processes.

Up to speed? Help fiduciaries stay one step ahead

GCs can play a vital role in ensuring that decision-makers are kept abreast of ESG-related legal and other developments, providing focused, decided and judicious input and seeking external advice where necessary. They are also well placed to advise on when it is appropriate to seek advice from external advisors with particular expertise (e.g. a human rights or environmental specialist).

Aim high: Continuously improve and incentivize

ESG-based governance

GCs are well placed to make the case for investing in independent reviews of ESG governance mechanisms to identify areas where risks might be better mitigated. Human resources teams may be able to assist in assessing how to incentivize employees and managers who engage with ESG commitments.

**03. HUMAN RIGHTS AND SUPPLY CHAIN DILIGENCE**

Grievance mechanisms form part of responsible business processes. Practising the roll-out of these plans regularly and having an agreed high-level plan for management and information-sharing can have broad roots, often driven at least in part by failure to time, but a “crisis” can be defined as a sudden or previously unidentified risk that threatens to significantly damage an organization’s economic value or licence to operate. Crucis can have broad roots, often driven at least in part by failure to operate ethically and sustainably.

**04. CORPORATE SUSTAINABILITY AND GRIEVANCE MECHANISMS**

A grievance mechanism is a non-judicial process established or supported by a company through which complaints or concerns about business integrity, compliance, human rights and other issues can be raised.

Grievance mechanisms can take many forms, adopt a broad scope or focus on a specific issue and can serve a range of purposes.

The business case: An important part of the risk management toolkit

Grievance mechanisms form part of responsible business processes. Providing a transparent and easily accessible means whereby employees and others can be heard and access remotely can reduce the risk of social volatility, litigation, and reputational damage. They can also support an organization’s social licence to operate and help create a stable, secure and sustainable environment in which to do business.

Where to start? Designing a grievance mechanism

Soft law standards provide a framework for the development of grievance mechanisms and help businesses stay on track when doing so. For example, the UN Guiding Principles on Business and Human Rights establish effectiveness criteria for all non-judicial grievance mechanisms designed to address adverse human rights impacts.

Listen carefully: The important role of stakeholder engagement

Consulting with relevant stakeholder groups in relation to the design of non-judicial grievance mechanisms can be critical to ensuring they are accessible, supported and used by those for whose benefit they are provided.

Take stock: Measure effectiveness and make changes

Grievance mechanisms should be a source of continuous learning. Performance and effectiveness should be regularly monitored and assessed to ensure they remain effective, relevant and in use.

**05. CHALLENGES TO CORPORATE SUSTAINABILITY – MANAGING A CRISIS**

The first 72 hours: Effective management of the initial response

The first phase of a crisis typically involves some basic first steps and a great deal of work on communication. Organizations are now expected to communicate with key stakeholders publicly and very quickly in the event of a crisis.

Moving on: Investigation, reporting and remediation

From both an internal and external perspective, it is important to establish the root cause of any crisis. At this point businesses typically turn their attention to conducting an investigation, reporting the results of that investigation and remediating any problematic conduct.

Do not waste a valuable opportunity: Learn lessons towards continuous improvement

Once a business has survived a crisis, it is necessary to rebuild its reputation and brand, assess how the crisis was handled and identify improvements to risk management and pre-crisis planning.

Ultimately, having an ingrained sustainability culture will have a positive multiplier effect in how a business is able to avert and/or deal with a crisis.