



How to Properly Staff for the Future of ESG

Environmental



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Environmental, social, and governance (ESG) issues are gaining importance and visibility within companies with the [emergence of multijurisdictional regulatory obligations](#), compliance, reporting, and auditing requirements. We see an enhanced focus on mitigating legal risk while simultaneously meeting business objectives.

This is likely an unexpected and unwelcome prospect for many of the current chief sustainability officers (CSO) who often see themselves as dedicated social and sustainability advocates embedded within a company. And up to now, they have been able to serve in their roles as maximalists; from this perspective, the more ESG actions the better, and there could not be enough stakeholder engagement or focus on double/impact/non-financial materiality.

Legal perspectives in demand

We are now entering a new era of ESG, in which emerging rules and demands emphasize legal analysis and skills. In this next stage, companies will need professionals who are experts in fiduciary duties and will prioritize their professional obligations to the company over environmental or social causes that may resonate personally for them, even when considering triple bottom lines or double materiality.



Leverage attorney-client privilege in ESG matters by involving in-house counsel. Artwork by FoxyImage / Shutterstock.com

There is one professional that is an expert in fiduciary duties and is tasked with placing legal obligations over personal motivations — the lawyer. This is why at this time, GCs, depending on their company size and exposure to ESG issues, should consider hiring ESG deputy general counsel, advising their CEOs to hire a CSO with a legal background, or fostering cross-functional collaboration.

Navigating the “G” in ESG

Next, the weakest letter in ESG for many current CSOs is likely “G.”

This is not surprising, considering many came from corporate social responsibility (CSR), corporate communications, or environmental/climate backgrounds.

Yet, [even the inventor of the ESG acronym](#) knew from the start that “G” was the most important letter, providing “if a company gets its G right the others should follow.”



In-house counsel are well-equipped to mitigate business risk while meeting business objectives.
Artwork by Alex Savich / Shutterstock.com

The predominant focus of current CSOs is on the politically complex and evolving “E” and the “S” issues (where they may be much more comfortable as advocates), but this has arguably led to much confusion over ESG. Governance is the antidote to confusion, and simply put, lawyers are the owners of the “G” within a company.

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In addition, the previous era of often well intentioned ESG maximalism by CSOs without legal training has exposed a number of companies to unnecessary legal, reputational, [greenwashing](#), and other risks (i.e., responding to pressure from stakeholders by making virtuous statements or commitments they have no current plan to accomplish and/or have not undergone the same rigor a commitment for a “material” topic discussed in an earnings call or written about in a 10-K would have).

One of the often underappreciated features of inclusion of legal counsel in sustainability discussions is their ability to foster freer discussion protected by the attorney-client privilege.

This has resulted in several government agencies, such as the SEC and state legislatures, including the recent California climate bills, to take action focused on compliance, reporting, auditing, and minimizing legal risks. These developments will result in a further refocusing of ESG on the “G” and an emphasis on reviewing disclosures, so they are not false or misleading. Lawyers are experts in this area as well.

Keeping ESG in the legal department has advantages

Finally, one of the often underappreciated features of inclusion of legal counsel in sustainability discussions is their ability to foster freer discussion protected by the attorney-client privilege when practical and helpful to the company. Of course, here there is no substitute to having a lawyer in the lead when it comes to this benefit.

[Read more about attorney-client privilege in this *Docket* article.](#)

Arguably, another option is to foster tighter coordination among your sustainability, legal, auditing, risk, and compliance functions. This may be the best option for smaller companies or those with limited exposure to ESG issues. However, as shown above, a more efficient CSO option is filling the role with a business-minded lawyer who is comfortable working with multiple stakeholders simultaneously. If not, GCs should be hiring ESG deputies to work closely with their CSOs.

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Mike Dillinger is currently the AVP of environmental, social, and governance (ESG) and strategic programs at USAA where he is responsible for ESG strategy and protecting the economic goodwill of a \$40B Fortune 100 private insurer and bank with over 38,000 employees. He was previously the VP of sustainability, environmental, and permitting at NuStar Energy where he led the Environmental, Regulatory Affairs, Remediation, Customs, and Permitting Departments and served in senior legal counsel roles.

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Mike's education includes an LLM in Litigation Management from Baylor University School of Law, LLM in Environmental Law from the George Washington University School of Law, JD from the University of North Dakota School of Law, and BS in Social Behavioral Sciences from the University of Mary. Some of his certifications include the National Association of Corporate Directors (NACD) Directorship Certification, being a Global Reporting Initiative (GRI) Certified Sustainability Professional and holding the Sustainability Accounting Standards Board (SASB) Credential (Level I and II).

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With over 23 years of experience in corporate law, board counsel, governance, sustainability, and SEC reporting, [Kristina Wyatt](#) helps organizations achieve their sustainability goals, mitigate complex risks, and unlock long term opportunities. She has counseled Fortune 500 companies, boards of directors, C-suite executives, and financial institutions across industries on corporate strategy, governance, reporting, and sustainability risk and opportunity, leveraging her knowledge of securities

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