

The Business of ESG: What Corporate Counsel Need to Know

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Association of Corporate Counsel
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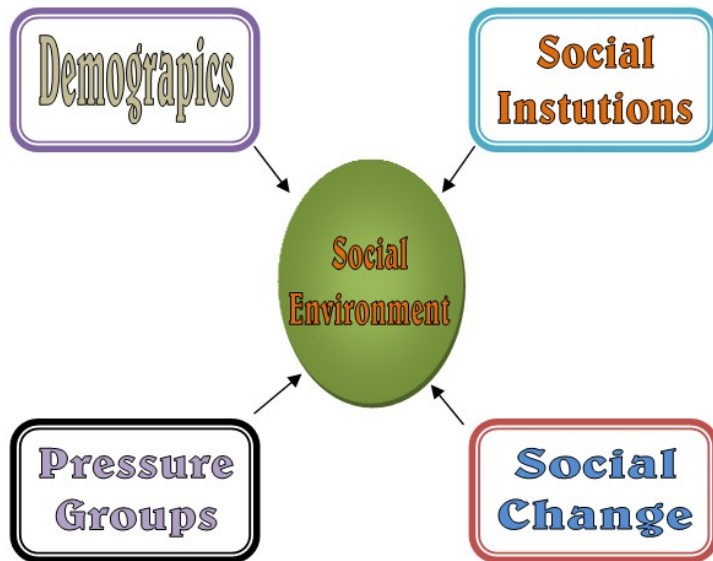
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ESG in an hour or less . . .

- What is ESG?
- How does it relate to business goals and objectives?
- How does it connect to operational and legal risk management?
- How does all of this play itself out in the real world?

What is ESG?



<https://analysisproject.blogspot.com/2011/08/social-environment.html>



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<https://learningforsustainability.net/good-governance/>

ESG Factors Examples

ENVIRONMENTAL

- Climate Change
- Waste Management
- Energy Efficiency
- Deforestation
- Pollution
- Biodiversity
- Water Scarcity



SOCIAL

- Diversity and Inclusion
- Community Impact
- Labor Standards
- Data Privacy
- Health & Safety
- Customer Satisfaction
- Employee Engagement

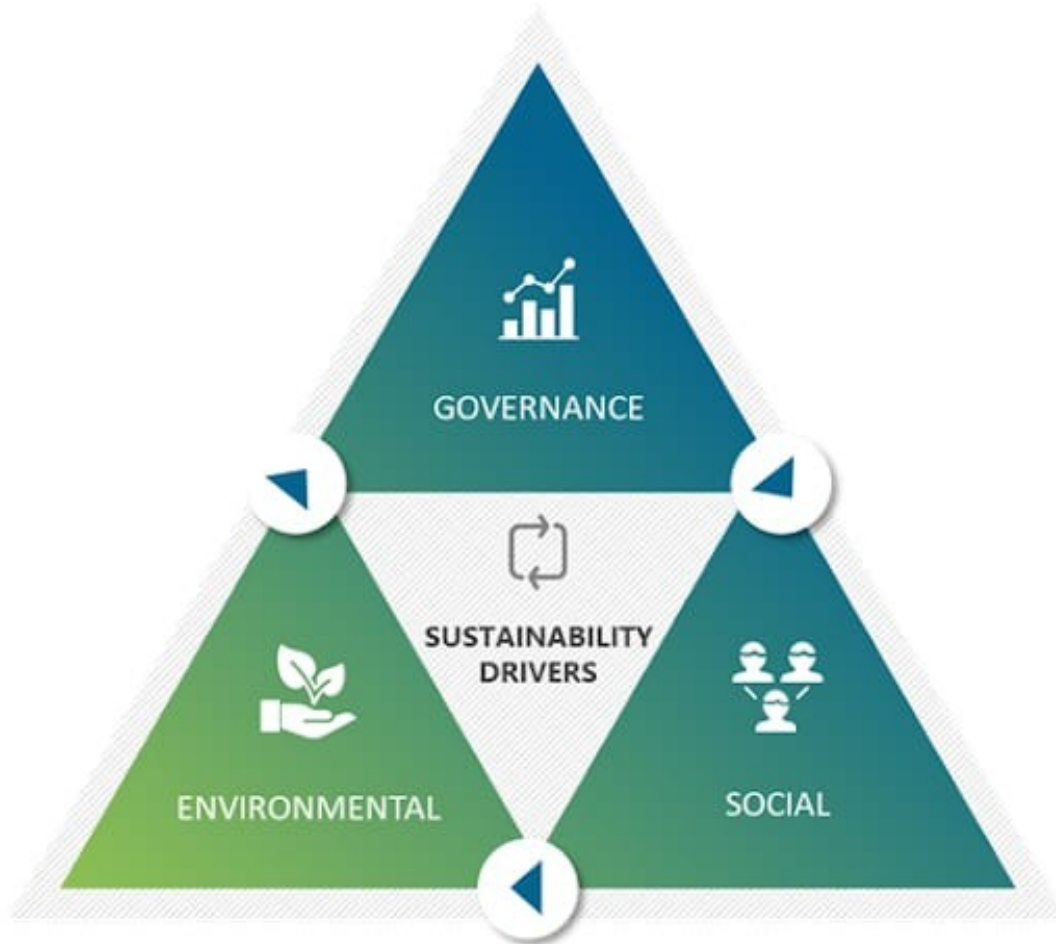
GOVERNANCE

- Regulation Compliance
- Equitable Compensation
- Leadership Diversity
- Leadership Integrity
- Corruption & Bribery
- Tax Strategy
- Lobbying

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As a result, ESG is . . .

- Another potential level of regulation;
- Another political hot button;
- Another source of competitive ranking/rating;
- Another way to acquire resources;
- Another cost center;
- Another marketing/sales opportunity;
- Another potential recipe for legal claims;
- An opportunity for active business planning and management;
- A foundation for a sustainable business!



Engage Energy & Industrial Consulting, *Sustainability and ESG Strategy*, <https://engageeic.com/sustainability-esg-strategy/>

Word Cloud #1

In one word, what does ESG mean to you in your professional role? (You may enter up to three individual words.)

Attain business goals/objectives

	GOAL	OBJECTIVE
DEFINITION	The direction and overall destination of your company that helps you realize your vision	The exact actions and steps your company must take to reach its goals
SPECIFICITY	General intention or direction	Specific, precise
PLAN	Broad in scope	Narrow in scope
SIZE	Large in size, the whole	Small chunks, part of the whole
EXAMPLE	Increase international customer base	Acquire 28% more customers from the UK, Australia, and Germany in next 3 months
ACTIONS	A general outcome	Specific actions and measurable steps
MEASUREMENT	Difficult; goals are usually intangible and may not be strictly measurable	Easy; it must be measurable and tangible
TIMEFRAME	Long-term	Medium- to short-term

Range Labs, Inc., *Goals and objectives: a mini guide for managers*,
<https://www.range.co/blog/difference-between-goals-and-objectives>

Possible goals/objectives

- Find new and renewable sources of:
 - Supplies
 - Customers
 - Employees
 - Funding
- Better promote:
 - Products or services
 - Reputation in key markets

 <p>Specific</p>	 <p>Measurable</p>	 <p>Attainable</p>	 <p>Realistic</p>	 <p>Time-bound</p>
<p>Do: Set real numbers with real deadlines.</p> <p>Don't: Say, "I want more visitors."</p>	<p>Do: Make sure your goal is trackable.</p> <p>Don't: Hide behind buzzwords like, "brand engagement," or, "social influence."</p>	<p>Do: Work towards a goal that is challenging, but possible.</p> <p>Don't: Try to take over the world in one night.</p>	<p>Do: Be honest with yourself- you know what you and your team are capable of.</p> <p>Don't: Forget any hurdles you may have to overcome.</p>	<p>Do: Give yourself a deadline.</p> <p>Don't: Keep pushing towards a goal you might hit, "some day."</p>

Madison Merrihew, *The Importance of Setting SMART Goals*,
<https://www.hydratemarketing.com/blog/the-importance-of-setting-smart-goals>

Word Cloud #2

In what areas of operations (e.g., human resources, marketing, sales, tech, logistics, finance) are the key goals or objectives of your business?

Manage operational & legal risk

- Identify the ESG risks of the firm's business operations;
- Assess and gauge the short-term and long-term importance of these ESG risks to the business;
- Plan to mitigate, exploit, or otherwise address these ESG risks;
- Assess the need for/desirability of disclosure;
- Implement and monitor resulting plans and programs; and
- Evaluate and retool, as necessary or desired.



Kosmas Papadopoulos and Rodolfo Araujo, *The Seven Sins of ESG Management*,
HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE,
<https://corpgov.law.harvard.edu/2020/09/23/the-seven-sins-of-esg-management/>



Poll #1

Are you involved in business or strategic planning in your organization?

- My organization does not engage in strategic or business planning
- Yes
- No
- Sometimes

ESG applied: “E”

“Unsustainable paper production and consumption contributes to deforestation and natural ecosystem degradation in some of the world’s most ecologically important places It can also exacerbate social conflicts, as non-responsible practices are still widespread in several countries.”

World Wildlife Fund, *Pulp and Paper*,

https://wwf.panda.org/discover/our_focus/forests_practice/forest_sector_transformation_updated/pulp_and_paper/

“E”: You decide

Your business has historically relied on print materials in its operations, including consumer-facing aspects of the business. This aspect of the business is critical to its short-term and long-term goals. Electronic media can meet some, but not all, of these needs. It has been difficult to source recycled paper on a consistent basis, even at an increased cost. Your customers/clients are making inquiries with increasing frequency (some in public forums that have been covered by news media) about what the firm is doing to reduce its reliance on paper generated from virgin fibers. Private funding sources also have begun to raise similar issues.

Poll #2

Understanding that more than one course of action may be advisable, what immediate action might you take?

- No immediate action (i.e., wait, see, continue to research options)
- Communicate with the affected communities about what you have learned and next steps
- Conduct interviews and issue statements about the business's environmental beliefs and aspirations
- Commit to other specific action (e.g., joining a tree-planting consortium to renew forests)

ESG applied: S & G

“[W]hen looking at the leadership diversity among retail and consumer companies, it is clear that there is work to do. In 2019, women held on average only 26 percent of board seats for retail and consumer companies and made up 14 percent of executives. Even worse, ethnically diverse individuals held just 16 percent of board seats and 13 percent of executive positions. . . . We also see top retailers . . . pledging donations to support racial-equity initiatives, making bold commitments to increase racial representation of employees at all levels, and doubling down on training for employees at headquarters and in stores.”

Tiffany Burns et al., *The diversity imperative in retail* (Jan. 13, 2021), <https://www.mckinsey.com/industries/retail/our-insights/the-diversity-imperative-in-retail>

S & G: You decide

Your organization, a corporation, has significant externally facing operations. Its external constituents are a diverse group of individuals and businesses. Their engagement with the corporation is critical to its business success and is based on credibility and trust. These external constituents (including prospective business partners) have begun to ask executives and representatives for the corporation's diversity action plan. You have been charged with drafting the plan.

Ranking #1

What are the most important aspects of the diversity action plan in addressing the needs of your organization's external constituents? Rank these from most to least important.

- Diversifying the board of directors
- Diversifying the team in the C-suite
- Diversifying constituent-centric personnel
- Increasing awareness of ideas and policies that foster diversity and inclusion
- Increasing commitment to ideas and policies that foster diversity and inclusion
- Adopting or advocating ideas and policies that foster diversity and inclusion

A few key takeaways

- E, S, and G are separate things, but their impact on a business can overlap and interact.
- ESG can help a business attain its goals and objectives.
- ESG is an impetus for risk assessment and planning for a sustainable future.
- Walk the talk; match actions to promises.
- Focus on tailored solutions related to business structures and operations with an attentiveness to legal and other risks.

Questions?



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Certain of my papers can be accessed on the Social Sciences Research Network (SSRN) at <http://ssrn.com/author=353099>

