United Nations Global Compact

BerkeleyLaw UNIVERSITY OF CALIFORNIA

Business in Society Institute

Linklaters

Guide for General Counsel on Corporate Sustainability Version 2.0 – Executive Summary

The UN Global Compact, Linklaters LLP, and UC Berkeley School of Law, with the support and guidance from an advisory group of GCs from Nestlé and other companies, has prepared this *Guide for General Counsel on Corporate Sustainability Version 2.0.*

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.

01_ CORPORATE SUSTAINABILITY AND BUSINESS INTEGRITY

Many organizations aspire to take an approach to doing business that ensures not only compliance with laws and regulations, but also a commitment to "do the right thing". Often the first step in operationalizing business integrity is articulating and communicating corporate values and behavioural expectations which can serve as a "lighthouse", especially in times of crisis.

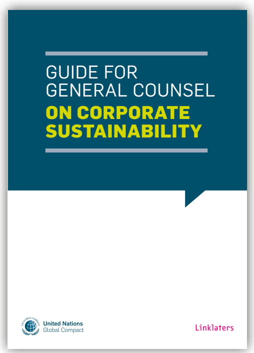
Generating "buy-in": Value-driven compliance programmes
Businesses embed business integrity into their day-to-day operations through compliance programmes. GCs report a resurgence of "values-based" programmes, which can help address a broader range of complex challenges or developments which the business has not been able to foresee.

Strong leadership: Setting the right tone from the top
Business leaders, including GCs, should champion and exhibit their organization's values to reinforce a culture of ethical behaviour and compliance.

Fostering a culture of continuous learning and improvement
Ensuring that everyone is aware of, understands, values and internalizes business integrity is always a challenge. GCs can play an important role in helping articulate the legal and other risks the organization may face if business integrity is not front of mind.

Problem-spotting: The role of grievance mechanisms and whistleblowing
Grievance mechanisms and whistleblowing provide a clear and structured way to report business integrity concerns and are an important risk management tool for businesses.

How are we doing? Measuring the effectiveness of compliance culture
Just because no compliance issues have been identified, it does not mean they do not exist. A multi-pronged approach to measuring compliance culture is needed which might include self-assessments, refresher training and engagement with external stakeholders to test perceptions.



The previous version of the Guide for General Counsel on Corporate Sustainability is available at www.unglobalcompact.org/docs/publications/Guide_for_General_Counsel.pdf

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 driving change 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, decision-useful inputs 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

Traditional methods of supply chain risk management have focused on commercial aspects of procurement and on contingency planning. However, against a backdrop of increasingly globalized and complex supply arrangements, stakeholder expectations have evolved and the regulator landscape is shifting.

Know your supply chain: Map suppliers to better understand human rights risks
A key part of managing human rights risks is to ensure the business has a sufficiently well-developed picture of its supplier landscape to be able to understand which parts it should subject to further scrutiny and so that appropriate risk management systems and processes can be applied where they are needed most.

A fresh perspective: Conducting due diligence through a human rights lens
In this context, human rights due diligence involves an assessment of actual and potential human rights impacts within the supply chain. This is an assessment through the lens of salient risks to rights holders, not simply a review of whether a particular human rights issue may be a material risk to the business. The two may align, but this will not always be the case.

What next? Addressing impacts
There will be times when the business will need to address adverse impacts or use any leverage it has available to encourage others to do so. Remedy, in this context, can take a variety of forms and so specialist (including local) input may be required to ensure any response is appropriate.

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 affected persons can be heard and/or access remedy 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

Many organizations face unexpected challenges from time 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. Crises can have broad roots, often driven at least in part by failure to operate ethically and sustainably.

Building resilience: Establish strong culture and values
Organizations that have integrated sustainability considerations into their business strategy can typically better protect against, respond to, and bounce back from a crisis.

Plan ahead: How will you respond?
Having an agreed high-level plan for management and information-sharing in a crisis and mapping out actions for the first stage of response is also very useful in supporting an efficient and appropriate reaction. Practising the roll-out of these plans regularly and participating in regular crisis simulations is very valuable.

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 aid risk management and pre-crisis preparation. 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.

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