THE GC'S ROLE IN ESG: 6 KEY CONSIDERATIONS

Environmental, social and governance (ESG) initiatives are fast becoming a key focal point for organizations, investors, regulators and stakeholders alike. Rooted in concepts like company purpose and corporate social responsibility (CSR), a well-honed ESG strategy is an investor relations tool, an employee engagement strategy, an investment vehicle and a competitive advantage in the talent war. However, the all-encompassing nature of ESG has also led to questions of ownership. Who is best to lead the organization through this uncharted territory?

The answer, of course, is that every executive, operator and board member plays an important role in an organization's ESG strategy. However, the general counsel (GC) is perhaps in the best position to lead the integrated effort across the organization – a thesis we explored with Megan Belcher and Samantha Wellington in a recent webinar, "The GC's Role in ESG."

> "GCs are good at being detailed and process-oriented, which is really the devil behind a good sustainability program – as well as having the ability to look around the corner. [ESG] is a space where I think our skill set, our training, our leadership development – and also our connectivity around GRC – can provide real strategic impact to the organization."
>
> **Megan Belcher**
> Senior Vice President, General Counsel & Corporate Secretary, Scoular

Why GCs Are Uniquely Positioned to Lead

The GC sits at the intersection of legal, compliance, reputation and risk. They work directly with the board, while also managing the front-line teams responsible for disclosure, reporting and ethics.

A successful ESG program can bring many benefits beyond just profit and investor interest. From higher customer and community engagement to innovation opportunities to a more positive brand reputation, the GC can lead the way. But what steps do they need to take, and what should they be aware of?

Megan Belcher

Senior Vice President, General Counsel & Corporate Secretary, Scoular

Samantha Wellington

Senior Vice President, Chief Legal Officer & Secretary, TriNet

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1. IDENTIFY FRAMEWORKS AND EXISTING INITIATIVES

Few organizations will need to start from scratch. Assuming your organization has already set its company purpose, ensure ESG goals cascade from that vision. Leverage frameworks early on (e.g., SASB, GRI, World Economic Forum Core Metrics). Mix and match the framework elements that are most relevant or material to your company and industry.

Take time to think about how your organization's ESG initiatives might evolve at the beginning and reap the rewards in the future. Envisage progress. At the same time, says Wellington, begin to identify the grassroots initiatives that already exist at your organization (e.g., diversity practices, technology recycling programs) and start to own the narrative around these initiatives in your disclosures and reporting.

"We've based ourselves off the SASB framework, but not in a completely dictated way. So far, we're using it as a basis, but we're also allowing ourselves to look at other frameworks that exist and take bits and pieces that might be appropriate for us."

Samantha Wellington
Senior Vice President, Chief Legal Officer & Secretary, TriNet

2. RECOGNIZE THE RELATIONSHIP BETWEEN ESG AND GRC

The GC is primed to play an integral role in not just establishing but developing ESG in their organization. This means recognizing the relationship between ESG and governance, risk and compliance (GRC) programs and guiding the process forward until it eventually becomes self-sustaining.

Recognize that the relationship between ESG and GRC is symbiotic. Many of the metrics and governance mechanisms needed for ESG are likely already in a GRC program, and the skill sets required for overseeing both (a good head for strategy, an understanding of technology and reporting tools, the ability to move seamlessly between multiple processes) are similar.

"Many of the metrics and governance mechanisms that you need for a strong ESG program often inherently live in a modern GRC program, including the technology and tools that I think are really the backbone for effectively driving and tracking against your progress in those programs."

Megan Belcher
Senior Vice President, General Counsel & Corporate Secretary, Scoular

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3. ACCOUNT FOR ALL STAKEHOLDERS

Various stakeholder groups are going to have different needs and demands in relation to ESG. For example, consumers will expect organizations to be ethically aligned to their own viewpoints; employees will want to work for a company with a strong sense of purpose; and shareholders, policymakers and regulators will have their own set of priorities. The GC should do their best to prepare for these challenges by working with organizational leaders who are closest to those stakeholder groups.

Ensure your organization has a mechanism for listening to each stakeholder group, and consider how your organization can lead the way. Being a thoughtful corporate social actor will not only improve your relationship across stakeholders, but will also position you at the front of your industry, setting a benchmark for others to follow.

> "From a corporate sustainability perspective, we partner closely with each of our five operating divisions as they think about [what ESG means for] their extremely diverse customers. In addition, as we think about Scoular as a market leader and an umbrella brand, we're very focused on not only the 'E' but also the 'S' as we think about the importance of social [justice] matters that are front and center in our country."

Megan Belcher
Senior Vice President, General Counsel & Corporate Secretary, Scoular

How Does the GC Drive Board Engagement with ESG?

The GC is primed to drive real strategic impact when it comes to ESG – but a strong board relationship is just as critical to success. Accordingly, what steps should GCs take to make sure that the board is engaged with ESG strategy?

- **Involve the board in the creation of an ESG strategy.** This will not only drive engagement, but will allow the organization to benefit from the board's unique, high-level perspective (experience gleaned from time on other boards, for example). Take advantage of their expertise and experience.
- **Present the board with analysis of what their peers are doing.** No board wants its organization to lag behind others. Show them examples of what's working well in your industry, and encourage them to match or improve on it.
- **Bring the board along on the ESG journey.** Provide them with regular updates. Once the ESG roadmap is built, consider how you'll monitor progress and keep the board abreast of key milestones. Consistent, easy-to-follow reporting is one way to maintain high engagement levels.
- **Ensure the board has the foundation needed to oversee the ESG strategy effectively.** Bring in outside speakers (e.g., investors, industry experts) to educate the board about evolving stakeholder demands, ESG investing and regulatory trends.

4. OWN YOUR NARRATIVE

More and more companies now provide sustainability reports. For organizations just dipping their toe in the water, this can be a great milestone to strive for. Authoring a report not only helps your organization map out its ESG reporting structure, but it also can help your company find its voice to tell your ESG story.

There are a variety of steps GCs can take when drafting ESG disclosures that will make the process simpler. Be sure to reference the sustainability reports and disclosures across your peer group and other leading companies, and incorporate the best of each. Most crucial, however, is the need to be transparent about where you are on your ESG journey. Your organization's ESG posture will grow and evolve over time. Reports and disclosures are a useful way to get the ball rolling.

"My goal is to publish our inaugural sustainability report by November of this year. I see that report as a bar, so that it becomes the benchmark for whatever we then do the next year, so that it becomes something that you can build on each year as a way of holding ourselves accountable to it."

Samantha Wellington
Senior Vice President, Chief Legal Officer & Secretary, TriNet

Disclosures: United States vs. Europe

In the **U.S.** there are currently no mandatory ESG disclosures, although the SEC requires all public companies to disclose information that may be material to investors, including information on ESG-related risks. That may be changing, however. In March 2021 Acting SEC Chair Allison Lee indicated that the SEC is undertaking concrete steps to develop and implement a mandatory ESG disclosure framework.

The **EU's** regulation on sustainability related disclosures in the financial services sector (the SFDR) was adopted by the European Parliament and European Council in November 2019, and has applied to certain financial services sector firms since March 10, 2021. The SFDR requires financial market participants and financial advisers to provide clients and investors with certain ESG-related information in relation to the provision of their services and the marketing of certain financial products, using the mandatory disclosure templates (where applicable).

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5. CONSIDER THE BROADER BENEFITS

There's more to adopting ESG than just keeping investors or customers happy. The ramifications of a well-executed ESG strategy can reverberate beyond the confines of investor meetings or an annual report.

ESG and the opportunity for GCs to drive measurable impact is transforming the role of a "modern general counsel," explained Belcher. Beyond their role as a legal guardian, GCs have the opportunity to be a real strategic leader for the organization, executing ESG programs that are holistic, cross-functional and quantifiable in value. ESG also broadens the scope of legal and compliance departments in ways that are positive for talent development, enabling the GC's entire team to become better future leaders – offering the chance to learn about project management, balancing metrics, quantitative metrics and other useful disciplines.

"We've seen many benefits [in adopting ESG as a reporting mechanism] across the board. In the pure business sense, [that includes] high customer engagement, increased customer conversation, and really shifting ESG to front of mind for an organization that is thinking about these issues in a sophisticated and strategic way."

Megan Belcher
Senior Vice President, General Counsel & Corporate Secretary, Scoular

6. GET THE RIGHT DATA & TECHNOLOGY IN PLACE

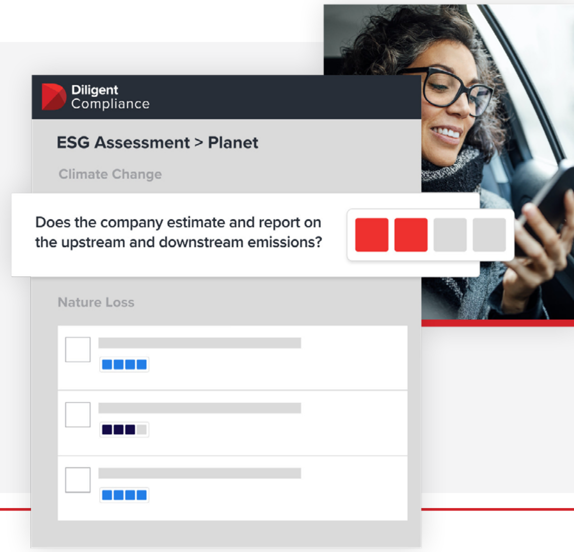
The size and scope of ESG reporting can sometimes seem daunting. But that's where technology – and automation in particular – plays an important role. Having the right data and technology in place gives you access to the insights necessary to increase visibility and to track the right metrics across organizational departments and peer groups. Especially in the early stages, GCs can lean on third-party data providers and industry consultants to get reporting structures set up, while platforms like Diligent can provide the infrastructure.

Bear in mind that current and potential investors are already using technology and third-party data sources to track and benchmark your organization's ESG progress, so it makes sense for GCs to do the same. With tools like Diligent, GCs are able to track ESG metrics across departments, benchmark against peers, search disclosures, and monitor news and stakeholder sentiment – so they can stay one step ahead in today's era of stakeholder capitalism.

"As you think about getting that ball rolling and thinking about what the right-sized investment from an SG&A [selling, general and administrative] perspective for your organization is, leveraging third-party partnerships and reporting can be a nice way to right-size what your organization should look like."

Megan Belcher
Senior Vice President, General Counsel & Corporate Secretary, Scoular

ESG is here to stay. Organizations must make the most of the opportunity ahead – a challenge the GC is poised to lead. GCs own all relevant functions necessary to run a holistic ESG program, from legal and compliance to brand reputation and board management. Most importantly, they operate at a level of influence, and they understand the complexities involved. ESG initiatives ultimately come down to impact, both internal and external. No one is better placed than the GC to make them a success.



HOW DILIGENT CAN HELP WITH ESG

GCs can leverage Diligent to help their organizations operationalize ESG principles and measure their impact:

- **Track Progress Against ESG Standards**
  Access to a library of standards and regulatory obligations to measure, track and improve overall progress toward their ESG goals. The all-in-one platform has built-in solutions for internal audit, risk management and improvement planning.

- **Benchmark Practices with Governance Analytics**
  Access the largest governance data set in the world, which is also used by leading proxy advisor Glass Lewis. With board effectiveness scores and executive compensation models, the platform flags potential discrepancies in diversity, governance and executive pay.

- **Monitor News & Stakeholder Sentiment**
  Automate news tracking across tens of thousands of sources to keep a finger on the pulse of ESG trends, regulations and, most importantly, stakeholder sentiment. Organizations can access health scores for their company, industry and competitors, enabling them to identify red flags and keep their board and leadership team informed.

- **Search Disclosures**
  Use Diligent to filter and search through thousands of public disclosures to quickly understand how other companies are reporting and responding to key ESG issues.

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a MODERN GOVERNANCE company

About Diligent

Diligent is leading the way in modern governance and is relied on by more than 25,000 organizations and 1,000,000 leaders in over 90 countries. Diligent empowers leaders to turn governance into a competitive advantage through unparalleled insight and highly secure, integrated SaaS applications. Thrive and endure in today's complex global landscape with Diligent.

Learn more and explore our solutions at Diligent.com