

ENVIRONMENTAL, SOCIAL & GOVERNANCE PRACTICE GROUP



In today's business environment, companies are increasingly evaluated on not only their profitability, but the manner in which they conduct business. Fox Rothschild helps clients analyze material ESG opportunities and risks, report on ESG matters and navigate the associated liability hazards in their efforts to become better corporate citizens.

More than ever, investors, consumers, government agencies and regulators are examining how companies do business and holding them accountable for their social and environmental footprints. Businesses seeking to improve their performance against these measures face an intimidating array of choices. Fox Rothschild's ESG Practice Group helps businesses cut through the noise and thoroughly evaluate the benefits and risks of a broad range of material ESG opportunities, including identifying and working with key stakeholders who are critical to the analysis. Businesses — and their boards of directors — have many options for improving ESG performance. We help them identify and capitalize on the best, most effective opportunities.

When it comes to ESG, both action and inaction carry risk. Failing to respond to internal and external demands for corporate social responsibility can result in significant business consequences, including lost revenue and reputational damage. Companies that make efforts to improve their Environmental, Social and Governance performance can enhance their reputations by reporting on their progress in these areas or by participating in ESG rating frameworks. But these disclosures, no matter how well intended, carry risks of their own.

Those risks include a growing threat of litigation from stakeholders seeking to hold businesses accountable for making inaccurate statements about their ESG practices in advertising, company and financial reports and rating agency disclosures. Claims may arise under state consumer protection laws, federal and state securities laws and product labeling laws. In addition, a small, but increasing, number of states and other jurisdictions have enacted ESG-related laws and regulations in areas such as climate change and board diversity. Fox attorneys help businesses report accurately on their activities, and minimize the risk associated with that reporting. If ESG-related claims are filed against a business in state or federal court, Fox's team of highly skilled litigators can assist in mounting an effective and efficient defense.

Business Practices

ESG-conscious consumers and investors demand not only that companies conduct business in ways that are sensitive to climate change, preserve human rights and promote diversity, but that they use suppliers that adhere to similar standards. This requires careful review of internal policies and procedures as well as a variety of contracts and agreements with a broad range of business partners.

Reporting

Companies face growing pressure to tout their efforts to preserve the environment, protect human rights and promote a diverse workforce. However, the manner in which businesses make these public disclosures can mean the difference between notching a hard-fought reputational win, and exposing the company to costly and potentially damaging litigation from consumers or investors. ESG reporting requires careful attention to detail and an understanding of risk mitigation strategies.

E – Environmental

How does your company impact the environment and what are you saying about it?



Federal and state environmental protection agencies are no longer the only government regulators paying attention to business decisions that may affect our environment and natural resources. Federal and state securities regulators — including the SEC — along with investors, lenders and consumers are increasingly focused on business decisions and policies that involve sustainability, air and water pollution, energy conservation, chemical usage, waste disposal and land preservation. Companies' sustainability and climate change policies, as well as the manner in which they report those policies to investors, ESG rating agencies, employees and the general public, can have unintended consequences and create significant financial and reputational risk. Our team includes environmental attorneys who assist clients in evaluating their environmental policies and impact, and can help identify worthwhile opportunities to improve their performance.

S – Social

How do you treat your employees and the communities in which you do business?

Businesses' human resources practices and community impact have become an increasingly significant factor in determining how they are perceived by investors and consumers. Companies are accustomed to complying with local, state and federal labor and employment laws and regulations, but they now face an imperative to go beyond those statutory requirements to demonstrate a broader commitment to fairness and to diversity, equity and inclusion. Beyond matters of fairness and diversity, issues such as workplace safety, social dynamics that affect demand for a company's products or services and geopolitical factors beyond a business' control can pose risk to companies on multiple fronts. Fox Rothschild's ESG Practice includes labor and employment attorneys with the focused practice area knowledge to help businesses enact policies and procedures that improve ESG performance and mitigate workplace-related risks.



G – Governance

How ethical, accountable and transparent are executives and board leadership?

Good corporate governance is an indicator of solid decision making, while poor governance practices can expose a business to regulatory and reputational risk, as well as missed opportunities to grow revenue and profits. Investors and lenders, rating agencies and government regulators are increasingly scrutinizing the gender and racial diversity of company boards, the independence and effectiveness of board oversight of key corporate functions, business codes of conduct, management strategies for long-term growth versus short-term gain, and the way companies handle high-profile, high-risk issues such as executive compensation and cybersecurity. We help boards identify and live up to their ESG oversight responsibilities.



Our Services

Fox Rothschild's multidisciplinary team assists businesses in evaluating ESG risk relating both to their practices in the areas of environmental sustainability, employee relations and human rights and the multiple methods of reporting their efforts in these areas. Fox's ESG Practice helps companies make smart ESG disclosures, avoid reporting pitfalls and evaluate the risk of potentially sensitive statements included in press releases, investor communications, product packaging and literature and annual reports.

Our team includes attorneys from the firm's Environmental, Labor & Employment, Privacy & Data Security, Manufacturing, International, Corporate and Litigation practices who can assist businesses in determining how to adjust their policies and procedures in these areas, screen business partners for ESG practices and require suppliers to meet ESG standards, while mitigating litigation and regulatory risk. If litigation arises, our well-resourced group combines the litigation skills and subject area knowledge needed to mount a robust defense.

Our services include:

- Evaluation of material ESG opportunities and risks
- Identifying stakeholders relevant to ESG analysis
- Board governance advice and counsel related to ESG matters
- Compliance with state and international ESG reporting regimes
- Review and drafting of GRI, IRF, SASB, TFCO disclosures
- Supplier and contractor reviews and requirements
- Vetting of company statements, reports and packaging
- ESG-related contract clauses
- ESG litigation defense
- ESG policy and procedure review

Related Practices

- Environmental
- Labor & Employment
- Privacy & Data Security
- Manufacturing
- Animal Law
- Immigration
- International
- Health Law
- Media & Defamation
- Securities Industry



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