Gartner for Legal, Risk & Compliance

The Strategic Role of the General Counsel in Successful ESG Programs
Introduction

Once a nice-to-have, environmental, social and governance (ESG) programs are now a business imperative.

Investors, employees, regulators, customers and activists continue to put pressure on organizations to make commitments and show progress on social and environmental issues.

The general counsel (GC) plays a critical role in ensuring the impact of an organization's ESG program — particularly during times of rapid social change when the law is a necessary but insufficient guide to corporate behavior and decision making. The GC inherently has a holistic understanding of business practices, proximity to investors and regulators, and ability to balance disclosure requirements with social and governance expectations. This provides a unique, but sometimes fraught, opportunity to arbitrate between what the organization must do versus what it ought to do.

Not surprisingly, many GCs are the natural leaders to align organizational leadership around a shared definition of ESG, scope the program to focus on the issues of greatest impact to the business, set meaningful goals, govern program execution to ensure each program component meets key goals and communicate the program mission and outcomes to critical stakeholders.

This guide offers a call to action for GCs who are ready to lead their organization’s ESG evolution from purely compliance- and reporting-driven efforts to strategic, business outcome- and risk-oriented programs.

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What is ESG?

Environmental, social and governance is the process for setting, managing and reporting on an organization’s environmental and social impacts, governance mechanisms and related policies. Having a well-defined and widely communicated ESG program gives organizational leadership, including the board of directors, a platform from which to communicate key information, as well as a framework for understanding the long-term sustainability of the company’s business model and revenue streams.
Align organizational leadership around a shared definition of ESG

In Part 1 of this ESG eBook series, *Anatomy of an Effective ESG Program*, we describe the four components of ESG.

As organizations execute on these components, all eyes are on the GC to guide the process — and sometimes to litigate internal disputes between leaders who have widely divergent views of what ESG is and what it isn’t. The most successful GCs start by gathering internal and external views on the components of ESG, crafting a core definition for the organization and aligning the executive leadership and the board around it.

By starting with a shared definition, the GC establishes the connective tissue linking the four components and ensures each remains in sync with one another and with the organization’s strategic priorities. Forging partnerships across the ESG spectrum — for example, with the chief human resources officer (CHRO) on issues related to diversity, equity and inclusion (DEI), and with the head of supply chain or real estate on environmental sustainability — ensures that all future ESG efforts operate in a coherent and consistent way, regardless of whose purview they fall under.

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<th>ESG Imperatives</th>
<th>Strategic Actions for the GC</th>
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<td>Understand Stakeholder Expectations</td>
<td>Determine Program Scope Conduct Materiality Assessment</td>
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<td>Set ESG Strategy and Goals</td>
<td>Align Strategy, Goals and Targets</td>
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<td>Establish Program Governance</td>
<td>Drive Internal Role Clarity Focus on Data Reliability</td>
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<td>Communicate Your ESG Narrative</td>
<td>Ensure Narrative Strength</td>
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Scope the ESG program

ESG has implications for many functions of an organization, such as manufacturing, supply chain, governance, talent management, board management — and those are just a few. Scope the program by first documenting the range of priorities voiced by stakeholders, including regulators, investors, value chain partners, customers, employees and the public at large.

Give greater weight to the priorities of stakeholder groups that have significant impact on your organizational strategy. Engage with them directly through surveys and interviews. To fill in gaps, leverage secondary sources, such as news reports, peer ESG reports and ESG rating reports. Progressive GCs are increasingly investing in “voice of society” initiatives to synthesize the risks and opportunities of new laws, regulations and social expectations and guide business-specific actions and organizationwide investments.

A thorough process of discovery is key — but don’t stop there. It’s easy to create a reactionary ESG program that just responds to stakeholder concerns. For higher impact, go the next step to identify material issues, not just stakeholder-relevant ones.
Identify the essential material issues to narrow the scope

Identify material issues using an assessment that maps ESG issues along two dimensions: stakeholder relevance and strategic importance. Issues that rank high on both warrant consideration as part of the ESG program.

Materiality is a critical input, but the judgment of the GC is still critical to ensure the organization has prioritized the right ESG issues. If there are too many material issues to tackle at once, if they are imbalanced across the ESG segments or if they collectively require too many resources, the organization risks creating a shallow ESG program that absorbs significant resources and investments but produces insufficient tangible progress.

Armed with an initial list, the GC must engage and persuade the board and C-suite peers to build a shared commitment to three to five essential issues that will serve as the ESG program cornerstones.
Long-term ESG success depends on having actionable, measurable goals the organization wants to achieve. For each issue in the ESG program scope, the organization must set a goal and define an action plan for achieving it.

The level of ambition reflected in each goal varies by issue. For some, it may simply be to meet an industry expectation. For others, it may be more aggressive in that it positions the organization as a leader.

The GC’s knowledge of regulations and disclosures — and the business’s input on the strategic and long-term implications of the issue — will ensure the ESG goals are consistent with industry expectations, stakeholder expectations and organizational capabilities. Also, the GC can guide the organization on which metrics to report to reflect progress. Ask and investigate the following as it pertains to the organization’s high-priority ESG issues:

- What metrics do industry peers report?
- Does working on the issue have the potential to improve business processes, products or services?
- Are there potential financial gains from venturing into this area?

### Identify ESG Targets, Illustrative Example

<table>
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<tr>
<th>Issue</th>
<th>Goal</th>
<th>Target</th>
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<tr>
<td>Diversity, equity and inclusion</td>
<td>Improve DEI initiatives and develop diversity recruitment strategies</td>
<td>X% of management belonging to underrepresented groups by 2025</td>
</tr>
<tr>
<td>Greenhouse gas (GHG) emissions</td>
<td>Reduce GHG emissions</td>
<td>Achieve net-zero carbon emissions by 2030</td>
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1. Set goals for material ESG issues that are achievable and align to business strategy and priorities.
2. Consider the benefits, financial and operation impact, and potential competitive advantage of each goal to set viable targets.
Once an organization sets its ESG goals, stakeholders expect them to be met — and to receive accurate and reliable reports related to them. Failure to do so destroys trust and credibility.

GCs are well-positioned to oversee the development of reporting processes to capture the data related to key ESG metrics and ensure disclosures are validated and analyzed in a timely cadence to ensure accurate and up-to-date reporting.

**Key Aspects of Reporting Quality**

- **Data Metrics**
  - Who has the relevant information?
  - In what system is it housed?
  - How frequently is it updated or needed?

- **Data Validation**
  - Is the data comprehensive, reliable and accurate?
  - Can you explain the methodology behind metrics?
  - Does the methodology conform to industry and accounting standards?

- **Process Validation**
  - Do you understand reporting and accounting standards?
  - Do you have sufficient controls for ESG reporting?
  - Do you have a process for supplier attestations?

- **Data Reporting**
  - Do you have data sources for key ESG goals and metrics?
  - Can you consistently and efficiently access information?
  - Is there a central repository for ESG data?
An ESG program is more likely to meet its goals when it has purpose-driven leadership and governance — led by the GC but implemented across affected functions and lines of business.

In Anatomy of an Effective ESG Program, we described a recommended governance structure that includes an executive committee or council that includes the GC and is tasked with defining and driving the organization’s strategy. The executive council works under the oversight of the board of directors and collaborates with a task force of representatives from involved business units.

Within that structure, however, the organization needs absolute clarity about which council or task force member is responsible for fulfilling defined roles related to:

- Unique skills, knowledge and expertise
- Business operations
- Specific ESG goals
- Weighing stakeholder opinions
- Making decisions when there are competing interests
- Timing and cadence of meetings and progress toward goals

### ESG Governance Structure, Illustrative Example

#### The Board

**Key responsibilities**
- Overseeing the organization’s ESG strategy, reporting practices and disclosures
- Monitoring risks associated with ESG

**Composition**
- Entire board, existing board committee or new ESG board committee

#### Executive Council

**Key responsibilities**
- Defining and driving the organization’s formal ESG strategy
- Creating the annual ESG report

**Composition**
- Senior leaders, such as the GC, CHRO, CCO, investor relations, etc.

#### ESG Task Force

**Key responsibilities**
- Executive ESG program activities and tasks
- Monitoring stakeholder (internal and external) ESG sentiment

**Composition**
- Representatives from functional areas across the organization

#### ESG Liaisons

**Key responsibilities**
- Tracking and reporting ESG metrics
- Socializing the ESG program

**Composition**
- Representatives from functional areas across the organization
It’s now critical to gain a reputational benefit by communicating an ESG narrative to stakeholders. A clear message and comprehensive strategy are key to ensure clarity about the overall ESG mission and goals.

- **Craft an ESG mission statement:** Define the overarching narrative to convey to the public, including a corporate commitment to ESG and high-level ESG goals.
- **Determine the best channels for disclosure:** Review the list of issues and metrics and identify the key audiences for them.
- **Assign disclosure responsibilities:** Identify the best-fit individuals or groups for each communication channel and allocate disclosure roles and responsibilities. Consider reporting frequency: Organizations typically publish proxies and ESG reports once a year and update websites whenever significant changes occur.

### ESG Mission Statement, Illustrative Example

**At organization name, we are committed to improving our environmental, social, and governance (ESG) performance.**

**Our mission**
- To achieve net-zero carbon emissions by 2035
- To improve our DEI initiatives
- ESG goal or priority
- ESG goal or priority
- ESG goal or priority
Conclusion

Competitive demand, social pressures and regulatory requirements are increasingly forcing organizations to take a stand on issues they care about, including sustainability and environmental, social and governance issues. Public commitments to ESG priorities can create consequences and action requirements across the organization’s operations.

GCs are ideally positioned to guide their businesses through the complexities of ESG program development and execution. Aligning organizational leaders around a shared definition of ESG, scoping the program to focus on a core set of material issues, setting meaningful goals, governing program execution toward success, and communicating the program mission and outcomes all serve to ensure that the ESG program delivers key reputational, risk management and business performance benefits to the organization.
Explore these additional complimentary resources and tools for legal leaders:

**Research**
- **Anatomy of an Effective ESG Program**
  Uncover the key components of a high-impact corporate environmental, social and governance program.
  - [Download Guide](#)

- **General Counsel Leadership Vision for 2022**
  Explore key actions for GCs and their teams.
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