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**Baker
McKenzie.**

**Annual Compliance
Conference 2022**

ESG, Supply Chain and Product Compliance

**Key Takeaways from the Annual Compliance
Conference 2022**

In Brief

In this week's sessions, we delve into notable developments in ESG, Supply Chain and Product Compliance, including:

- ESG Supply Chain Due Diligence
- Product Compliance and Liability
- The "G" in ESG
- Sustainable Product Trends for In-house Counsel, including Plastics, Greenwashing and the Right to Repair

Session 3: The "G" in ESG: How governance can help address climate, environmental and social risks within your business and supply chain

6 October 2022

Today's session focuses on governance, which is the G in ESG, and its role in managing climate, environmental and social risks within businesses. We examine how companies are adapting their governance frameworks to address ESG risks in their supply chains and their related challenges and look into some best practices to ensure a robust stakeholder governance program.

What is governance? Governance refers to the structures, processes and practices of an organization that support the board and senior management's delivery of the organization's objectives and strategies to ensure effective decision-making and enable appropriate oversight of business operations.

Why is it important? Now more than ever, governance is increasingly becoming central to ESG as forward-thinking boards are looking at integrating ESG considerations into company strategies early on. Apart from being on the receiving end of stakeholder activism, businesses have also had to grapple with investors who are increasingly focused on long-term value creation, as well as the implications of the ever-evolving legal and regulatory landscape. As purpose-driven, ESG-based metrics are increasingly being assessed alongside a company's financial performance, it is important to collect data and routinely review how the business is performing against its ESG performance indicators.

What is the best governance structure? There is no one-size-fits-all structure for governance. Cross-functional efforts must be undertaken to embed stakeholder voices in company strategies and strengthen governance. At the heart of designing any stakeholder governance framework is making the voice of each key stakeholder heard in the boardroom, by senior management and, indeed the whole company, and ensuring these voices inform decision-making. Each company should approach this in a tailored way, incorporating their stakeholders' preferences into the corporate agenda. The best ESG strategies entail a deep understanding of key stakeholders which, depending on the company, might include the workforce, customers, suppliers, regulators, NGOs, and the wider community. They also tend to incorporate environmental considerations, in light of these becoming a high priority for many stakeholders. There is no singular approach to governance as each business will have its own stakeholder universe that will shift over time, which therefore should be reviewed periodically. It is also important that you are ready to show where you are in your journey and how you are progressing towards your goals.

The role of governance in the environmental and social agenda as it relates to its supply chain: Traditionally, key factors for supply chain success were cost/capital, quality, and service. To future proof supply chains, three additional priorities need to be factored in: resilience, agility and sustainability¹. These new priorities can't be tacked on to existing supply chain setups. Rather, they will need to be built in from the foundation and considered in every element of supply chain design, organization, and operation. This is where governance plays a key role, particularly as regards agility and sustainability. Agility means having a sound stakeholder engagement program (in this case focused perhaps on customers), which will give companies a glimpse into customer preference and behavior. This engagement must be coupled with the processes that bring this information into board and management decision making. For sustainability, the corporate governance framework should be constantly checked and adapted as necessary so that E and S considerations are adequately addressed across the company. Without a solid corporate governance framework and oversight structures, good decision making is at risk and organizations may struggle in trying to deliver the E and the S in ESG.

Key issues and challenges with respect to supply chain governance: As the legal and regulatory landscape continues to evolve, alignment with laws and regulations, including complying with legal requirements across jurisdictions,

¹ McKinsey, Future Proofing the Supply Chain, 14 June 2022 Future supply chains: resilience, agility, sustainability | McKinsey

and balancing these with corporate commitments is becoming a challenge. Businesses need to grapple with the practical implementation of ESG across supply chains, including the traceability of the source of commodities, the difference between segregated and mass balance commodities, and self- and third-party certifications, among others. Businesses also have to deal with the implementation of compliance processes and data management in a practical and efficient manner. Businesses will also have to prepare for potential exposure to litigation especially in light of various competing legal and regulatory requirements on mandatory reporting, marketing claims and other requirements that have been the focus of increased stakeholder activism, including those related to greenwashing claims.

Top tips for companies when grappling with the G in ESG:

- While voice from the top is critical, embedding stakeholder voices in company strategies is also important for an effective stakeholder governance program.
- Align corporate strategy early on.
- Examine issues on a global basis (vs using a regional or local lens).
- Invest on a robust data governance program, in light of increasing transparency requirements.
- Leverage existing in-house processes and resources, as well as external knowledge and experiences.
- Keep abreast of the laws and regulations in the horizon.

Annual Compliance Conference 2022

Our popular Annual Compliance Conference, which attracts over 6,000 in-house senior legal and compliance professionals from across the world, took place across five weeks from 6 September - 6 October 2022. These sessions virtually delivered our cutting-edge insights and guidance on key global compliance, investigations and ethics issues.

The sessions provided practical insights and analysis on significant developments across:

- Anti-bribery, corruption and economic crime
- Customs and FTAs
- Export controls, sanctions and foreign investment
- Antitrust and competition
- ESG, supply chain and product compliance



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