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# **THE GROWING IMPORTANCE OF EFFECTIVE ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) POLICIES FOR COMPANIES IN NIGERIA**





Climate change, social inequality, and unethical company operations are just a few of the issues facing the world today. More and more companies are recognising the negative impact that industry and business can have on the planet and its people and are driving change to turn that negative impact into a positive one. This change will have profound effects on the roles of lawyers and professional services firms as they transform in line with the demands and expectations of their clients, stakeholders at all levels, wider society and the planet. One key trend contributing to the positive change is ESG.

## **THE MEANING OF ESG AND ITS METEORIC RISE IN BUSINESSES TODAY**

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ESG has been brewing for a while, and is hitting the mainstream now, driven by united demand from employees, investors, customers and the society. All four groups seem to have shifted from a passive to an active stance and are forcing companies to step up against climate change and social injustice, among others.

ESG stands for Environmental, Social and Governance. It is a term widely used in relation to investment, referring to a set of measures designed to ascertain how a company manages its potential impact on society and the planet. In other words, it refers to a company's commitment to do more than make profits, such as actively strive to contribute positively to the environment or social causes and to conduct itself responsibly.

ESG is a tool for businesses to measure sustainability. In a business context, sustainability is about the company's business model, i.e., how its products and services contribute to sustainable development.

We briefly examine the different words that make up ESG and what each stands for.

## 1. Environmental

Global production and consumption have a major impact on our environment. When producing and consuming everything from cars to food, we contribute to climate change, resource depletion, waste pollution, deforestation, and biodiversity to name a few examples. The 'Environmental' in 'ESG' ensures that in production and consumptions, active measures are taken to reduce the harmful effects on the environment.

## 2. Social

People-related elements are the focus of the social aspect of ESG, covering company culture and issues impacting society, customers/consumers, and employees. This can cover employee treatment and pay, employee engagement and staff turnover, diversity and inclusion in hiring and advancement opportunities, and mission or higher purpose.

## 3. Governance

The governance element of ESG refers to the composition of the board of directors, their powers, how the directors relate to different stakeholders. Governance can serve as a control mechanism in relation to bribery and corruption, tax, executive remuneration, shareholders' voting possibilities and internal control. Undoubtedly, active corporate governance is important for the development of companies and provides long-term benefits for shareholders, employees, and society.

# ESG AS A KEY FACTOR FOR INVESTORS

Companies that desire to be beneficiaries of ethical investment must ensure that they are ESG focused. This is because ESG is a list of criteria used by investment professionals, also known as fund managers, to measure the ethical impact of companies that they choose to include within their ethical funds. An ethical fund is a mutual fund with strict investment guidelines that limit investment activity to companies known for operating ethically, that is companies, whose businesses are not considered harmful to the society or the environment.

Put simply, before investing in any company, investors or fund managers will look at a wide range of factors that encompass the three key pillars of ESG: environment, society, and governance. They will check things like how much waste a company produces, how much energy it uses, what it does to champion gender and race equality, whether it gives back to local communities, what rights it gives its shareholders, and how transparent it is when reporting to the public. Fund managers will then give an ESG rating to each company they examine. The better a company's ethical standards are, the higher its ESG score will be and the more likely it will qualify to be a recipient of the funds.

ESG is considered a fundamental factor for investors, because among other things, it gives investors the tools to build plans that reflect their principles, but more importantly, ESG can help push for change. With ESG, companies are held accountable for their actions and are urged to do better. Increasingly, businesses understand that they must actively find ways to increase their positive contribution to the environment and society, or they might miss out on financing opportunities if they continue to ignore such issues.

With investors increasingly assessing companies in terms of their holistic performance, long-term sustainability, and societal impact, ESG cannot be overlooked.

## **KEY BENEFITS OF ESG TO COMPANIES/ORGANISATIONS**

- **Facilitating top-line growth** – a strong ESG proposition and integration can help attract new business opportunities, meet competitive challenges, and speed up growth by strengthening relationships with key stakeholders, consumers and government bodies.
- **Reducing costs** – tackling environmental issues like climate change, energy and raw material waste can have a direct impact on operating profits by as much as 60%. This is because, as research reveals, there is a particularly strong correlation between resource efficiency and financial performance.
- **Minimising regulatory and legal interventions by increasing transparency** – an effective ESG integration can improve transparency and thus reduce the general regulatory burden on organisations. Whilst the biggest benefit of ESG from a regulatory perspective is reducing the risk of adverse government actions, it can, on the other hand, attract its support. In some industries like banking, automobile and pharmaceuticals, organisations might risk up to 60% of the value.
- **Increasing employee productivity** – generally, a strong ESG proposition can attract and retain the best talent and drive work motivation by instilling a sense of purpose that can further improve productivity and employee satisfaction.
- **Optimising investment and capital expenditure** – by allocating capital on more sustainable investments, organisations can also benefit from higher investment returns in the long term. For example, relying on energy-hungry plants and equipment can significantly affect cash flows in the future as governments continue to push for a greener economy.



# THE ROLE OF LAWYERS/LAW FIRMS IN DELIVERING ORGANISATION'S SUSTAINABILITY AND ESG OBJECTIVES

As companies increase their commitment to sustainability and responsible business, so too has the involvement of lawyers. Lawyers and law firms have always played an important role in managing social, ethical and environmental issues for organisations. However, legal teams are no longer just reacting to ESG issues, but proactively becoming involved in integrating material ESG risks and opportunities in business organisations, their operational policies and go-to-market strategies. The following are the roles lawyers play in ensuring that organisations remain focused on ESG.

## 1. Sustainability strategy and integration into decision-making

Lawyers are increasingly involved in setting the strategic direction of sustainability and ESG within the organisations they advise and ensuring sustainability is embedded into corporate governance and integrated into broader business operations. In this regard, a key component has been integrating ESG criteria into investment decision-making and ensuring adequate ESG due diligence strategies are in place for any transactions.

## 2. Horizon-scanning

Lawyers are able to horizon-scan and understand what ESG opportunities and risks may likely affect the company. Sustainability challenges are ultimately about risk and reward – challenges and opportunities. Lawyers are experts in identifying and dealing with risk and spotting trends in the evolution of regulations (such as regulations around the green recovery, modern slavery, circularity and extended producer responsibility) that can have a material impact on the business, pre-empt and prepare for any changes.

## 3. Transparency and disclosure

Lawyers are central to ensuring companies report on their sustainability progress in a transparent manner and one that explains material issues, the pathways and actions to manage them. Lawyers will make sure that corporate reporting meets the relevant reporting standards, and that disclosure addresses the ESG factors that are important to all stakeholders.

## 4. Policies and procedures

Lawyers can help shape the culture and corporate decision-making of companies through the development of robust ESG policies and procedures, and ensure they are operationalized and meet stakeholder expectations.

Lawyers are often key to championing the values and purpose of an organisation and encouraging employees to uphold good levels of responsible business and compliance. Alongside Human Resource, lawyers can also ensure employees are appropriately incentivized to deliver against the company's sustainability objectives.

## 5. Grievance procedures

Effective grievance mechanisms are a cornerstone of any sustainable business. They are essential to mitigate the legal, financial and reputational risks that can arise regarding ESG issues in their operations, relationships and value chain. The legal team plays a pivotal role in ensuring stakeholders have an adequate and transparent route to raise concerns and that the appropriate remediation will take place.

## 6. In a time of crisis

Finally, lawyers will always play an important role when there are social, ethical or environmental challenges that have the potential to affect the organisation's financial position and reputation, particularly when this results in regulatory intervention or litigation, but also targeting by interest groups which require "softer" but equally important responses.

## CONCLUSION

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ESG is the new corporate social responsibilities of companies, and for a company to remain relevant in today's world and contribute meaningfully to the society, it must ensure that it has ESG integrated into its operations. Lawyers are well positioned to assist companies and organisations in this regard, to the end that these companies will not only make profits but will also build sustainable businesses.

Famsville Solicitors is well positioned to render necessary advice on ESG and to help design an effective ESG policy for your company and organisation.

## KEY CONTACTS

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