Corporate governance - Embedding ESG in what you do

24 July 2024

Getting started on ESG (Environmental, Social and Governance) corporate governance can seem daunting but you can take some simple first steps by focusing on these four areas:

- ·virtual board meetings and digital paperwork;
- local knowledge and ESG directors;
- ESG-aligned articles of association; and
- ESG-based performance incentives.

Virtual board meetings and digital paperwork

Holding virtual board meetings is a relatively straightforward way to start embedding ESG into company culture and practice. Most people are now comfortable with dialling in to a telephone or video conference call and appreciate that not having to travel to meetings can benefit both their lifestyle and the environment. Remote meetings aren't always appropriate, but companies can support ESG goals by looking to increase the number of virtual meetings a year.

A company can introduce a specific provision in its governance documents requiring directors to endeavour to hold meetings virtually, such as this one by The Chancery Lane Project (**TCLP**). It has been drafted from a New Zealand perspective, but the concepts hold true to the UK and the text could be redrafted to work within a company's articles of association or shareholders' agreement.

Companies should also review their paper trail for meetings. Is the physical paperwork for a meeting necessary? If so, is it as succinct as possible? There may be times when detailed information does need to be provided on paper so that those attending the meeting can properly prepare and advise. But paper production is energy-intensive and has a significant carbon and water footprint, so when paper is not essential companies can help their ESG performance by circulating information digitally.

And don't forget that parties to contracts can now sign them electronically, subject to the governing law of the contract and local law of each signing party. This article by TLT gives an update on the evolving status of electronic signatures for mergers and acquisitions in England and Wales.

ESG considerations should be a conscious part of board decision-making and companies can pro-actively factor these into template board resolutions – making sure to tailor them for each meeting held.

Darcy's board minutes clause, also produced by TCLP, goes some way towards achieving this, with a focus on routinely thinking about climate considerations.

Local knowledge and ESG directors

Appointing a local knowledge director to the board helps to ensure that the voices and perspectives of the local community are heard. This can be particularly useful for subsidiaries based abroad where the local geography, environment, working practices and community can differ substantially from those of the parent company based outside of the jurisdiction. A local knowledge expert can share what they know and speak up to make sure that decision-making is informed and respectful, and that the wider group considers local and global stakeholders (such as employees, customers and supply chain partners).

Jedda's clause describes the role and terms for the appointment of a director with local knowledge (or where this is not possible, a person with other relevant ESG-related expertise) to a company's board.

ESG-aligned articles of association

Building ESG considerations into a company's articles of association ensures that they form part of its decision-making and activities. They can be quite general to begin with – for example, requiring that the board seeks to reduce harms the company creates – but can adapt over time to be more tailored and aspirational. Arlo's clause provides a basis for building ESG considerations into a company's constitution in a way that aligns corporate governance, decision-making and company activities.

ESG based performance incentives

With directors' remunerations and incentives, we expect to see a shift away from the use exclusively of traditional financial performance conditions. Whilst financial performance conditions will nearly always play a part in determining rewards, there is a growing focus on other targets for performance too, for example:

- environmental targets and net zero attainment and maintenance;
- regulatory governance (including addressing the gender and ethnicity pay gaps and providing modern slavery reporting);
- ESG governance (including Equality, Diversity and Inclusion (ED&I) and sustainability committees and compliance with a formal corporate governance code); and
- bespoke targets (for example, ensuring the company's job descriptions include language and requirements that are inclusive and equitable).

Scarlett's performance conditions give examples of remuneration awards which are "*conditional on achieving ESG targets and so incentivise and reward long-term decision-making that is required to deliver sustainable, climate-aligned action*".

In summary

We also recommend looking at the wealth of information and drafting which has been created by TCLP, a pro bono initiative that brings legal professionals together to find practical drafting solutions to fight climate change and achieve net zero carbon emissions. The clauses linked in this article are just a small number of those generated by TCLP with the support of local lawyers in various jurisdictions – including TLT which is an active participant.

If you would like to talk to us about any of the above, please get in touch.

This publication is intended for general guidance and represents our understanding of the relevant law and practice as at July 2024. Specific advice should be sought for specific cases. For more information see our terms & conditions.