



Post-COVID-19 Sustainability and ESG disputes: human rights commitments and key legal risk during times of crisis

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Maintaining a consistent approach to sustainability and human rights is not just the right thing to do during the COVID-19 crisis, but an important consideration to mitigate medium and long-term legal risks.

General Counsel and in-house legal teams, as guardians of the business, are front and centre of the crisis response. Their obvious roles include navigating contractual liabilities, advising the business on what it can and can't do when taking decisions about workers, suppliers, customers and other key stakeholders and ensuring adequate governance oversight is in place.

In that role they must also ensure consistency between sustainability and human rights commitments and short-term crisis response measures to mitigate the medium to long-term risk of litigation should harm or injury arise - both in relation to issues that occur directly as a result of any short-term measures taken in response to the crisis, but also as a result of unforeseen consequences that can and will arise.

Some businesses, for whom sustainability and Environmental, Social and Governance ("ESG") considerations have been embedded into business strategy and public statements, will have a heightened need to ensure consistency and may find this balancing act tricky. In these businesses, however, Sustainability, ESG and Human Rights due diligence is likely to be a familiar process. Legal, Sustainability, Responsible Business, CSR, Risk, PR, Supply Chain and Commercial teams are also generally well accustomed to collaboration, which will put them in good stead to navigate this complex legal landscape.

Businesses who may be less exposed to public Sustainability and ESG drivers may be more focused on getting through the immediate crisis by protecting cash reserves, minimising cash outflows and reducing liabilities on the balance sheet. These businesses may consider the importance of a joined up internal approach across Legal and other relevant teams and the benefit of that perspective in protecting long term value and business relationships.

What human rights may be impacted by businesses' efforts to mitigate COVID-19?

Adverse impacts can arise in a range of different ways across business activities, supply chains and relationships. For example:

- measures taken to contain the pandemic, changes to workplace environments working conditions, changes to supplier relationships, among others, have the potential to impact on the full range of individuals' rights to life, health, women's and children's rights, rights to family life, labour rights, among others;
- implementation and use of new technology and surveillance measures to manage the spread of the pandemic

can create privacy issues;

- interruptions to work and daily life disproportionately impact vulnerable or at risk groups, including migrant workers, people from ethnic and religious minorities, women, children and informal workers, among others;
- restrictions or refusal to offer services to ethnic and other minority groups creates the potential for racism and xenophobia.

How might these risks manifest?

Given the complexity of the crisis and speed at which it is developing, businesses should identify potential impacts on their commitments on the basis of risks to people and ensure that responses in these areas are consistent. The current crisis may well serve to exacerbate already difficult conditions. For example, red-flags can arise in locations and/or operations where:

- there is an increased contagion risk to workers because of their role, working conditions or changes to the workforce;
- reduced workforce participation may impact on maintaining safe production methods and/or working environments;
- production or construction sites are confined to spaces that do not enable adequate distancing measures to be employed;
- accommodation and housing is provided to workers which does not enable adequate distancing measures to be employed;
- public or private security forces or temporary militarisation are employed to enforce curfews and movement restrictions or protect assets and installations;
- drastic changes in local social and/or economic opportunities leading to civil unrest or political violence;
- access to justice does not exist for affected stakeholders or rule of law protections are weak.

Maintaining consistency

Multinational businesses have operations, supply chains and business relationships that span multiple jurisdictions and markets, each with their own legal and policy drivers and unique social and operational contexts. Consistency of approach does not necessarily mean applying the same approach everywhere, but instead understanding the interaction between local issues and transnational legal risks and ensuring measures are put in place by the people with the right skills and knowledge of local context.

In Issue 2 of this mini-series, we will consider some of the pinch points, and practical pointers for managing and mitigating potential legal risks.

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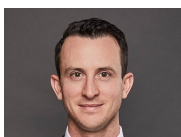
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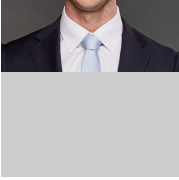
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