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embrace ESG: act to impact

A WHITE PAPER FOR LEGAL SERVICE PROVIDERS

introduction

Globalisation and capitalism must evolve if they are to continue delivering prosperity and progress. Indeed, in recent years the much-heralded stakeholder economy has gained significant momentum, accelerated by the climate crisis and the pandemic. Today, there is no longer any doubt: the collective challenges faced by humanity are so great that no single industry, country, technology or profession can address them alone. We are all inter connected.

For business, we know that this means a shift of focus from a narrow group of shareholders to a vast range of stakeholders – including local communities, national governments, international suppliers and the global environment. Although the network of connections between any individual business and its stakeholders is complex (and still evolving), the issues can be summed up in just three words: Environment, Society, Governance (ESG).

For all but a very few mainstream companies, sustainability, social responsibility and ethics have emerged from back offices into C-suites and board rooms. No longer simply short hand for “risk”, ESG now stands at the heart of corporate strategies. It has even been described by PwC as the “growth opportunity of the century”. Others talk of “doing well by doing good”, while a few glimpse the potential for whole new measures of business success, based on benefit to all.

What are the implications for law firms and in-house legal departments? We believe that ESG also represents “the opportunity of the century” for the legal profession. The winners will be those who embrace the challenge, with creativity, conviction and courage – in all the advice that they give and all the decisions that they make.

We at impactvise propose five positive, practical principles for seizing that opportunity:

BE
TRANSPARENT

ACT

IMPACT

LEAD

INSPIRE

Principle #1:

Be transparent – disclose or be disclosed

Today's stakeholders are demanding. Shareholders and customers alike are increasingly vocal. Many insist that companies take responsibility, not only for their own ESG performance, but also for the sustainability of their suppliers. Law firms are thus becoming subject to the same scrutiny as every other organisation in the value chain.

It follows that law firms – not to mention in-house legal departments – must learn the art of transparency. They must start to be open about their organisations' sustainability credentials – and ESG demands on their own supply chains.

For many members of the legal profession, this looming imperative is already a reality, with diversity targets built into tender documents by some multinational companies... and fees withheld from law firms that fail to measure up.

But there will soon be no choice about transparency. Never before has there been so much information in the world and, thanks to new technologies such as data mining, the ESG performance of law firms – and their clients – is becoming ever more public. Analogous to the shift in management paradigm from IQ to EQ (intelligence to emotional intelligence) of previous decades, there is now a shift in the technological paradigm from AI to BI (artificial to beneficial intelligence). Whether they like it or not, law firms that do not walk their ESG talk will be found out – and open to same accusations of "greenwashing" as corporates.

Of course, transparency has its limits for lawyers, just as sustainability has its limits for executives: client confidentiality remains a legal obligation, just as financial performance remains a commercial obligation. But the same ESG expectations and technological searches will be applicable to all organisations up and down the global supply chains, regardless of whether they are publicly listed or privately owned.

There is a powerful upside to this particular change. Law firms that differentiate themselves through ESG transparency will win clients. Better still, having truly experienced the same transparency challenges as those clients, they can apply their professional expertise to deliver an outstanding service... and gain yet more business.

In short, transparency is a virtuous circle for those who are prepared to act.

Principle #2:

Act – be creative and drive ESG performance

Complacency is not an option – or your competitors will win. This age-old axiom applies as much to law firms as to the companies they serve. And it applies in the new economy as it did in the old. Lawyers have always been a key link in the value chain. Now, with their broad legal mindsets and rigorous intellectual training, they are ideally placed to become proactive ESG enablers. They do not need to be activists, but they do need to act.

Let us be clear: We are not just talking about specialist ESG practices or occasional pro bono projects. All lawyers can act. Whether working in law firms or legal departments, they can walk in the shoes of the business leaders they advise and take responsibility for the action inspired by their advice.

However, as we have seen, to advise a company today is to influence its relationships with multitude of very vocal and highly connected stakeholders, who may have competing interests. The legal profession must expect new challenges and even ethical dilemmas.

As a consequence, the legal mindset must broaden yet further, which means embarking on education and professional development beyond the purely technical. It is time for lawyers to engage with the complexities of environmental, societal and governance responsibility in all of its myriad forms – and to incorporate ESG into all of their professional activities.

Consider, for example, the concepts of choice and decision. Decisions are about minimising risks. Choices are about minimising regret. Every business decision is also a choice – and so is every piece opinion that influences it. There are two major implications for lawyers who advise businesses. First, their advice must be forward-looking – going beyond pure compliance with today's regulations and anticipating tomorrow's shifts in societal expectations. Second, their perspective must be holistic – envisaging the impact on all stakeholders. Even if the client remains narrowly focused on share holders and customers, lawyers have a professional duty to see the bigger picture.

In short, it is not enough to act for ESG; lawyers must also impact through their advice.

Principle #3:

Impact – advise for positive ESG outcomes - and measure them!

Here is another old business axiom: “what gets measured gets done”. And today there is a vast array of new metrics – from CO2 emissions to diversity targets – available for measuring ESG impact. There are also qualitative checklists, such as the UN Sustainable development Goals, that many companies have integrated into their strategies.

Realistically, there is only so much ESG impact that lawyers can have through their own operations. Less paper. Fewer flights. More pro bono. Fairer recruitment. Greater transparency, as we have seen. Yet, as professional advisers, lawyers have the opportunity to make a tremendous impact by building ESG measures into the options they offer their clients – whether implicitly or explicitly.

Different organisations will need to be offered different choices, which means that lawyers can once again expect dilemmas. The choices will not be simple oppositions of good versus gain or people and planet versus profit. Sometimes the effects on environment, society and governance will all need to be balanced against one another. The good news is that the metrics now available can help to evaluate these trade-offs.

The even better news is that win-win choices are possible for companies and their legal advisers: not just “either x or y” but “both x and y”. Even financial considerations can be compatible with sustainability factors. Indeed, data from the last decade proves that ESG investments have significantly out performed conventional alternatives as money has flowed towards environmentally friendly activities.

Law firms also face difficult choices on their own account. Should they refuse to advise polluters and exploiters and “risky” new clients for the sake of their own reputations? Or should they take the money and run to a moral high ground based on “access to justice for all”? We believe that win-win is sometimes possible here too. By applying the right measures, robust, forward-looking, big-picture legal advice can actually guide some corporations from bad ESG performance to a position of sustainability strength.

In short, advising for impact is just the beginning. Lawyers must also become ESG leaders: path finders and bridge-builders in the shifting stakeholder landscape.

Principle #4:

Lead – in thought as well as action

Leaders in any field must have the confidence and courage to take a position that will not necessarily please everyone. Just as business leaders must be prepared to resist pressure from activist shareholders, governments and corporate partners, so lawyers must be prepared to take a stand for what they believe in – and bear the consequences. Only then will others follow.

Indeed, lawyers have powers of persuasion that leaders in other fields often lack. They are experts at weighing arguments, gifted researchers, skilled wordsmiths and compelling presenters. Those who back up their ESG actions by investigating, writing, publishing and speaking – putting words onto paper, screens and platforms – will maximise their impact. There is nothing more powerful than words combined with actions.

However, there is one fundamental reason why ESG thought leadership is a duty for the legal profession. Quite simply, it is that lawyers are key players in shaping the law – and the law tends to emerge from what is already being said and done. Today's ideas and precedents are tomorrow's regulations.

Once again, the duty of ESG leadership does not apply only to fields such as environmental legislation or human rights. We are calling on lawyers in all areas of practice to use their influence so that ESG considerations are built into all current legal thinking and all future laws. Once again too, it is essential to be proactive. It is not enough to wait for government action and consultation processes. True leaders take the initiative and inspire change before it becomes a necessity.

In short, leaders do not just make things happen, they inspire others to join them.

Principle #5:

Inspire – it is time to be outspoken!

Just like every other market in the modern world, the market for legal careers is changing. The so-called “war for talent” continues but has moved onto a new battle ground, where there are no jobs for life – and where money, prestige and intellectual satisfaction are not the only objectives. The winning recruiters are increasingly those organisations armed with a meaningful purpose.

The desire to make a positive difference in the world is no longer confined to idealistic young graduates. Experienced and accomplished lawyers, executives and support staff of all ages are refusing to join (or stay at) organisations with a poor ESG record. The old messages about pro bono opportunities and annual charity fundraisers have lost their appeal. To inspire others to join you, you need to be truly transparent – and to show that your firm or company is active, impactful and a leader in all things related to ESG.

In short, refocusing the legal mindset on ESG represents an opportunity for personal fulfilment as well as professional renewal.

in conclusion

Finally, we offer one – uncharacteristically simple – binary choice. The ESG grounds well is building. Lawyers can either stand in splendid isolation on the shore and wait to be engulfed, or they can take the plunge, catch the wave of opportunity and ride high.

Transform or be transformed: the decision is yours.



Created by lawyers, for lawyers, impactvise is the first AI-driven solution that provides environmental, social, and governance (ESG) performance insight, ESG educational training, and sustainability advisory services to legal service providers (LSPs) and in-house legal departments.

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