COP26 - FIVE TAKEAWAYS FOR GCs

Governance, Sustainability & Society – Part of the Horizon Scanning series

The Glasgow Climate Pact and conclusion of COP26 have added pressures on corporates, financial institutions and other organisations to transform the way they do business in a global effort to mitigate climate change.

COP26 saw an alignment between politics, finance and the business world. They agreed that achieving net zero is the most credible path to contain climate change. Yet, it is not just about emission reductions but also the interconnected challenges brought by having consideration for biodiversity and the role of people and communities, including the 'just transition'.

The role of the General Counsel (GC) has evolved in the last decade to include a heavier focus on risk. As sustainability becomes ever more central and urgent to businesses, GCs and legal teams have a key role to play in identifying both risks and opportunities. The challenge ahead lies in finding a competitive advantage within the net zero landscape.

These are our five key COP 26 takeaways for GCs and in-house legal teams:

1. Sustainability Reporting is becoming more standardised

Climate-related disclosures by corporates have, to date, been largely voluntary. Added to that, competing standards and frameworks—some of which are inconsistent— have led to confusion and the potential risk of inadvertent 'greenwashing'.

The International Financial Reporting Standards (IFRS) Foundation announced during COP26 the launch of the International Sustainability Standards Board (ISSB). This has the potential to set a global baseline for sustainability reporting through the publication of climate and sustainability prototype disclosure requirements. The ISSB will also integrate both the Value Reporting Foundation and Climate Disclosure Standards Board by June 2022.

The IFRS's announcement occurs at a time when countries and regional groups—including the G7 and China—move toward legislating for mandatory TCFD-based climate disclosures for larger businesses. Similarly, the UK government indicated that it intends to make publishing net zero transition plans a requirement for UK-listed companies in the next few years.

To report under these standards and comply with regulations and investors' expectations, GCs and their teams would benefit from working closely with their sustainability teams recognizing that this will be required in an accelerated timeframe.

2. Procurement and production will go under review

Significant side agreements have been reached at COP26 which have an impact on corporate supply chains, production methods and procurement strategies. These include:

~ The Global Methane Pledge signed by over 100 countries, committing collectively to reduce methane emissions by at least 30 percent from 2020 levels by 2030

~ The Global Coal to Clean Power Transition Statement and the Powering Past Coal Alliance signed by 190 nations and organisations, committing to ending investment in new coal power generation, and to scaling up clean power generation

~ The Declaration on Forests and Land Use saw leaders representing over 85% of the world's forests commit to halt and reverse deforestation and land degradation by 2030

GCs can get ahead by working closely with their sustainability and procurement teams to review their companies' carbon emissions and those of their supply chains in order to comply with new regulation coming out of these pledges. Legal in-house teams will also need to negotiate, for example, corporate renewable power purchase agreements amongst other new type of supply chain contracts.

These reviews will have to look beyond emission reductions and also incorporate assessments in relation to components and materials – how to secure them in an environment in which resources will become more restricted. Reinventing the value chain as consumption reduces will become a key part of building resilience.

3. Adaptation strategies will be needed to address climate risk

The Climate Action Tracker indicated that, despite the commitments secured at COP 26, in a best-case scenario the world is likely to experience 1.8 degrees C of warming, but 2.4 degrees C cannot be ruled out. GCs can play a role in elevating the importance of adaptation as an area of risk. This means identifying and understanding the implications of the impacts of different climate change scenarios on their companies' assets and activities and considering strategies to adapt to the risks identified.

Those businesses implementing the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD) are already using strategies to identify, measure and manage the physical risks of climate change (e.g. water scarcity) and the transition risks (e.g. changes to markets or legal frameworks). This exercise is expected to become more commonplace as reporting requirements increase. The Global Resilience Index Initiative, launched at COP 26, will provide access to data in relation to resilience of different sectors and assets. This will bring greater scrutiny of their exposure to physical climate risks by regulators and investors who will be looking for robust adaptation plans.

4. Use of carbon markets to achieve net zero

Carbon markets offer an alternative for businesses to achieve their net zero commitments. At COP26 new agreements were reached around the Paris Agreement Article 6, which addresses the regulation of international carbon markets. These decisions clarify the rule on how voluntary carbon markets, in which companies can participate, will align with Article 6.

From a reputational perspective, a company's involvement in any type of carbon markets as the sole replacement for other carbon emissions reduction activities may be a concern for some.

5. Sustainability will become a requirement to access finance

Countries have long recognised that large-scale mobilisation of private finance is crucial to meeting net zero targets. The Glasgow Financial Alliance for Net Zero (GFANZ) announced several commitments during COP 26 which are set to transform the financial system. Banks and other financial institutions will increasingly scrutinise the sustainability credentials of companies they invest in and lend to.

Moreover, as sustainability-linked financial products become commonplace, companies without sustainability strategies may find it increasingly difficult to access financing. GCs have an opportunity to bring together their sustainability teams and treasury to understand and meet the sustainability requirements of lenders.

What next?

COP 26 revised the timetable for countries to review their 2030 climate change plans. As a result, 2022 will see continued scrutiny and strengthening of national emission reduction commitments, providing further clarity of decarbonisation pathways.

In this context, GCs are in a prime position to guard their companies' reputation and integrity by leading the way on sustainability strategies that mitigate climate change, care for the environment and incorporate all stakeholders.

For further information on this topic or on our Horizon Scanning series, please ask your usual Slaughter and May contact.