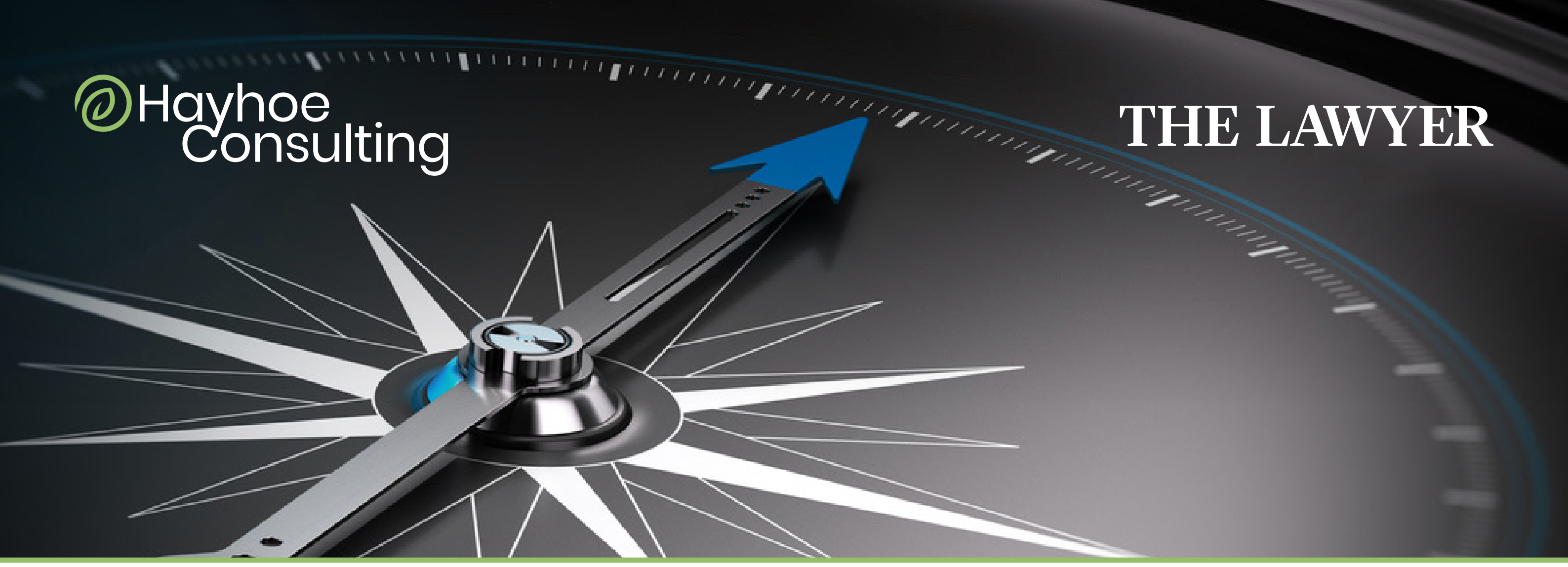

Helping Clients Achieve Sustainable Business Transformation

Law firms can play a pivotal and rewarding role in helping clients achieve sustainable business transformation, but many are at a loss to know where to start. Here are six ways to approach that important task.

By Julia Hayhoe

Environmental, social and governance (ESG) issues are now fully on the agenda of boards and their in-house legal teams, as businesses respond to growing pressures to drive growth, mitigate risk and operate in more sustainable ways.

With ESG issues increasingly seen as vital to long-term business success, inhouse counsel are looking for ways to support their own businesses' efforts to achieve sustainable business transformation and are actively seeking help from their external legal and professional advisers to fulfil this role.

This creates real opportunities for law firms to build closer and more trusted relationships with their clients. It also places significant responsibilities on them.

And the truth is that, in this dynamic and complex area, firms can be at loss to understand how best to make themselves most useful.

How do you make sure you know what matters most to boards and to the in-house legal team? What's the best way to support and stay connected with your client's sustainability agenda?

The evidence suggests firms have yet to respond in a strategic, client centric, and co-ordinated manner. That was also the finding of a recent survey I carried out as part of The Lawyer's Business Leadership Summit.

Six issues to tackle

Using themes from a series of interviews I conducted for The Lawyer, and more broadly from work with boards and GCs, there are six key themes that can help firms decide how to help clients in their sustainable business transformation.

1. Really get to grips with the board's sustainability agenda

Clearly not all businesses are on the same page where ESG issues are concerned. Some have fully embraced Stakeholder Capitalism. For them the company's purpose is to serve the interests of all their material stakeholders to create long-term value, rather than being focused on maximising short term profits and shareholder returns at the expense of other stakeholders.

Some businesses have this approach to sustainability deeply embedded in their DNA. Unilever, for instance, has its "Compass", a single sustainable business strategy that is embedded into every aspect of the business and its stakeholders. Crown Estates has sustainability within its historical constitution, while Habito, the digital mortgage broker and lender, has it enshrined in its B Corp structure.

Other businesses (and Industry Sectors) are further behind and have catching up to do. Even if they recognise that ESG needs to be high up the boardroom agenda and converted into tangible action, it is tough to do in hard economic times. For many businesses, their efforts are being challenged by acute short-term operating cashflow pressures. Here advisers can help identify the most material ESG opportunities and risks for business to focus upon.

So, it is vitally important for firms to understand the stage clients are at in their sustainable business transformation, to know how best to advise and assist them.

To do so it helps to start with client centric questions:

- To what extent is Stakeholder Capitalism embraced within the corporate purpose, strategy, structure and culture of the company?
- Which ESG macro-trends are having most material impact on the business and its industry sector?
- What are the ESG strategic goals and priorities of the business?

2. Understand the client's stakeholder landscape

Businesses have historically focused most on stakeholders that are in their direct line of sight. That typically means customers and clients, employees, investors and shareholders.

Businesses have been less effective at looking within these stakeholder groups for voices not heard (minorities), or more distant (younger/future generations and within supply chains). Their importance has been brought to into view by the Social and Environmental Change Movements, empowered and scaled by social media, activism as exemplified by The Black Lives Matter and Climate Action Movements.

Nor has business been quick enough to see how the priorities and requirements of stakeholders are changing. Investors, for instance, have become much more aggressive in spotlighting ESG issues as they move towards impact investing.

Understanding this wider stakeholder landscape helps firms decide how best they can advise clients on the material stakeholder dynamics impacting business growth, risks and opportunities. Plus, share lessons across sectors.

Key questions to consider afresh are:

- Which stakeholders are most material to the long-term success of the business?
- How are stakeholder demands changing and how do they vary across different markets and cultures?
- What stakeholder lessons can be shared across different sectors and businesses?

3. Think about ESG in a cohesive way

Companies have often not approached all three aspects of ESG cohesively, but this is changing.

In the energy sector, instance, we've seen great progress on the "E" – particularly with the widespread shift to renewable energy. But there has, arguably, been less focus on the "S". Have they really taken on board the reputational and operational risks of failing to understand the business impact on communities in different markets? Do they really acknowledge the missed opportunities and risks of failing to develop inclusive and diverse talent pipelines, cultures and stakeholder engagement mechanisms?

Many companies now realise they need to adopt a cohesive ESG mindset and approach, scrutinising each element and the interdependencies within ESG. That's particularly important with business under pressure to earn its license to operate and address governance issues – the "G". Business needs to show it has the right governance framework (composition, competencies, incentives, stakeholder engagement, transparency, accountability) to enable effective decision-making and translate good policy to action.

And, as all businesses digitise, the significance of technology and Big Data will continue to rise as a tremendous enablers and risks (ethics, governance, regulation and security) across ESG.

Firms need to develop their service lines with a cohesive ESG lens asking:

- Which multifunctional service lines will best meet the cohesive ESG needs of the client's business, now and in the future?
- Which professional capabilities, beyond/adjacent to legal skills, are required and need to be incorporated to deliver impactful services?
- Where are current gaps in capability and what is the best way to fill those gaps in a sustainable way - organically, acquisitions, alliances?

4. Embrace the significance of shared values and goals

Sustainability is no longer a CSR nice-to-have or a sideline project as it once was. It has become a central to strategic growth, risk mitigation and business model change for companies. Businesses choose to work with advisers that share and help advance their ESG goals, values and ambitions. And who can demonstrate their own commitment, collaboration and action in their day-to-day interactions, as part of the business supply chain.
How are business expectations of their advisers changing? Advisors are being expected to: Demonstrate their ESG credentials cohesively; proactively bring forward partnering opportunities; be prepared to experiment and iterate and demonstrate material progress against a cohesive ESG framework.

To do this, there are strategic questions for firms to ask of themselves:

- To what extent is sustainability and ESG baked into the firm's own purpose, strategy and values and is it translating into tangible progress?
- Have stakeholders recognised and said the firm has lived it values and purpose in times of crisis, such as during the pandemic?
- What are the most material ESG issues the firm can collaborate with clients on to bring about change?

5. Recognise the importance of materiality and metrics

Along with the growing complexity of regulation, the proliferation of ESG frameworks and metrics sits at the top of the frustration list for boards and GCs. Yet they know without an appropriate framework, it hard to measure and manage material performance and demonstrate impact.

Fortunately, there is light through the materiality and metrics jungle.

The UN Sustainable Development Goals act as a universally adopted standard, providing common language and material priorities around which to organise. Then there are a number of well-developed harmonisation projects to point the way, including the recent report from The World Economic Forum's International Business Council: "Towards Common ESG Metrics and Reporting of Sustainable Value Creation". There is also the call to use environmental comparable science-based targets to drive rigour in transparency and accountability.

It's vital for a strategic legal adviser to understand which frameworks options are at the disposal of a business and how harmonisation is occurring.

To do so, it's useful to ask:

- Which ESG frameworks have been adopted by the business, within its sector, and which ones are likely to be used in future?
- What is the regulatory future landscape within which ESG issues will be measured and in what timeframe?
- What role can the firm play in helping the client to develop and implement an appropriate ESG framework?

6. Look outside and be aware of the wider ecosystem

Businesses are increasingly recognising that they don't exist and operate in isolation, but as part of a wider ecosystem. Solutions to strategic opportunities and risks do not always sit within the business itself, but are often to be found in this outer world.

That's why we are seeing an increasing focus on supply chains, joint ventures and alliances, and it explains why there are growing calls for greater collaboration between the public and private sectors. The latter is crucial in harnessing the macro-scale influence of governments to tackle complex problems, such as climate change or social inequality.

Law firms, given their relatively small scale in the economic ecosystem, can often make their biggest ESG impact by helping their clients transition to more sustainable businesses and by contributing to the advancement of ESG enabling regulations, contracts and laws.

So, firms needs to be just as aware of their own ecosystem and impact opportunity.

Key questions to ask include:

- In which policy forums can the firm play its most material roles?
- What are the key client collaboration opportunities within the forums?
- How to empower and recognise your partners who sit on these forums, to increase and leverage the firm's overall impact?

These six themes guide firms in deciding how best to help their clients achieve long-terms success in a sustainable way. And whilst working in tandem and collaboration with clients, to develop responsible business as an integral aspect of a firm's own strategy.

It brings both great opportunity and responsibility for law firms at a critical time.

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