

LIFTED Knowledge Guides

Environmental, Social, and Governance (ESG)

This practice area deals with matters relating to environmental, social, and governance (ESG) issues. The practice comprises (i) contentious (disputes) and (ii) non-contentious (advisory and transactional) work.

Proficiency Levels	
Intermediate	Advanced
<p>Cross-disciplinary ESG issues. Environmental problems (e.g. climate/ net zero transition), social problems (e.g. human rights, labour practices, community impacts, just transition) and governance practices (e.g. board structures, shareholder rights, executive accountability), rise of ESG, its evolution, and relevance for lawyers (e.g. the legal and business case for clients and the lawyers' role and business opportunities).</p>	<p>Sustainable finance advisory and transactional issues. Familiarising with and structuring various financial instruments supporting environmentally positive activities (e.g. green bonds and loans, sustainability-linked loans and bonds), the application of their governing frameworks (e.g. taxonomies), related principles (e.g. IFRS Sustainability Standards, Equator Principles, ICMA Principles) and ratings, renewable energy projects including deal structure, due diligence in project financing, and trends in disclosure.</p>
<p>Relevant frameworks. International treaties and frameworks including environmental treaties (e.g. UNFCCC and Paris Agreement, SBTi, CDP), social and human rights frameworks (e.g. UNGP on Business and Human Rights, OECD Guidelines, and ILO Core Conventions), governance and anti-corruption frameworks (e.g. Foreign Corrupt Practices Act).</p>	<p>Carbon markets advisory and transactional issues. Compliance markets (e.g. cap-and-trade systems, carbon taxes) and voluntary markets (e.g. offset projects, their due diligence, and use of carbon offsets), Article 6 of the Paris Agreement and Paris Rulebook (and COP 29), integration of carbon pricing (e.g. shadow pricing), structuring carbon market and decarbonisation related transactions (afforestation, reforestation, forest restoration, CCUS, and trades in RECs and carbon offsets).</p>
<p>ESG reporting and due diligence requirements. Legal impetus (fiduciary duties and regulation) and reporting standards and frameworks (e.g. GRI, ISSB, EU CSRD), listing rules for public companies, legal requirements, risk areas, and data analysis as relevant for lawyers (e.g. identifying data gaps, inconsistencies or inaccuracies to mitigate legal risk).</p>	<p>Labour and supply chain advisory and transactional issues. Legal risks related to labour (e.g. wage violations, forced labour, underaged labour, work health and safety), due diligence obligations, contracting (e.g. model clauses for supplier agreements or seller's codes of conduct, and contract negotiation) ESG disclosure requirements, and responsible supply chain strategies to mitigate legal risks.</p>
<p>Regulatory compliance frameworks across jurisdictions. Broad concepts (e.g. business specific and import-related regulation), environment-related laws (e.g. CSDDD and climate transition plans, EU Deforestation Regulation, Carbon Border Adjustment Mechanism), labour laws (e.g. modern slavery legislation across Australia, UK, Canada, California, EU), and corporate governance codes.</p>	<p>Internal governance issues for ESG compliance and best practice. Modelling governance structures referencing international standards and best practice (e.g. OECD Guidelines for Multinational Enterprises, UNGC), reviewing and drafting of ESG policies (anti-harassment, green claims, DEI, deforestation, etc.), ESG board management (e.g. ESG-related performance indicators, remuneration incentives, board / committee structures) and governance structures (e.g. formation of sustainability committees and operational-level working groups).</p>

Proficiency Levels

Intermediate

Advanced

Risk assessment. In relation to ESG corporate commitments (e.g. carbon emission reduction and net zero targets) and antitrust-related considerations, ESG litigation and complaints (case studies and trends on for e.g. strategic litigation), shareholder activism, whistle-blowing, and analysis of greenwashing risks (e.g. marketing and corporate communications, products, and product descriptions).

Types of "materiality" analysis. (1) spatial-temporal materiality of ESG such as macro-business environment, geopolitical trends, cultural sensitivities (geographical and topical) and evolving ESG regulations, and (2) business-specific materiality such as ESG profile of company including progress, risk, and objectives.

Risk mitigation strategies. Stakeholder engagement (e.g. employees, investor, NGOs, and regulators), training and enforcement of policies (e.g. penalties for non-compliance for employees and/or suppliers), framing communications, and crisis management, litigation and regulatory investigations (e.g. green claims-related investigations/disputes, human rights violations).

Types of fit-for-purpose advice. ESG analysis and advice across a spectrum of companies broadly including (1) start-up companies (e.g. ESG integration, compliance, investment considerations), (2) SMEs (e.g. formalising policies and practices, supply chain relationships, reporting, setting corporate transition plans), (3) large non-listed companies (e.g. due diligence on acquisition, shoring up internal governance, raising finance for expansion, disclosures for getting listed) and (4) listed companies (e.g. board oversight, investor relations, ESG due diligence for M&A transactions, listing rules, litigation risks).