An international perspective
ESG and employment insights
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Environmental, social and governance (ESG) issues and considerations play an ever-increasing role for businesses globally. ESG considers how a company is managed, directed and controlled, and how it manages its environmental and social aims and responsibilities.

From an employment perspective, a key part of the ‘S’ element is how a company manages its business in ensuring appropriate labor standards, addressing diversity and inclusion, encouraging staff engagement and protecting against human rights breaches in the supply chain, with the ‘G’ influencing how those aspects are monitored. Increasingly, the ‘E’ pillar is influencing terms of employment, including compensation and benefits. All three ESG pillars are key to recruitment and retention.

ESG has evolved from an issue of corporate social responsibility to a board-level strategic matter. The impacts of global attitudes around climate change and a growing awareness of human and social rights have triggered both pressure from stakeholders and legislative action, which look set to continue. However, the pace of the recognition, development, and integration of ESG factors within business operations and workplaces, varies significantly across jurisdictions.

Our teams of lawyers around the world have significant combined experience in relation to ESG matters, enabling our teams to anticipate the rapidly evolving ESG landscape and identify risks and opportunities for our clients. As a firm, we are committed to embedding responsible business practices throughout our operations and in all our work.

In Part One of this document, we provide a collection of insights on current approaches to employment related ESG factors in different jurisdictions. The evolution of arrangements with workforces driven by ESG factors can often require changes to terms and conditions of employment and/or information and consultation with worker representatives. In Part Two of this document, we consider how these considerations compare across jurisdictions.

For assistance with any employment focused ESG issues, please feel free to contact us.

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Please also see our Responsible Business and ESG webpages and our Eversheds Sutherland Global ESG Solutions – the workplace brochure, where you can find additional resources and information.
# An international perspective

ESG and employment insights

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Part 1: Insights

An international perspective
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In September 2020, President Xi Jinping announced the target for the PRC to achieve carbon neutrality before 2060, thereby bringing into the spotlight the need for effective measures to combat pollution. As the PRC works to achieve its ambitious environmental goals and global awareness of ESG continues to grow, ESG influences will inevitably creep into PRC workforce considerations and strategies.

Although ESG is still developing in the PRC, several ESG-relevant laws and regulations governing workforce matters already exist. These include the regulation of employment, worker safety, cybersecurity, discrimination, anti-unfair competition, and the protection of minors. Currently however, there are no mandatory workforce related reporting obligations, such as in relation to pay gaps, board diversity or modern slavery. As a result, it is often difficult for companies’ performance in relation to workforce ESG factors to be externally measured.

However, there is a growing recognition that ESG factors can contribute significantly to long-term business success. This is reflected in the China Enterprise Reform and Development Society recently publishing voluntary corporate ESG disclosure standards – “Guidance for Enterprises ESG Disclosure”. The Guidance sets out a 3-tier hierarchy for measuring ESG targets, including social indicators relating to labour rights. Chinese enterprises are encouraged to make disclosures in the form of an ESG report made publicly available.

The recognition that ESG factors can contribute to business success has resulted in investors and other stakeholders increasingly demanding data on the ESG performance of companies. Where this involves the collection, use or other processing of the sensitive personal information of the workforce, the PRC’s Personal Information Protection Law places limitations on what can be provided, often requiring employee consent to be first obtained. Penalties for breaches of data privacy law can be significant.

There is also growing evidence that ESG performance factors are influencing worker recruitment and retention in the PRC. Employee benefits, workplace safety, training, corporate culture, and social responsibility are increasingly prominent factors. In addition, many Chinese enterprises are adopting measures to improve career development opportunities and better pay equality.

Worker health and safety is also a focus in PRC workplaces. Companies have a statutory obligation to take relevant measures, including providing employees with training on occupational hygiene. For those enterprises with workplace occupational disease hazard factors, there is also a requirement to put in place internal rules, policies, and operational procedures to ensure workplace safety.
One consequence of ESG-related workplace measures is the potential for information and consultation obligations to be triggered. Any initiatives related to the employees’ immediate rights and interests, such as remuneration, working hours, rest and leave, work safety, insurance and benefits or labor discipline, can trigger “democratic and publication procedures”. This prompts a requirement for collective negotiations with the workforce or employee representative bodies prior to implementation. In addition, where changes are made to terms and conditions, individual employee consent will often be required.

Not taking account of ESG as it continues to develop in the PRC, including in relation to workforce matters, is a business risk. Our team in the PRC can help manage that risk and identify opportunities to add value through effective ESG strategies. For further information please contact:

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In recent years, a number of new and amended laws in France have been encouraging companies to take steps to build positive ESG considerations into their business practices, including their people strategies. A law aimed at accelerating environmentally friendly business and consumer behavior was enacted in France in 2021 (Climate Law), including provisions encouraging “greening” in employment by giving new powers to a company’s employee representation body, the Social and Economic Committee (CSE). Employers with at least 50 employees are required to inform the CSE about the environmental consequences of any company actions or proposals on which the CSE must be consulted. Further, education on the environmental consequences of a company’s activities is integrated into the economic training for members of the CSE who have been elected for the first time.

The new requirement to include environmental factors in the information given to the CSE has also recently been reflected in the extension of the categories included in the economic and social database in which French organizations gather the information they must provide to the CSE. The database has also been renamed to reflect this new environmental element, now being called the economic, social and environmental database (BDESE).

Several laws in France seek to strengthen the social responsibility of large companies. This includes a Vigilance Law, which aims to protect against human rights and environmental abuses, including by requiring the preparation and implementation of a “vigilance plan” to identify and prevent any risk of serious damage to human rights and fundamental freedoms, health and security, and the environment.

France has also recently updated its health and safety requirements – the so-called “Santé” Law – with the introduction of new statutory measures to prevent safety risks at work. Such measures include a strengthened risk assessment system, health training for staff representatives, the introduction of a mid-career medical check-up for employees and the reinforcement of medical monitoring of employees exposed to particular risks.

The whistleblowing regime in France has also been recently bolstered, including by an extension to some of the protections offered. In addition, the role of the Defender of Rights has been extended by appointing a dedicated whistleblowing function. Recognizing the importance of whistleblowing to intercepting and exposing malpractice, the new deputy position will be responsible for supporting and providing information to whistleblowers and protected persons.

Several laws in France govern ESG issues in the workplace, with further developments on the horizon. Workforce trends are being seen around measures or targets across all the ESG pillars, including on the topics of climate change, human rights and supply chains, diversity and inclusion, health and safety and whistleblowing.
Diversity and inclusion developments in France

France has well-established anti-discrimination laws, including quotas for disabled workers and gender diversity on Boards. More recently, the discrimination laws in France have been supplemented with the requirement for recruiters working in companies with more than 300 employees and in specialist recruitment firms to undergo training in non-discrimination in hiring to encourage good practices.

Alongside a requirement to conduct regular negotiations on measures to eliminate any pay gap between women and men, France operates a Gender Equality Index, which measures against gender pay equality metrics, giving a score out of 100, and requires companies with 50 or more employees to publish their results. Since February 2022, this has also included a requirement for companies scoring fewer than 75 points to prepare corrective measures to improve their score and companies scoring between 75 and 85 points to define and set improvement targets for each gender equality criteria for which they did not score maximum points. Companies must publish their proposed remediation actions on their website, submit them to the Ministry of Labor, and integrate them into their BDESE.

France has also recently enacted a requirement regarding the calculation and publishing of progress targets for senior executive roles and management bodies (Rixain Law). This requires companies with 1,000 or more employees to annually publish their representation gaps between women and men in senior executive roles and in their management bodies.

In parallel to the evolving diversity and inclusion laws in France, companies are increasingly taking voluntary measures to analyze and address wider issues of inequality within their workforces, moving beyond the areas of focus to date. Reflecting this trend, the French government is currently piloting a voluntary diversity and inclusion index, modelled on the Gender Equality Index, which analyzes the social, geographic and cultural diversity of workforces and governance factors.
In companies with at least 50 employees, the CSE must be informed and consulted on a wide range of matters (the CSE in companies with less than 50 employees have consultation prerogatives too, but they are in principle reduced when compared to larger companies). Many of those matters include ESG elements, including environmental issues, diversity and inclusion, pay transparency, and workplace health and safety.

Information and consultation triggers can also potentially be seen where new ESG-related measures result in changes to working conditions or working models, major technological changes, modification of work objectives, work rates and productivity standards, or the modification and adjustment of working hours or schedules. As a result of the recent inclusion of the environmental factors to be provided in the information given to the CSE, where consultation is triggered on proposed measures within companies with at least 50 employees, that consultation must now include the environmental consequences of the measure. The employer must also inform the CSE of the environmental consequences of the company’s activities during the three periodic consultations.

Understanding these triggers and consultation requirements is a key element of managing workforces in France. A wide range of risks apply for breach of the requirements, depending on the specific obligation breached, including criminal sanctions (imprisonment and fines), civil penalties (damages and the measure being deemed null and void), administrative sanctions (injunctions, fines and exclusion from public contracts), as well as reputational damage.

It should also be noted that where ESG measures taken by a company involve a change in the employment contract (as opposed to a modification to working conditions), an obligation to obtain consent and formally amend the contract is also likely to arise.

Our team of specialist lawyers in France has been at the forefront of ESG-related developments for many years, with the experience and track record of helping organizations navigate through this area. For further information, please contact:

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Hong Kong

As an international financial center and a responsible member of the global community, Hong Kong continues to progress its environmental and social initiatives.

Hong Kong is a signatory to the Paris Agreement and has confirmed its commitment to measures to seek to achieve carbon neutrality before 2050. Measures to drive forward this target are starting to see increased focus in Hong Kong as a result.

One such area of focus has been seen in recent measures taken by the Hong Kong stock exchange and the Securities and Futures Commission, which have recently introduced requirements around environmental and social impact, including reporting obligations. Those regulatory requirements reflect an increased demand in the investment arena for information on how companies manage their ESG risks and a growing awareness that increased focus on ESG factors can contribute significantly to long-term business success.

From a workforce perspective, the social aspect of ESG has started to see some progress through calls for action to be taken to improve the diversity of Boards in Hong Kong. Those calls have included diversity pledges for Boards being sought, including by groups such as The Women’s Foundation and the 30% Club.

To date, other ESG-driven measures have yet to become a significant feature of workplaces in Hong Kong, although as awareness grows in other areas, this is expected to change. Where such change results in proposed changes to terms and conditions of employment, for example to link rewards and benefits to ESG-related initiatives or targets, individual employees’ consent will be required, and well-planned communications strategies will need to be in place to support that process.

Our team of expert lawyers in Hong Kong is well-placed to help clients with ESG considerations, enabling clients to keep one step ahead of ESG stakeholder expectations. For further information please contact:

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Alongside the various legal regulation that applies in the Netherlands governing ESG issues, suppliers and contractors in the Netherlands are increasingly demanding that the companies they engage with have taken steps to take account of ESG factors in their strategies. Variable remuneration continues to be more regularly linked to ESG targets, especially in large, listed companies.

Influenced by demands from investors, suppliers, customers, workers, trade unions, environmental organizations and pressure groups, a shift in business practices has been taking place in the Netherlands, resulting in ESG playing an ever-increasing role.

The Dutch government has also been driving change, including committing to provide additional equality legal protections, and additional protection for platform workers. In addition, it has recently taken steps to advance and strengthen its climate policy, partly driven by a court ruling in which it was ordered to reduce greenhouse gases emissions.

Laws and regulations currently in place in the Netherlands governing ESG issues include legislation regulating working conditions, requiring a more balanced ratio in the number of men and women on the Boards and senior management of large Dutch public and private limited companies, ensuring whistleblower protection, regulating working time and requiring the protection of health and safety at work.

Several legislative proposals have been made that will potentially impact ESG-related work practices. This includes proposals regarding supply chain human rights and environmental due diligence, monitoring equal opportunities in recruitment and selection, further whistleblower protection, transparency over working conditions, an obligation on employers to report on business travel, and further pay equality developments.

**ESG-related workplace trends in the Netherlands**

Variable remuneration, such as bonuses, has been linked to ESG targets in the Netherlands for several years. More recently, the focus has shifted from environmental targets to also include other ESG elements, including diversity and inclusion.

Many companies in the Netherlands are developing sustainable travel strategies. This includes requiring or incentivizing more sustainable business travel and more environmentally friendly car arrangements, including the opportunity to lease (only) hydrogen or electric cars.

Employers are also responding to rising demand for hybrid working, while at the same time focusing on the wellbeing of their employees. On this topic, the advisory body to the government (the Social Economic Council) has recently published advice, suggesting that workers should be given more control over their place of work by requiring employers to consider flexible working arrangement requests based on reasonableness and fairness, as determined by the specific circumstances.
In addition, companies are focusing on their diversity, equity and inclusion strategies and policies. Driven by recent gender composition requirements for the Supervisory Boards of Dutch listed companies, companies are reviewing their Board and senior manager level diversity strategies. In addition, there are pending legislative proposals that seek to strengthen the equal pay principle, causing companies to analyze their pay arrangements.

From a pensions perspective, Dutch pension funds have embraced ESG factors for a number of years, driven by voluntary rules and a requirement to report in their financial statements how their investment policy takes account of environment and climate considerations, human rights and social relations. As such, investing in accordance with ESG principles has become an integral part of the risk management of pension funds.
Where ESG initiatives result in changes to terms and conditions, consent of employees may be required. In addition, certain ESG measures may trigger information, consultation and/or advice obligations with employee representative bodies such as the Works Council and trade unions.

Where companies plan to take important measures regarding the management of the natural environment, including taking or changing policy related organizational or administrative measures, the Works Council has the right to provide advice in relation to any such measure. For example, where an employer plans to undertake an extensive recruitment drive for workers to support projects that will advance its sustainability targets regarding climate change, this may trigger a right for the Works Council to provide advice on any such recruitment drive.

Failure to take account of information, consultation and/or advice obligations can impact workplace strategies in the Netherlands, with the risk of the Works Council initiating legal proceedings to nullify a decision, to reverse a decision or stop certain actions, as well as reputational issues.

Our Netherlands team has been helping companies to understand and shape their approach to ESG and assess and comply with their legal and regulatory obligations for many years. The advice and practical support of our specialist team can help on all aspects of workplace ESG considerations, including with risk assessments around equality practices, practical advice and action plans. For further information please contact:

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Portugal

Increasingly, ESG factors are being recognized as being key to driving progress and growth in Portugal, as well as receiving additional focus in PR and marketing strategies.

Employment-related considerations, supported by existing laws, are recognized as a significant element of ESG in Portugal and are starting to have an impact on the recruitment and retention of talent. Such laws include legislation governing health and safety, pay transparency, labor standards and discrimination, diversity and inclusion.

The Portuguese Labour Code includes comprehensive regulation of workplace requirements, including to protect the health and safety of workers and to ensure appropriate labor standards.

Diversity and inclusion is a particular area of focus. Alongside Portugal’s comprehensive discrimination laws, there is an obligation on employers to implement a transparent wage policy and report annually to the labor authorities, including on the remuneration and gender of each employee. In addition, larger employers may be subject to Equal Pay Procedures from the employment authorities, which include reporting, assessing and implementing measures to seek to ensure equality of pay.

Recognizing the importance of diversity in corporate governance to driving wider diversity, reducing risk and increasing value, minimum quotas apply to the composition of directive and supervisory bodies of public and listed companies. Companies must have different genders representing at least 33.3% of the total members of such bodies.

Portugal has also recently enacted new legislation to transpose the EU Whistleblowing Directive into its legal framework. This represents a significant shift, including the introduction of new legal protection of whistleblowers and new requirements for the creation and implementation of internal channels for reporting breaches.
Substantial changes to working conditions and to any criteria of workforce management may trigger information or consultation obligations. This could include, for example, changes to compensation and benefits arrangements to drive forward ESG strategies, such as to travel benefits or variable remuneration schemes. Therefore, employers planning such measures should take into account the possibility of information or consultation obligations. Where they apply, employers should build those requirements into the planning and implementation process. Furthermore, where such measures affect individually agreed employment conditions, the employee’s consent may be required.

Failing to recognize and action information and consultation obligations and contractual consent requirements can be a significant pitfall, with the potential to create unexpected and negative impacts on the risk profile. Breaches can result in fines from the labor authorities, which can be made public. Furthermore, employees or their representatives may challenge the implementation of measures through litigation, which risks the payment of compensation and measures being deemed null and void.

Our team in Portugal has substantial experience in helping companies navigate ESG-related workplace requirements and strategies, including around labor standards and equality of pay requirements. For further information please contact:

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ESG continues to develop in the Middle East and is being recognized and embraced in the KSA as a critical part of securing a more sustainable economic landscape that can drive long-term economic growth for companies.

Programs such as the Saudi Green Initiative and the wider Middle East Green Initiative demonstrate the KSA’s commitment to achieving its target of net-zero carbon emissions by 2060. In addition, ESG is rapidly growing in importance in the KSA financial sector, as reflected in new ESG disclosure guidelines from the KSA Stock Exchange and advice for companies on how to improve their ESG performance.

A number of laws, regulations, ministerial resolutions, administrative orders, and judicial decisions issued by the Ministry of Human Resources and Social Development (MHRSD) and General Organization for Social Insurance (GOSI) have governed employment related ESG matters in the KSA for many years.

The Saudi Labor Law is the major legislation governing labor standards, including employment contract formalities and content requirements, the use of probationary periods, contract renewals, wages, working hours, leave and termination. In addition, separate legislation builds upon the Labor Law, including around incidental and temporary contracts, anti-trafficking, whistleblowing, data protection privacy, internal work policies, on-site registers, workplace safety, equality, social insurance and sanctions and penalties.

Workplace discrimination is unlawful in KSA, including based on gender, disability, and age. Although there are no mandatory reporting obligations around diversity or pay in the KSA, employers are increasingly disclosing data to demonstrate the inclusivity of women and young leaders in their workforces. In addition, employers with 25 or more workers in the KSA are required to employ a minimum number of disabled workers, equivalent to a minimum of 4% or more of the total workforce, and implement certain adjustments to ensure accessibility for disabled workers.

As awareness of ESG factors in the KSA continues to grow, it is anticipated that ESG influences will start to be seen in KSA workforce considerations and strategies, including potentially around compensation and benefits. Employers considering ESG-related changes that have the potential to impact the contractual rights of workers should consider that consent to the change will be required.
Depending on the nature of any contractual variation, there are several routes that can be utilized by employers to formalize any change once the consent is obtained. This includes the use of an annexure and/or addendum to the employment contract, implementing an internal policy, or issuing an internal administrative order. Ensuring that the change is correctly formalized is important, with risk of statutory penalties being imposed for any breach.

Our team of expert employment lawyers in the KSA have substantial experience of helping employers to navigate the legislative requirements relating to their workforces, including around ESG elements, and to shape strategies to assist growth and attract, motivate and retain talent. For further information please contact:

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New climate change legislation is awaiting Presidential signature in South Africa. The proposed law is aimed at supporting an effective climate change response, including compelling companies to reduce greenhouse gas emissions. Pending this new legislation, many companies are already taking significant steps to build positive environmental considerations into their practices and decision-making.

Several laws and regulations concerning ESG issues are already in place and on the horizon in South Africa, including those regulating conditions of employment and fair labor practices. This includes the regulation of wages, working time, leave, collective bargaining and the termination of employment, together with the promotion of equal opportunity, fair treatment in employment through the elimination of unfair discrimination and the effective resolution of labor disputes.

In addition, wellbeing of workers is strictly regulated in South Africa, with obligations on employers to ensure the health and safety of their employees in the workplace and in connection with the use of any workplace machinery. ESG factors influence financial decisions that can impact workforce strategies too. For example, financial incentives are available in South Africa in the form of tax breaks and allowances for environmentally friendly practices and projects. Pensions can also be impacted, with a statutory requirement for any pension fund and its board to consider any factor that may materially affect the sustainable long-term performance of the fund, including environmental, social and governance factors.

ESG-related workplace trends in South Africa

Environmental issues and the desire to “go green” has impacted many workplaces in South Africa, driving organizations to consider environmental issues when contemplating policy changes and new projects. The trend towards a paperless workplace and remote working to avoid CO2 emissions from work-related travel are just some of the examples being seen.

There has also been a general trend toward greater employee engagement. This has been through trade unions, bargaining councils and worker representatives, providing an avenue for employees to raise issues or concerns and influence fairer labor practices. In addition, greater voluntary two-way employee engagement has been seen, including through open-door policies, suggestion portals and more regular meetings.

Enhanced working conditions or workplace safety has become significantly more robust in South Africa over the past few years. Employers have a statutory obligation to ensure the safety of all employees, clients and customers at workplaces. A statutory compensation fund now exists for employees who are injured and/or contract diseases at the workplace during the course of their employment.
Diversity and inclusion developments in South Africa

Diversity and inclusion are prevalent and consistent factors in the policies and regulations of South African businesses.

Employers employing 50 or more people are required to formulate employment equity plans, setting out clear goals to achieve employment equity in the workplace. The South African government has prescribed targets for inclusivity, which are largely focused on race, gender and disability. Failure to adhere to the requirement to implement a satisfactory employment equity plan can be significant, with serious reputational risk and potential fines of up to R1.5 million (approximately €90,000). An Employment Equity Amendment Bill has recently been passed to ensure that all new employment equity plans align with the new five-year targets set by the Minister of Employment and Labour.

A new Code of Good Practice on the Prevention and Elimination of Violence and Harassment in the Workplace has been enacted, with the aim of eliminating all forms of harassment in the workplace and in any activity linked to, or arising out of, work. It further broadens what is considered workplace harassment and bolsters the protection to include non-employees, suspended workers, ex-employees, persons in training and “others having dealings with the organisation”. The Code implements greater obligations on employers to prevent and eliminate violence and harassment in the workplace. This includes the development and implementation of policies, procedures and practices.

Pay transparency is also a feature. A Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value was published in 2015 and has been a major trigger in the trend towards pay transparency. The Code requires employers to eliminate unfair discrimination and take steps to eliminate any differences in the conditions of employment of employees who perform the same or substantially similar work or work of equal value where such differences are directly or indirectly based on grounds such as race, ethnicity and gender.

Mandatory reporting and ethics obligations in South Africa

Black Economic Empowerment (BEE) ratings are aimed at encouraging companies to employ more diverse workforces. A BEE rating has reputational benefits, aiding a positive image of the company to consumers and/or clients and allowing favorable positioning in state tenders/procurement exercises.

An entity’s BEE rating is impacted by the BEE ratings of entities with whom they do business and is therefore a significant feature of doing business in South Africa.

Designated employers are obliged to report to the Department of Labour annually on their employment policies and employment equity achievements as compared with their targets.

The existence of a social and ethics committee (SEC), made up of at least three directors or prescribed officers, has been a requirement for certain companies in South Africa for several years. The remit of the SEC is to draw certain matters to the attention of the board and to then report to the shareholders. These matters include, social and economic development, good corporate citizenship, the environment, health and public safety, consumer relationships and labor and employment.

Our team in South Africa has been providing ESG-related advice to employers for many years, including advice relating to diversity and inclusion, mandatory reporting and ethics obligations. Our team is uniquely placed to provide legal and practical support to clients across the full spectrum of ESG-related workforce matters. For further information please contact:

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The UK has a long history of labor protections and standards across all aspects of the employment lifecycle, with those aspects forming the cornerstones of the social element of ESG in the UK. That legal framework includes the protection of wages, health and safety protections, minimum terms of employment, protection against discrimination, limits and controls around working time, whistleblower protections, and the regulation of the termination of employment.

In addition, the governance aspect of some of those elements has been seen for a number of years, with certain companies being under an obligation to publicly report on their labor measures and results, including on anti-slavery and human trafficking, and gender and CEO pay gaps.

Environmental measures have also been a constant feature of many UK workplaces in recent years, including employers taking steps to create paperless workplaces and a focus on ways to reduce the carbon footprint in business operations and workplace practices.

ESG is not therefore a new or emerging concept in the UK, but what is new is the holistic view taken of ESG across all aspects as a measure of good business conduct and management. Increased expectations have recently been seen from workers, investors, customers and suppliers that companies will have strategies addressing all ESG elements.

Alongside the legal framework, companies in the UK are increasingly seeking to create a culture where workers are engaged in ESG-related changes to maximize the impact, as well as going beyond minimum legal requirements on key topics, both in direct operations and in global supply chains.

**ESG-related workplace trends in the UK**

Fair pay, including fair and transparent pay practices, is one of the areas of ESG that has seen recent focus by businesses in the UK. As well as greater engagement and expectations from workforces, unions, customers, regulators and investors, there has been renewed enforcement activity around national minimum wage breaches. Such enforcement activity has the potential to cause significant financial and reputational damage, with the possibility of employers that do not comply having to pay fines and being publicly named.
Responsible business practices around diversity and inclusion also continues to be a particular area of focus. The COVID-19 pandemic, #MeToo, Black Lives Matter and supply chain worker scandals highlighted workplace inequalities and raised the social expectations for business operations. A company’s reputation around diversity and inclusion, including transparency around strategy and progress, is increasingly seen as a key factor for UK workers choosing whether to join or stay with an organization and in the assessment of sustainability, value and reputation by investors, customers and suppliers.

Diversity and inclusion has been a regular focus for regulators in the UK for many years. However, the recent surge in focus around responsible business practices has resulted in further measures in this respect. For example, the Financial Conduct Authority (FCA) has recently published new rules and guidance, requiring additional disclosures by some listed companies about whether they have met certain targets in relation to gender and ethnic minority representation on their Boards.

The focus on diversity and inclusion has also seen an evolution from the perspective of discrimination litigation. Age, sex, disability and race have historically been the more prevalent type of discrimination claims. However, claims based on disadvantage suffered at work on account of a protected belief can also be made. With the growing awareness of ESG, claims have therefore started to be seen around beliefs linked to ESG commitments, including employees who suffer workplace detriment or dismissal due to their commitment to addressing climate change or where they have highlighted “greenwashing” concerns. Such claims are expected to see greater prominence in the courts and tribunals in the future, with resulting impact on business risk profiles.

Another area of ESG that has seen recent development in the UK from a people perspective is around employee voice. There is a growing expectation of workers, trade unions and representative bodies within workplaces in the UK to have a voice on matters concerning the organization’s environmental impact, governance and social responsibility. Developing dialogue to support ESG change is consequently becoming progressively important and, in some cases, will be legally required.

Information and consultation triggers in the UK

Change to address environmental sustainability and climate risks may require employers to adapt their people strategies. This may be by retraining and upskilling workers, role changes, adjustments to compensation and benefits to link incentives to climate change objectives and/or reassessing workplace locations.

Where those changes result in large-scale redundancies or changes to terms and conditions of employment where dismissal and re-engagement is used to effect the change, statutory information and consultation obligations may be triggered. In addition, certain ESG-related changes that amend terms and conditions are likely to require worker consent.

We have UK experts with significant long-established experience across the broad range of ESG issues in the workplace. Our workplace focused ESG support falls within six broad categories: Culture and employee engagement; Change management; Diversity and inclusion; Corporate governance and the workplace; Human rights, labor and supply chains; Pension scheme specific requirements. For further information please contact:

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Companies in the US are responding to pressure from several directions for ESG programs.

From a regulatory perspective, the U.S. Securities and Exchange Commission ("SEC") has recently highlighted the significant increase in investor demand for the disclosure of information about climate change risks, impacts, and opportunities. Consequently, it has made clear that it will be paying close attention to these and other ESG matters, including monitoring compliance with existing disclosure rules. The SEC has also recently proposed some significant new climate related reporting obligations for publicly reporting companies and confirmed that it will consider updating guidance to develop a more comprehensive framework that produces consistent, comparable, and reliable climate-related disclosures.

In addition, the US is a member country of the Organisation for Economic Co-operation and Development (OECD), an international organization that works with governments and policy makers to drive international standards. The OECD guidelines form recommendations from governments to multinational enterprises on responsible business conduct, including in relation to human rights, supply chain responsibility, consumer protection and competition. The guidelines also establish that employers should respect environmental and labor standards and have appropriate due diligence processes in place to ensure this happens.

Investors are also increasingly driving the pace and direction of the development of ESG policies, including using proxy voting guidelines that state that they will require companies to demonstrate their commitment to mitigating climate risk and increasing diverse Board membership.

Moreover, employees and unions are progressively demanding appropriate labor standards, including more robust health and safety practices, fairer compensation plans and increased focus on diversity and inclusion. Particularly in the current labor market, these factors have the potential to significantly influence recruitment and retention.
Diversity and inclusion developments in the US

Federal, state, and local legislation prohibits discrimination against employees with regard to employment decisions based on personal characteristics, such as race, color, sex or disability, and protects employees against retaliation for, among other things, their complaint of or participation in an investigation related to discrimination.

In an effort to reduce the pay gap between men and women, federal and state laws provide restrictions on asking about or using past pay information to make decisions about pay for new hires and for employees in certain promotion situations (though certain exceptions may be permitted).

Private employers who have 100 or more employees and federal contractors who have 50 or more employees, including subcontractors under a federal contract, who meet certain criteria have obligations to report “EEO-1” information about employees’ job categories, ethnicity, race, and gender to the US Equal Employment Opportunities Commission. In addition, in certain circumstances, employers must have certain Affirmative Action Plans in place, intended to ensure equal opportunities in recruitment, hire, promotion, training, and discipline in employment.

Due to the requirement to complete EEO-1 reports and Affirmative Action Plans, it is becoming a more common practice in the US for employers to collect the diversity data relevant to those measures. However, the recent influences on employers to develop and progress ESG-related measures, including to make further advances in diversity, equity, and inclusion beyond those driven by such measures, is also making the collection and monitoring of wider diversity data an increasingly usual practice.

Our US teams of experts have significant experience of supporting employers to steer through the legal, regulatory and practical implications associated with ESG-related requirements and influences. For further information, please contact:

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An international perspective
ESG and employment insights
Part 2: Comparative information across jurisdictions
Changes terms and conditions in response to ESG-related drivers

The formalities of effecting a contractual change should be considered in the event of any ESG measures triggering changes to terms and conditions. In many cases, it will be necessary to obtain the consent of workers and/or work with works councils, unions or employee representative bodies to ensure the change is effective and/or avoid financial penalty. In some jurisdictions, it will be necessary to reissue the employment contract, in others, a side letter or annex to the existing contract will suffice.

Further, there may be requirements for the amendment document to be in the local language and/or prescribed methods of execution. An electronically signed variation document will not be legally effective in some jurisdictions, meaning the document will instead need to be in paper hard copy with a wet ink signature.

Sample at-a-glance comparisons:

<table>
<thead>
<tr>
<th>Local language legal requirement for variation documents?</th>
<th>China</th>
<th>France</th>
<th>Hong Kong</th>
<th>Netherlands</th>
<th>Portugal</th>
</tr>
</thead>
<tbody>
<tr>
<td>No, but bilingual document is common practice for a foreign-invested company</td>
<td>Yes (French or bilingual document)</td>
<td>No</td>
<td>No (provided that the employee understands the chosen language)</td>
<td>No (provided that the employee understands the chosen language)</td>
<td></td>
</tr>
</tbody>
</table>

| Mandatory to agree changes to key terms and conditions through a written agreement? | Yes | Yes | No | Yes | Yes |
|----------------------------------------------------------|-------|--------|----------|-------|
| Yes (not an absolute requirement but highly recommended) | No | Yes, (not an absolute requirement but highly recommended) | Generally, no. However, there are some changes that require a mandatory written notice |

| Can contractual/variation documents be signed electronically? | Yes, reliable electronic signature permitted, but wet ink signature is always recommended. | Yes, electronic signature is permitted, provided that a certified system is used | Yes, except where the variation provides for a power of attorney | Yes, by qualified electronic signature | Yes |
|----------------------------------------------------------|-------|--------|----------|-------|

An international perspective
ESG and employment insights
This guide is intended to give a comparative overview of some of the key questions regarding changes terms and conditions in response to ESG-related drivers. It does not set out a comprehensive picture of the law and is not tailored to any particular circumstances your company may be facing. It should not therefore be seen as a substitute for obtaining legal advice.

<table>
<thead>
<tr>
<th>Local language legal requirement for variation documents?</th>
<th>Saudi Arabia</th>
<th>South Africa</th>
<th>UK</th>
<th>USA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. Arabic language is required to be used. In practice, bilingual (Arabic and English) contracts are used</td>
<td>No (provided that the employee understands the chosen language)</td>
<td>No</td>
<td>Depends on variation and state law</td>
<td></td>
</tr>
</tbody>
</table>

| Mandatory to agree changes to key terms and conditions through a written agreement? | Yes | Yes. Changes to company policies which do not affect employees’ terms and conditions of employment (and are not governed by a collective agreement) should be communicated to all employees and/or trade unions as a form of best practice. | Yes | No |

| Can contractual/variation documents be signed electronically? | Yes | Yes | Yes | Yes, permitted under federal and state laws |
Information and consultation — ESG-related triggers and obligations

In many countries, ESG-related measures may trigger information and consultation obligations. Where employee representative bodies are a requirement, there will often be prescribed triggers for establishing such arrangement and/or providing information and consulting.

Failing to recognize and action information and consultation obligations, is a common pitfall for global employers, and can create an unexpected and often significant negative impact on the risk profile, timing and cost of ESG-driven exercises.

Sample at-a-glance comparisons:

<table>
<thead>
<tr>
<th></th>
<th>China</th>
<th>France</th>
<th>Hong Kong</th>
<th>Netherlands</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Information and consultation (I&amp;C) parties</strong></td>
<td>Trade union (if recognized)/ all employees if no union</td>
<td>Social and Economic (CSE) Committee and trade union</td>
<td>None</td>
<td>Trade union and works council/employee reps if no works council</td>
</tr>
<tr>
<td><strong>Statutory obligation to establish an employee representative body (excluding European Works Council)?</strong></td>
<td>No. Where an employer has more than 25 employees who are the members of the All-China Federation of Trade Unions, establishing a primary-level trade union is required.</td>
<td>Yes, all companies with at least 11 employees must elect a CSE</td>
<td>No</td>
<td>Yes, an employer with 50 or more employees is required to establish a works council. An employer with 10-50 employees is required to establish a personnel representative body at request of the majority of employees.</td>
</tr>
<tr>
<td><strong>ESG-related trigger for I&amp;C?</strong></td>
<td>Any initiatives that are related to employees’ immediate rights and interests, such as remuneration, working hours, rest and leave, work safety, insurance and benefits or labor discipline, can trigger “democratic and publication procedures”</td>
<td>Yes, several subjects require information and/or consultation, including environmental issues, D&amp;I, pay transparency, changes to the size or structure of the workforce, implementation or modification of internal rules and regulations and workplace health and safety.</td>
<td>No</td>
<td>Yes, some ESG initiatives</td>
</tr>
<tr>
<td><strong>Statutory minimum prescribed timescale for I&amp;C</strong></td>
<td>None</td>
<td>1 – 3 months</td>
<td>No requirement</td>
<td>In due time to enable proper consultation</td>
</tr>
<tr>
<td><strong>Sanctions for non-compliance with I&amp;C obligations</strong></td>
<td>The initiatives will not be binding upon employees. Any disciplinary action taken against employees based on such initiatives (where applicable) will be invalid.</td>
<td>Potential criminal liability/injunction/financial penalty/delay</td>
<td>None</td>
<td>Delay/court prohibition to implement decision/court order to reverse (effects of) implemented decision</td>
</tr>
</tbody>
</table>
### Information and consultation (I&C) parties

<table>
<thead>
<tr>
<th>Country</th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Works Council/inter-union committee/special consultation committee/all employees (if no employee representatives)</td>
<td>N/A</td>
<td>Person identified for consultation in collective agreement; (if no collective agreement) workplace forum/registered trade union; if no workplace forum or registered trade union, affected employees</td>
<td>Trade union (if recognized)/works council (if applicable)/employee representatives</td>
<td>Union (if applicable)</td>
</tr>
</tbody>
</table>

### Statutory obligation to establish an employee representative body (excluding European Works Council)?

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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Only for health and safety matters.</td>
<td>No</td>
<td>No</td>
<td>Event-driven obligation – including larger scale redundancies/business transfer/health and safety/pension scheme changes</td>
<td>No</td>
</tr>
</tbody>
</table>

### ESG-related trigger for I&C?

<table>
<thead>
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<th>USA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes, ESG related changes that result in changes to working conditions and/or workforce management</td>
<td>N/A</td>
<td>No, although the Labour Relations Act (&quot;LRA&quot;) fosters a culture of communication and engagement between employers, employees and any relevant trade union or bargaining councils. Unions can demand relevant information for collective bargaining purposes.</td>
<td>Yes, ESG-related changes that result in large-scale redundancies or changes to terms and conditions of employment via dismissal and re-engagement</td>
<td>N/A</td>
</tr>
</tbody>
</table>

### Statutory minimum prescribed timescale for I&C

<table>
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<th>Country</th>
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<th>USA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>As early as possible/timing in the collective agreement</td>
<td>N/A</td>
<td>N/A</td>
<td>30 or 45 days depending on numbers involved</td>
<td>N/A</td>
</tr>
</tbody>
</table>

### Sanctions for non-compliance with I&C obligations

<table>
<thead>
<tr>
<th>Country</th>
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<th>UK</th>
<th>USA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Determined by collective bargaining agreement (if any)</td>
<td>N/A</td>
<td>N/A</td>
<td>Financial penalty</td>
<td>N/A</td>
</tr>
</tbody>
</table>

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This guide is intended to give a comparative overview of some of the key questions regarding ESG-related information and consultation triggers and obligations. It does not set out a comprehensive picture of the law and is not tailored to any particular circumstances your company may be facing. It should not therefore be seen as a substitute for obtaining legal advice.
Want to know more? Visit our Responsible Business and ESG web pages.