

ESG in the legal profession

With Pilar Galen, Global ESG Lead for Legal, KPMG International and Partner in KPMG Spain, and John Moutsopoulos, Asset Management and ESG Lead, Law, KPMG Australia

Host

Hello and welcome to the Future of Tax & Legal podcast series – Legal edition – with today's episode focusing specifically on ESG and Legal. Joining us today are Pilar Galen, Global ESG Lead for Legal, KPMG International, and Partner in KPMG Spain, as well as John Moutsopoulos, Asset Management and ESG Lead, Law, KPMG Australia. Pilar and John have joined us today to delve in to ESG and the legal functions, touching on the opportunities and challenges, as well as picking their brains on any regional nuances that exist in the space.

Thank you both for being here today. Perhaps we can start by setting the scene. Pilar, we can start with you. What role would you say the legal function plays in ESG for an organization?

Pilar Galan

The legal role is ideally positioned to be agent for the transformation of change. First, because easy changes largely driven by regulation and therefore navigating the complexity of new regulation and ensuring compliance and management of risk is key. Second, because of its holistic view of ESG and in-depth understanding that the legal function has of the organization and the impact on its operations director and on the different topics. Above all the easy journeys and opportunities for the legal function to partner with their business in designing and implementing their organization's ESG strategy.

Host

And John, do you have any further thoughts you wanted to add in here?

John Moutsopoulos

I would say 100% agree with what Pilar said. Everyone talks about businesses being on their own ESG journey and this somewhere along the journey road. Well, legal functions are on that same journey. And so there are different stages as well. But definitely the legal function is playing a bigger role in ESG, certainly down here in Australia as we play catch up with our new government in the last 12 months, we've really made a quantum leap from where we were, which was nowhere to where we are, which is somewhere and we've still got more to go, although we're still way behind Europe. And I think the legal function is playing a bigger role on both the risk side and the opportunity side.

Host

Great thanks John. An open question to either of you. What level of collaboration is necessary in an organization to achieve ESG related ambitions?

John Moutsopoulos

I'm happy to take that first if you want, Pilar, but I think it probably links in with what Pilar mentioned a moment ago that legal really has a very central and important role within a business in terms of meeting the ESG challenge and exploiting the ESG opportunities.

And they can't do it alone, of course. And it really is a collaboration. And I think the legal function is simply one of the stakeholders and an important one, particularly as we are seeing increasing ESG regulation and proposals in proposed reforms. So that's probably enough for me, I think from our end anything from you Pilar.

Pilar Galan

I would just add that while the legal function has, will or should take the role of supporting the business and supporting the organization to identify where are the risks, there is increasing transparency requirements and the scrutiny of the different stakeholders is getting higher. So it makes it crucial for the legal function to adequately identify where are the risks in order to avoid potential liability that could take place afterwards.

John Moutsopoulos

That's a good point, Pilar. I mean, greenwashing risk is a global theme. And what I'm seeing in Australia, you know, greenwashing is probably the biggest risk that everyone is talking about here because our financial regulators have stepped up their enforcement and it's quite sharp enforcement and what we're finding is that legal has a central role in the organization's response to that type of sharp enforcement, because fundamentally, greenwashing involves a breach of existing law.

Host

Thanks for that John and Pilar, digging a little deeper in to the topic, and knowing that the ESG landscape is ever-evolving, what are some of the ESG -related challenges or risks you foresee for the legal function in the near future (or what's happening now), how can organizations prepare for these? John, perhaps you can start us off with this question?

John Moutsopoulos

I guess from an Australian perspective, the expression that comes to mind is the 'pace of change'. And it's like strap yourself in. It's just amazing how much is going on. And that is a challenge. It's a challenge to stay on top of things. It's a challenge to understand what's going on when you've got your BAU job and there's all this noise going on increasingly becoming more mainstream.

So I think pace of change is a biggie. Improving education and awareness in line with that change is another one. I think, you know, you know, I'm the ESG lead for KPMG Law Australia, but four years ago, guess what? I was not and I had really no idea what ESG was, as did most lawyers in Australia.

But look at what's happened in badda bing badda boom in four years. You know, I'm suddenly now leading the function and working with ESG advisory almost on a daily basis. So I think the pace of change is a biggie and legal needs to be an active participant in internal efforts.

Pilar Galan

One of the challenges is to train our people and for the legal function to train their people, which is not easy at all. They are in their BAU (business as usual) and this is on top of all they have depending on the sector the regulation is different.

There is well and regulation coming from everywhere. The scrutiny of the authority, stake stakeholders so and they have to support the different operational areas of the business business. So this is really a challenge also for the organization to training.

Host

We've discussed the challenges, but what opportunities does ESG present for the legal function? John can I come to you first.

John Moutsopoulos

I think from an Australian perspective, what we're sort of seeing is you know, people started with the risk side and once they got that under control managing material ESG risks, they then sort of started to turn to the opportunity side. How do we, you know, find the opportunities in what's going on - and there's a lot going on.

So I think that's an exciting element. You know, a real opportunity for legal to, you know, assist in the transformation of the business into potentially a more purposive business.

And one whose values are, if they're not already really aligned to, you know, the values of the individuals within the organization. I think that can be quite inspiring.

I see it with the legal the young lawyers in my team, we run a weekly ESG 30 minute kind of what's going on kind of session. And the young people have got eyes like this, you know, and you can see that it resonates with them to hear about what's going on. So I think that's really big and there's an upskilling element to it.

I think that's an opportunity. I think, you know, learning, you know, we always continue to learn. We never stop learning and this is definitely the case for the legal function, really upskilling and speaking the language of ESG. It's a language and then actually applying and looking at ESG through a legal lens is really important because for so long it was being looked at without a legal lens.

And finally, teaming. Teaming with the responsible investment internal team, you know, to combine and look at challenges for the organization is also an exciting opportunity.

Pilar Galan

Partnering with other areas of the company and especially with business and the legal function should be monitoring what is to come. They should help to navigate what is already into in place in terms of regulation or in terms of just social awareness or scrutiny. And they have to support in implementation that. Of course of their knowledge or the knowledge that their teams should have in terms of ESG, in terms of potential liability, in terms of clearly being able to foresee what could be the implications of the transparency that they are giving to the market and the labelling that they have in the products, how they are complying with certain legal premises and so on.

Host

Are there any nuances from a regional perspective on how organizations are integrating ESG initiatives into their legal strategies and practices?

Pilar Galan

Well, yes, there are nuances from a regional perspective. For example, in Europe, regulation

is used as leverage to advance in the transition to net zero, whereas in other regions, for example, in the US the approach is to push ESG through grants and incentives to corporates. So really the approach is different, the regulation is different. We even have more important differences in terms of interpreting, for example of the fiduciary duty in the financial sector.

So it is important to when you are a company that operates in different countries to take into account the different approaches, the different regulation and this is very complex too. I would highlight that that nuances not only from a regional perspective, but also a because of the maturity of the companies and depending on the sector where they are.

So the maturity of the companies, what we see is that it depends on different factors, such as, for example, well, as I said, the sector where they operate, but also their culture, their governance, the support and how much they have advanced in terms of defining an ESG strategy. So I would say that we are seeing very different levels of maturity depending on the region, depending on the sector, depending on the kind of company and depending on the governance of the company.

Host

And John, would you like to add anything?

John Moutsopoulos

From an Australian perspective, I suppose the nuance with us is we're a bit like Europe. I suppose hearing Pilar's description, which was really interesting, that we are using increasing ESG regulation, I suppose more than as incentives. So we're definitely hitting down the or towards the European model. I'm not sure we'll go as far, but we're certainly hitting that down that way.

So for example, yesterday our government released a sustainable finance consultation paper, which we've been waiting for a long time and it's got some significant proposals, including in this investment fund labelling and disclosure rules.

We're also in the process of in a consulting on implementation of ISSB, be at least the climate S2. We look to the European Union and the United Kingdom for lessons because they are ahead of us in many respects.

We are imminently going to announce our own CBAM. And yesterday we there was released to the market a publicly opinion from a senior council making it clear that companies can face and their boards can face personal liability if their company's activities have adverse impacts on nature. And so that's really put a cat amongst the pigeons, you know, by releasing that opinion in the market.

It's really intended to move the nature loss, the, you know, nature positive stream forward to play catch up with climate. And the other big thing that's going on in our market is and we held a webinar on this earlier in the week is pension funds investing for real world impact? A lot of our pension funds and this links a very nicely with greenwashing and it also links nicely with fiduciary duty.

But a lot of pension funds are really positioning in the market with strong messages to their members that, you know, invest with us and you will and we will thereby invest for real world impact.

And we heard that fiduciary duties require that all investments have to satisfy the material financial interests of beneficiaries. And if you don't, then you cannot invest. And so that really means that the only investments a pension fund can make are ones which meet the pension funds, risk return requirements from a financial perspective. And once they're over that hurdle, that's when they can then look for impact.

Pilar Galan

It is truly very interesting and it shows first we can learn from each other. And because I'm afraid that this is something that we are building and that probably we are going to see even in the regions where it is highly regulated, such as Europe, that probably what certain things that have to have been regulated in a certain way will probably have to be some somehow amended.

But they also should be useful for other regions to learn what has been useful and what has

even more problems that then help it to support the transition to net zero. So we well, I think that the important thing is that in general, look, all over the world, ESG is on the top of the agenda and we will learn from each other and in order to support and guarantee that we advance on ESG.

Host

Thank you both. That's been a really informative discussion. I'm sure you've given our listeners a lot to think about, but finally, maybe just to wrap up our recording, if you could describe the ESG landscape for the legal function in one word, what would it be?

Pilar Galan

It would be purpose. And why purpose? Well, I guess that because the legal function must partner with the business in the design and deployment of the ESG strategy so that they have to support in order to change the approach from a more compliant approach to a purpose driven approach.

John Moutsopoulos

It's a tough one. One word I'd probably... I've written down dynamic, then I wrote exciting and I wrote scary. So maybe that's my three words.

Host

Thank you both for your time, and thank you to our listeners for joining us.

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