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Part I: Sustainability and law – setting the scene

Before we make the business case for sustainability (Part II) and present a practical toolkit that will assist your law firm on its journey towards sustainability (Part III), we begin by mapping the context in which law firms operate with regard to sustainability.

First, this report explores key concepts which are not always well understood. It then charts the historic evolution of the regulatory landscape, which makes lawyers uniquely placed to help clients navigate the expanding maze of complex regulations.

In this evolving context, how are law firms, as businesses, adapting? More often reactively, in response to client demand, which creates a ‘trickle-down effect’; but sometimes progressively. We discuss the different ages of corporate responsibility to highlight how the journey towards sustainability is an ongoing one.

And law firms are not on their own on this journey. Some law societies and bar associations are encouraging law firms to engage in ESG. Increasingly, legal community associations are taking clear positions to assist their members. And a growing number of coalitions between major firms and businesses are making ambitious collective moves.

The message is clear: law firms must reconsider – and are reconsidering – the way they do business in order to help preserve the environment and society. Like all other businesses, they should follow the global framework of the United Nations Sustainable Development Goals (SDGs) as the most accurate and useful compass when embarking on their sustainability journey.

The first part of this Special Report sets the context through a discussion of the following:

- key definitions;
- history and the developing body of rules;
- law firms' growing awareness of sustainability; and
- the SDGs as the universal compass for ESG in law firms.

1. Definitions: 'corporate social responsibility', 'sustainable development' or 'ESG'?

These terms – often overused and sometimes used out of context or as mere 'tick-the-box' expressions – require clear definition as used in this Special Report.

1.1 Corporate social responsibility

Corporate social responsibility (CSR) is the voluntary commitment of businesses to operate in a responsible way and contribute a net positive impact to society and the environment. Companies often have a dedicated CSR department and base their efforts on established norms or guiding principles (eg, ISO 26000; the Global Compact; the Organisation for Economic Co-operation and Development principles), to ensure that processes are in place to manage their business responsibly.

1.2 'Sustainability' or 'sustainable development'

'Sustainability' is a broader term. It refers to a comprehensive systemic approach whereby a business considers all its stakeholders and adapts its business model to create and share value both for immediate shareholders and for society and the planet. The level of engagement is stronger, as it is part of a wider undertaking to position the business within a global sustainable system. Society at large is placed at the centre of the business's strategy, governance and purpose. The growth of a sustainable business does not compromise, but rather positively impacts on society and the environment. For a business, sustainability encompasses everything from finance to supply chains, product development and production, and business model. Sustainable development results in growth and profits, as well as positive impacts that outweigh the negative impacts on society and the environment.

"For a business, sustainability encompasses everything from finance to supply chains, product development and production, and business model."

1.3 ESG criteria

ESG criteria are the main factors or key performance indicators (KPIs) used by investors when considering responsible investment in businesses. ESG criteria are now analysed with regard to the SDGs (explained in detail in Part I, section 4):

- **Environmental sustainability** relates to how a business performs as a steward of the natural environment, focusing on waste and pollution, oceans, essential resources, water, erosion of biodiversity, land use and deforestation, ozone depletion, carbon emissions and climate change.
- **Social responsibility** concerns how a company treats people and encompasses employee relations, diversity, working conditions – including child labour and slavery – and health and safety both in the workplace and in the supply chain. Another important aspect of social responsibility concerns wider societal responsibility towards local communities in the places where the company operates.
- **Governance** covers how a corporation polices itself – how it is governed – and focuses on the letter and spirit of its decision-making processes, its tax strategy, executive remuneration, anti-corruption and anti-bribery policies, and the diversity of the management board.

2. Sustainability: from slow raising of awareness to exponential growth of regulations

In the 1970s, scientists began raising awareness of the damage that human activity was causing to the environment and to the climate. Society and NGOs have since become increasingly vocal in criticising traditional ways of doing business, insisting that businesses should take account of their negative impact on society and the environment.

International organisations have developed a complex body of indicative guidelines and rules over the past 50 years. Increasingly, these rules are becoming binding regulations which seek to encourage corporates to conduct their business in a sustainable way. Their scope is incredibly broad, encompassing all aspects of business management and strategy. And more regulations are being introduced all around the world.

While many of these regulations are not binding on most law firms – either because they fall below the legal thresholds or because their legal status (where they are not commercial companies) is not yet covered by them – it seems clear that firms will be brought within their scope sooner or later. Law firms would thus be well advised to start thinking now about the relevant issues, as the sooner they do so, the easier it will be for them to embark on their ESG journey.

Let's start with the historical evolution that has seen this tsunami of rules develop.

2.1 From research and scientists ...

Research shows that human activity has caused serious damage to the environment since the industrial revolution. The first major reference study to be published was the Meadows Report[1] in 1972. It revealed, through computer simulations, the correlation between economic development and population growth in a world with finite resources, and demonstrated that there are social and environmental limits to growth. This prompted extensive debate, research and conferences around the world.

Over the past decade, more studies – including the latest report of the Intergovernmental Panel on Climate Change[2] (IPCC) – have confirmed that if we continue with our current focus on economic, industrial and population growth, this will have a negative – perhaps even irreversible – impact on the climate, biodiversity and the environment, which in turn will increase inequalities and severe poverty.

2.2 ... to increasing pressure from society ...

First coined in the 1950s, the terminology of CSR[3] developed after the first oil shock, as society began to criticise traditional business increasingly harshly for not respecting the common good or society at large.

In 1984, the 'shareholder value' theory was challenged by the 'stakeholder value' theory[4] – that is, businesses should create value not only for their direct shareholders, but also for their employees, the value chain, clients and neighbourhoods. While the contribution that business makes to increasing living standards is recognised, society criticises those business which are greedy for profits or which lack ethics.

In recent decades, pressure from citizens, NGOs (eg, climate activist marches), consumers (eg, the anti-black Friday movement, ethical fashion) and investors has increased significantly, leading to the dawn of socially responsible investing.

2.3 ... to voluntary responsibility of businesses

It is mainly due to this pressure from society that businesses voluntarily began to establish CSR departments and take appropriate action.

These initial efforts were encouraged and guided by international organisations, which prepared recommendations and principles to harmonise behaviours through 'soft law'.

2.4 From soft law and the need for guidelines ...

Over the past 50 years, international organisations such as the United Nations, the International Labour Organisation and the World Economic Forum have revealed the negative impact of our pace and means of development on people and the planet. Increasing numbers of non-binding rules, recommendations and principles encourage states, businesses and civil society to adopt sustainable behaviour.

The timeline in Figure 1 (overleaf) provides a very quick overview of the historical development of these regulations, which began with indicative norms.

Over the past 20 years, sustainability has become a key topic in international conventions, as studies have highlighted the increased urgency of progress in this sphere.

These principles and guidelines aim to support and promote the transformation of companies towards social responsibility; and while initially they were primarily non-binding, they are increasingly being underpinned by binding regulations.

2.5 ... to binding regulations and hard law

A few major guidelines and international frameworks have binding effect, while others have inspired binding laws. Figure 2 (overleaf) provides examples of important international treaties which are binding for member states, a game-changing EU directive and a focus on French national laws.

Figure 1. Selected milestones to the development of sustainability: the power of soft law[5]

To name but a few (non-exhaustive) milestones

1972 – The **Meadows Report**, published at the Stockholm Conference, highlighted social and environmental limits to growth.

1987 – The **Brundtland Report**, published by the UN in 1987, gave the first definition of sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".

1992 – The **Earth Summit in Rio** in 1992 (celebrating the 20th anniversary of the 1972 Stockholm Conference) highlighted the interdependence of the economic, social and environmental developments, and invited businesses to take account of sustainable development.

2000 – The **Global Reporting Initiative** came to light in 1997, and launched in 2000 the first global framework for sustainability reporting, encouraging corporates to prepare non-financial reports on economic, environmental and social dimensions of business activities.

2000 – The United Nations **Millennium Summit** in 2000 was the first attempt to agree on global goals and was a major stepping stone ahead of the 2015 Sustainable Development Goals. That same year, the UN issued the **Global Compact**, a set of 10 principles to engage corporates to adopt a socially responsible attitude with regard to human rights, labour, the environment and anti-corruption.

2006 – The **Principles for Responsible Investment** were developed in 2006 by investors, for investors, to encourage signatories to incorporate ESG issues into investment practice.

2010 – The **International Organization for Standardization** issued its **ISO 26000** guidelines as a non-binding tool, recognised internationally, to standardise common CSR concepts and help implement holistic approaches and processes for businesses. These guidelines inspired the **European Commission's normative definition of CSR** and the elaboration of its strategy in 2011 and 2014.

2011 – The **UN Guiding Principles on Business and Human Rights,** proposed by John Ruggie, endorsed by the UN HR Council in 2011, aim to "prevent, address and remedy human rights abuses committed in business operations".

2015 – Following on from Kyoto in 2005, the **Paris Agreement** in 2015 had a global objective to keep global warming below 2°C by 2100 (compared to pre-industrial levels).

The UN adopted its ambitious 2030 Agenda, to achieve globally the **17 Sustainable Development Goals.**

2020 – The **European Green Deal** fixed an overarching aim of making the European Union climate neutral by 2050, with the objective to reduce GHG emissions by at least 50% by 2030. In addition, there is planned legislation relating to energy, the environment, transport, etc.

2021 – The **COP 26 climate summit** recognised the urgency to limiting global warming; that countries should undertake more stringent 2030 emissions reductions targets; and that developed countries should provide more help to climate-vulnerable countries.

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This is an extract from the chapter 'Sustainability and law – setting the scene' by Robert F van Beemen and Sophie Boyer Chammard in the Special Report '*Building the Sustainable Law Firm: Developing and Implementing an ESG Strategy*', published by Globe Law and Business.