
GUIDE FOR GENERAL COUNSEL **ON CORPORATE SUSTAINABILITY**



United Nations
Global Compact

Linklaters

ABOUT THE UN GLOBAL COMPACT

The United Nations Global Compact is a call to companies everywhere to voluntarily align their operations with ten universally accepted principles in the areas of human rights, labor, environment and anti-corruption, and to take action in support of United Nations goals and issues. The UN Global Compact is a leadership platform for the development, implementation and disclosure of responsible corporate policies and practices.

Launched in 2000, it is the largest corporate sustainability initiative in the world, with over 8,000 companies and 4,000 non-business signatories based in 160 countries.

<http://www.unglobalcompact.org>

The United Nations Global Compact (“UN Global Compact”), together with Linklaters LLP, and with guidance from an Advisory Group of General Counsel (“GC”), has prepared this ‘Guide for General Counsel on Corporate Sustainability’ (the “Guide”).

United Nations Global Compact

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About Linklaters LLP

Linklaters LLP is a leading global law firm, supporting clients in achieving their strategies wherever they do business. With more than 2,600 lawyers spread across 20 countries, the firm uses its expertise and resources to help clients pursue opportunities and manage risk across emerging and developed markets around the world.

WELCOME LETTERS



This project was borne from the desire to engage lawyers more fully as the champions of corporate sustainability that they can be. We were inspired by the interest in this theme expressed to us by sustainability experts within companies. From their perspective, it was felt that GC and in-house could have a more positive and proactive role than they have had historically. At the same time, we began to see a greater number of GC and in-house lawyers attending UN Global Compact events, engaging in corporate sustainability workstreams and showing true leadership in corporate sustainability initiatives, such as human rights, anti-corruption, community engagement, diversity and inclusion and the rule of law.

We were eager to better understand this emerging trend and to encourage the changes we were witnessing — seeing lawyers transition into engaging actively in corporate sustainability and, in the process, becoming “accelerators” of these issues within their companies.

We believe this Guide is just the beginning of a conversation about the evolving role of GC and the convergence of that role with corporate sustainability principles. We look forward to being part of this ongoing discussion and express our deep appreciation to the Advisory Group, and the GC and sustainability experts who gave their input to this Guide. We especially thank Linklaters LLP for being our invaluable partner on this journey.

**Ursula Wynhoven, General Counsel
UN Global Compact**



We have been extremely pleased to support the UN Global Compact and the Advisory Group in the development of this Guide. We have also been fortunate to work collaboratively with many of the local networks of the UN Global Compact.

Conducting the interviews and drafting the Guide has been an incredibly valuable experience for each of us at Linklaters and Allens. Undoubtedly, we have been privileged to hear first hand about the world GC face today, and what they are doing to prepare for the one they expect to face “tomorrow”.

We are glad to have been able to support this initiative globally and facilitate this important discussion on the evolving role of GC and in-house counsel in corporate sustainability.

On behalf of Linklaters and Allens, I would like to express our sincere appreciation to the UN Global Compact, the Advisory Group, the local networks of the UN Global Compact and, of course, each of the interviewees and other participants in the initiative to develop this Guide.

**Tom Shropshire, Partner
Linklaters LLP**

GUIDE FOR GENERAL COUNSEL ON CORPORATE SUSTAINABILITY

Based on our discussions with GC regarding the "Drivers of Change" and "Emerging Themes", we have summarized practical guidance for GC on how to drive corporate sustainability from legal.

A detachable version of this graphic can be found at the end of this Guide.

COMMUNICATE EXPECTATIONS TO 3RD PARTY ADVISERS

- Communicate to external advisers about your strategic priorities
- Reinforce your expectations about the support and engagement needed from them
- Have an open dialogue about strengths & weaknesses
- Discuss specific changes in approach & team

REDEFINE CAREER PATH FOR LEGAL

- Articulate that an increased focus on corporate sustainability is key to career development given underlying trends
- Assess progress annually and communicate as part of core role

ESTABLISH KPIS & REWARDS

- Tie sustainability KPIs to team taking a "broadened" role & engagement
- Agree objective and subjective elements with business & team
- Create financial and non-financial incentives

BUILD INTERNAL CREDIBILITY

- Create legal SWOT with business & sustainability experts
- Agree areas of focus for legal with the business
- Agree plan of engagement for legal with relevant constituencies' operations
- Formally reassess progress with business periodically to underscore engagement

EMBRACE THE BREADTH OF THE ROLE

- Reflect on key drivers of change
- Create "heat" map of drivers against corporate strategy
- Identify & assess gaps and trends
- Develop "legal model" change plan based on corporate priorities

PRIORITIZE SUSTAINABILITY

- Mirror corporate emphasis on sustainability within strategic priorities for legal
- Regularize on your agenda
- Commit financial and human resource to capacity-build within legal

CREATE INTEGRATED OBJECTIVES WITH BUSINESS UNITS

- Objectives for cross-functional teams should be integrated into annual performance assessment of legal team members

GENERAL

**COMMUNICATE INITIATIVES
& ENGAGEMENT REGULARLY**

- Regularize reporting to GC on sustainability/engagement issues
- Communicate efforts/initiatives of legal team periodically
- Use both formal & informal mechanisms to communicate

**DRIVE CHANGE
FROM THE TOP**

- Proactively engage with C-Suite/Board on sustainability issues
- Communicate strategic importance of corporate sustainability with legal team

**ENGAGE WITH
3RD PARTIES**

- Engage with NGOs to develop expertise & credibility
- Set the tone within legal that "balanced engagement" is a key corporate strategy
- Encourage legal team to be part of stakeholder engagement strategy from earliest stages

**PEER-TO-PEER
ENGAGEMENT**

- Discuss the drivers of change & broadened role with other GC or "C-Suite" executives
- Discuss approaches to driving corporate sustainability from legal, including through the use of KPIs
- Capture and share best practices

**EMBED WITHIN
LEGAL STRATEGY**

- Identify aspects of key sustainability issues where legal can engage
- Embed points of engagement on corporate sustainability within legal dept. strategy/objectives

**BUILD
CROSS-FUNCTIONAL TEAMS**

- Embed legal expertise in key areas
- Encourage early & regularized engagement by legal team
- Elevate issues/developments across internal "silos"
- Periodic "progress" reports to GC/legal team

**BUILD FAMILIARITY
IN LEGAL TEAM**

- Dedicate legal resource to corporate sustainability issues
- Regularize internal engagement on sustainability issues
- Focus on practical application of "traditional" legal skills
- Engage in skills dev. & training

For any company seeking to be sustainable, it begins with integrity – respecting fundamental responsibilities in the areas of human rights, labor, environment and anti-corruption. The UN Global Compact's Ten Principles provide a universal language for corporate responsibility and a framework to guide all businesses, regardless of size, complexity or location.

Please visit <https://unglobalcompact.org/what-is-gc/mission/principles>

COUNSEL

CONTENTS

WELCOME LETTERS
P3

CORPORATE SUSTAINABILITY:
PRACTICAL GUIDANCE
FOR GENERAL COUNSEL
P5

EXECUTIVE SUMMARY
P7

01_

WHAT DOES CORPORATE
SUSTAINABILITY MEAN?
P10

02_

THE ROLE OF THE GC –
KEY DRIVERS OF CHANGE
P12

03_

GC FEEDBACK ON
CORPORATE SUSTAINABILITY
– CORE THEMES
P20

04_

ACKNOWLEDGEMENTS
P38

05_

METHODOLOGY
P40

06_

DETACHABLE GUIDE
P42

EXECUTIVE SUMMARY - THE BUSINESS CASE FOR CHANGE

Our view is clear. General Counsel are more well placed, better equipped and increasingly able to drive change and deliver value to their companies through an increased focus on “corporate sustainability”.

The Corporate Landscape has Changed

Changes to the commercial, legal and societal landscape have meant that companies are faced with increasingly complex and interconnected challenges, risks and opportunities. Many of those changes, in turn, have resulted in governments, shareholders, consumers, employees and other stakeholders placing a greater emphasis on concepts like governance, oversight, accountability, transparency, compliance and earning a “social license to operate”.

The Role of GC is Evolving

As a result of this changing landscape, the role of the GC is rapidly evolving too. It is clear to us that many of the key issues impacting strategic decision-making are those that are within the realm of the GC. Even where key issues have not been traditionally “owned” by the GC, an increased focus on risk identification, management and mitigation has put the GC squarely “at the table” for many strategic decisions.

Boards and the “C-Suite” are looking for independence, balance and commercial judgement to help them navigate these waters. For an increasing number of companies, the commitment to sustainability principles from the most senior ranks has enabled the GC to move beyond a traditional role and to contribute to the business more broadly.

Simply put, the role of the in-house lawyer used to be advising on whether something was legal. Today’s GC is expected to advise on whether something is right, and that requires engagement and a broadened perspective.

Convergence is Driving Engagement in Corporate Sustainability

We believe that there is convergence happening between the evolving role

of the GC and corporate sustainability, and therefore GC have a tremendous opportunity to drive change and rearticulate their value proposition within corporations through greater engagement in corporate sustainability.

The UN Global Compact defines corporate sustainability as a company’s delivery of “long-term value in financial, social, environmental and ethical terms”. Essentially, corporate sustainability means building a business that is capable of delivering value to a range of stakeholders over the long-term in the right way.

As the principles underpinning corporate sustainability are increasingly apparent on the face of corporate strategy, GC are taking steps to ensure they and their lawyers are aligned to those strategic priorities.

GC are using Corporate Sustainability to Articulate Value Proposition of the In-House Lawyer

Our interviews reveal that more GC are using the language of corporate sustainability to capture the value they are adding across a broader range of business issues and drivers, and to motivate their teams to think and act more broadly, thereby becoming more engaged partners to the business.

A Focus on Corporate Sustainability Enables GC to be Proactive about Making Change

We have seen GC thinking about how to leverage their teams in the most efficient and effective ways possible. We have found that those efforts have been to greatest effect where the GC have been:

- Proactive & connected
- Aligned with the corporate vision, purpose & strategy
- Well-versed in all aspects of business strategy
- Embedded, but independent

- Willing to go beyond compliance
- Diplomatic and vocal advocates for positive change

Using those traits, they have:

- Built team “sustainability” capabilities
- Encouraged the right behaviours through defined KPIs
- Communicated openly with internal constituencies about sustainability
- Collaborated with sustainability teams, NGOs & external stakeholders
- Encouraged peers to drive corporate sustainability through the legal function
- Taken concrete steps to engage in human rights issues
- Reinforced the UN Global Compact Ten Principles

Corporate sustainability principles are resonating with GC globally.

The UN Global Compact is committed to building on that momentum and to help GC take concrete steps to engage proactively in their company’s corporate sustainability strategy.

The UN Global Compact encourages there to be discussion and debate amongst GC and other constituencies about the best, most practical and effective ways for GC to continue to be partners with, and guardians of, their respective businesses; and to see that corporate sustainability is the right framework to capture and enhance the value they and their teams bring to the table.

This ‘Guide for GC on Corporate Sustainability’ Reinforces the Fact that GC can Drive Change and Deliver Value through Corporate Sustainability.

DRIVERS AND THEMES

Key “Drivers of Change” are causing the landscape facing companies and GC to evolve rapidly, and creating convergence between the role of GC and “corporate sustainability” principles.

DRIVERS OF CHANGE



These “Emerging Themes” reflect the observations made by GC regarding the key challenges and opportunities they are facing, and also explain why GC are increasingly well-placed to drive “corporate sustainability” strategies.

EMERGING THEMES



Corporate sustainability resonates but must be “grounded”



The role of the GC is broadening



Tone from the top must prioritize sustainability



The model needs to change in light of increasing demands



Resource constraints present challenges



Prioritization is key for success



Engagement, internal leverage and building credibility



Legal teams need to evolve



Need to understand human rights impact on business



KPIs support the business case for change

01_ WHAT DOES CORPORATE SUSTAINABILITY MEAN?

The UN Global Compact defines corporate sustainability as “a company's delivery of long-term value in financial, social, environmental and ethical terms”.

This definition is quite broad and can be all encompassing, which is both helpful in terms of creating a wide framework for GC to articulate how they contribute to sustainability, but also can be difficult for GC at first to wrap their arms around as a practical matter given its breadth, or reconcile with their own view on sustainability which often is more narrowly focused.

The feedback from our interviews reflects there is a wide range of understanding regarding what “corporate sustainability” actually means in theory and in practice, not only for GC, but companies generally.

Irrespective of their understanding of corporate sustainability, when we engaged GC in a substantive discussion about how they create and preserve value from a financial, social, environmental and ethical basis, that was a conversation they engaged in actively and enthusiastically.

To us, that underscores the disconnect that exists between the terminology of corporate sustainability and the “facts on the ground” for GC.

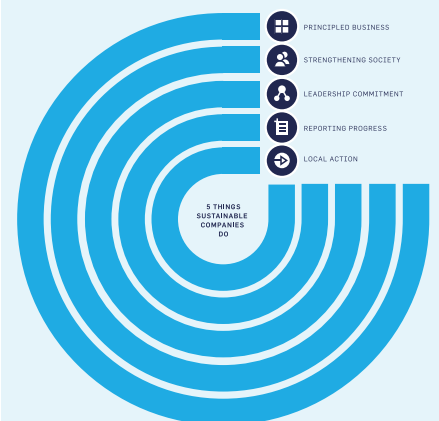
We found that the term “corporate sustainability” has the potential to resonate with GC and their legal teams, but it must be grounded in practicality and specificity in order to truly engage them, and most importantly, enable them to use it as a framework to articulate the breadth of their role and contribution.

Of course, the methods by which corporate sustainability is pursued and the impact that such efforts have over the life of a company will differ on a case-by-case basis. Therefore, it is also true that the ways in which GC seek to add value across a wide array of issues will similarly differ and will evolve based on corporate priorities and the views that are held internally about the GC and their legal team generally.

It is evident that the corporate landscape is changing and the drivers of those changes put the GC right at the heart of issues that are core to securing the long-term commercial success and viability of their companies — in other words, achieving true sustainability.

Not only has the scope of the role of the GC evolved greatly over the last

For additional information, please read the UN Global Compact **Guide to Corporate Sustainability** (2015) at: https://www.unglobalcompact.org/docs/publications/UN_Global_Compact_Guide_to_Corporate_Sustainability.pdf. It lays out five defining features of corporate sustainability which the UN Global Compact asks businesses to strive towards – and looks at why each element is essential, how business can move forward and what the UN Global Compact is doing to help.



<https://unglobalcompact.org/library/1151>



SUSTAINABILITY AS A STRATEGIC PRIORITY FOR LEGAL

Unilever's ambition is to double the size of the business, while reducing its environmental impact and increasing its positive social impact. Sustainability sits at the core of our business – our legal team is no exception. Of course our role will differ depending on the area, but we are here to enable Unilever to grow in a responsible way. We have also identified sustainability targets within our team and implemented a strategic skills framework to sharpen our expertise in this area. Our ambitious plans for sustainable growth create a sense of purpose which motivates our legal people and helps fuel our function.

Ritva Sotamaa, Chief Legal Officer, Unilever

ten years, but the pace of change has increased since the global financial crisis.

Now, that is not itself a revelation given the scope and pace of regulatory and legislative change that has been witnessed over that same period, particularly where that has been combined with increased enforcement activity and more sophisticated, well financed and at times global stakeholders. Those drivers are ones that can directly and clearly be linked to the traditional remit of the GC – oversight of legal and regulatory matters, risk management and dispute resolution.

However, those “traditional” drivers have also been coupled with companies needing to pursue growth in new markets in new ways, driven in part by economic rebalancing, shifting consumer preferences and the impact of technology. As a result, there are new issues and therefore new complexities; so, in other words, the “matrix” in which a company operates becomes more intricate and potentially interconnected.

In addition, stakeholders (including customers, communities, regulators and investors) have different expectations of the companies they are associated with, including about how they earn their “social license to operate”. That enhanced scrutiny of the “social license” has caused companies to recalibrate their thinking about performance and to develop a longer-term view about commercial purpose, activity, impact and reputation. Consistent with that, the issues that boards and the C-Suite are dealing with have widened, and corporate sustainability in its broadest sense has become a key priority.

The GC's perspectives on the drivers of change impacting companies are important to recognize and capture, as they inform how they and their legal teams continue to add value within their companies now and in the future.

Let's turn to those key drivers in the next section.

The following publication, **A New Agenda for the Board of Directors: Adoption and Oversight of Corporate Sustainability**, contains inspiration and recommendations for boards on adoption and oversight of corporate sustainability:

<https://www.unglobalcompact.org/resources/303>

The UN Global Compact Sustainability Agenda

Please visit the following resources for further information:

- **UN Global Compact Management Model** (2010): <https://unglobalcompact.org/library/231>
- **Blueprint for Corporate Sustainability Leadership within the Global Compact** (2010): <https://unglobalcompact.org/library/229>
- **UN Global Compact Guide to Corporate Sustainability** (2015): <https://unglobalcompact.org/library/1151>

Also, for further guidance, please visit: <https://unglobalcompact.org/library>

02_THE ROLE OF THE GC – KEY DRIVERS OF CHANGE

The rapid changes occurring in the global economy and the operating, legal and social environments around the world present challenges and opportunities to boards and senior management (for which they need counsel and advice). It has become apparent that many issues that were not historically thought of as core to the long-term commercial viability of an enterprise (particularly those related to areas of traditional sustainability, like human rights, the environment or anti-corruption) are increasingly becoming core.



DRIVING CORPORATE SUSTAINABILITY FROM LEGAL

MTR Corporation is in the process of redefining what corporate sustainability means for us as a business. In my role, I am leading that effort and looking at the way we do business and our role in society. Our legal team is well-placed in our organization to drive the corporate sustainability strategy, in part, because we sit across the business and engage with many parts of it. I see engaging proactively in our corporate sustainability efforts is an opportunity to position legal closer to the business. Ultimately, that allows us to better prepare our company to respond to the rapid changes it faces, and to make better, more well-informed decisions along the way.

Gillian Meller, Legal Director & Secretary, MTR Corporation

The pace and scope of legal and regulatory change

The defining characteristic of the world of the GC since the end of the financial crisis has been the increasing pace and scope of legal and regulatory change that has swept across the globe. The change in the legal and regulatory landscape has had significant operational, financial and strategic implications for companies and their stakeholders. In particular, there has been a renewed focus on governance, risk management and “corporate impact” in ways that have not been seen previously.

Our discussions revealed a number of interesting trends that were not always apparent from the outside, and also some of which the GC themselves could not be sure were being felt outside of their own organizations. However, having looked at these developments around the globe, we can say that the observations, events and occurrences borne out of the changing legal and regulatory landscape are not isolated, even though they may be evolving in distinct ways depending on the geographical, cultural and economic context in which they arise.

Changes arising out of crises unsurprisingly have common themes, and GC highlighted five core forces that are affecting the global legal and regulatory landscape – oversight

and governance, accountability, compliance, enforcement and the global impact of national priorities. Each of these is worthy of further discussion, however, the way that they have converged within companies and other institutions helps to explain why the GC may be very well placed to play a broader and more strategic role in helping to ensure corporate sustainability.

Oversight & governance

Irrespective of the issue or jurisdiction, GC noted that regulators have been clear in their desire to ensure that companies are focused on exercising sufficient oversight over their operations and people. Alongside that, principles of good governance have been reinforced, both formally (for example through the provisions of legislation) and informally (for example through institutional shareholder bodies). Further, new concepts like “viability statements” have entered the corporate reporting framework, bringing with them new questions and potentially new risks to be managed.

The increased focus on appropriate oversight has meant that companies have had to increase their focus on governance frameworks that promote transparency, accountability and adaptability, while at the same time ensuring that there is evidence of effectiveness to regulators and other external stakeholders. While there is an acknowledgement within companies

that these obligations need to be held broadly throughout an organization, there is a strong likelihood that the GC will be one of the parties at the core of that responsibility.

At the same time, this part of the landscape is still evolving, and compliance teams are playing an increasingly important role within organizations.

However, for these purposes, the fact that increased oversight and governance have come to the forefront in ways they have not previously, and principles of good governance are meant to encompass the entirety of the activities of a business, means that the traditional areas of influence of the GC are expanding. As a result, more close coordination, teamwork and leverage are required in order for them to do their job effectively.

The UN Global Compact – Sustainability Agenda – Key Resources:

The UN Global Compact Management Model: <https://www.unglobalcompact.org/resources/231>

The Blueprint for Corporate Sustainability Leadership: <https://www.unglobalcompact.org/resources/229>

For further guidance and resources, please visit: <https://www.unglobalcompact.org/library>

Understanding the issues that we face as a company is equivalent to playing chess on a “four dimensional chess board.”

Accountability

It isn't really possible to discuss recent regulatory and legal change without going right to the heart of the matter, which, from the perspectives of GC, is the concept of definite (although potentially over-reaching) accountability within industries, companies and boards for their actions or, in some cases, inaction. Of course, accountability in today's world also means there is an increased focus on liability, both corporate and personal. The dynamics of that ever increasing scrutiny inevitably has affected the perspectives and areas of focus of members of the C-Suite and the board.

Another core source of pressure has been from increasingly sophisticated and well-resourced stakeholders (whether shareholders, employees, environmental, human rights or other interests) focused on corporate “impact” and reputation across a wide range of issues, which requires greater coordination to be had throughout a company. This greater coordination is also driven in part by a desire internally and externally for increased transparency through corporate commitment, reporting and assurance.

That need to coordinate across functional areas is, at the very least, creating the opportunity for internal

engagement and “leverage” to be used by the GC, and, in many other circumstances, is putting them in a prime position to define and deliver their organizations' strategy for managing these issues – not only for the benefit of the company, but also for other members of the C-Suite and the board.

Compliance

Feedback from GC was clear, the attention being paid to legal and regulatory compliance was nearly unprecedented and was being driven both externally as a result of the drivers discussed above, but also internally by the board and C-Suite given the potential corporate and personal exposure that could exist for non-compliance.

That being said, GC were quick to also acknowledge that an increased emphasis on compliance was consistent with the messages that companies were getting from a range of interested stakeholders, whether they were shareholders, employees or consumers, for example.

It is becoming increasingly apparent that a range of stakeholders believes that building a robust compliance culture, when combined with effective governance and oversight, is capable of delivering tangible value.

Managing these developments, as well as the responsibility for building the right frameworks, policies, procedures, controls and evidence to support them, is uniformly seen to be within the remit of the GC (and in some cases, in conjunction with a Chief Compliance Officer). In fact, the scope of the role can easily become too large for the GC to handle alone given the increasing complexity of issues companies face and the competing demands placed upon GC.

Irrespective of the way in which GC manage those increased demands, the enhanced emphasis on legal and regulatory compliance (including on anti-bribery and corruption measures) means that GC are also a key component of the company's ethical compass. GC are clearly not alone in that regard, since ethical values need to be reinforced throughout a company.

However, it is still clear that boards and the C-Suite rely heavily on the judgement, advice and discretion of the GC in this regard, and undoubtedly will continue to do so in the future.

Enforcement

Increased enforcement activity exhibited by regulators has been a principal driver of change within countries, industries and companies. Typically, managing the threat,

THE UN GLOBAL COMPACT - BUSINESS FOR THE RULE OF LAW FRAMEWORK

From a different perspective, enforcement or really a lack thereof, can pose a different set of challenges for GC. As operations expand into new markets, responsible businesses may be exposed to challenges caused by weaknesses in the rule of law, difficulties in knowing the law, lack of enforcement or frameworks for enforcement, conflicts between international standards and local law, challenges to enforcing contracts and obtaining and securing property rights, corruption, and organizations and individuals without legal identity at the bottom of the supply chain. The UN Global Compact has developed the 'Business for the Rule of Law Framework', illustrated with over 100 examples of how companies, frequently led by their GC, are taking action to help build the legal framework and support more accountable institutions where they operate as an investment in the firm's long-term sustainability. Actions to support the rule of law present unique opportunities for GC to lead strategic corporate initiatives for their businesses.

<https://unglobalcompact.org/library/1341>

process and implications of regulatory enforcement sits squarely within the remit of the GC.

It is evident that the pace and scope of legal and regulatory change, combined with increased expectations regarding oversight, governance and accountability, have converged to make "enforcement" a key issue that can become a threat to an organization's ability to survive.

Boards, senior management and GC are all too aware (and wary) of the threat that significant enforcement actions can have on the reputation, financial health and operational performance of an organization, putting a wide range of stakeholders and corporate opportunities at risk.

However, at the same time, GC are seeing that enforcement risk comes from a broader array of sources, beyond traditional areas, like anti-bribery and corruption, competition and taxation, but also from new and developing areas of law like data protection and privacy and areas that involve a mixture of "hard-law", "soft law" and voluntary principles like human rights and the environment.

Furthermore, traditional laws are being used in new ways to gain leverage and encourage change by regulators.

Lastly, as noted above, the sources of regulatory and legal change have become more global and, therefore, the enforcement concerns of GC are as broad.

Global impact of national priorities

The point made by GC was that regulators and regulatory regimes are still independent of one another, and that regulatory convergence was not occurring in such a way as to minimize conflict, inconsistency or disarray. In fact, while regulators were working more closely with respect to sharing information and best-practices, and to take action, this was not resulting in convergence and coordination at the policy design, implementation or enforcement levels. Therefore, managing global growth, risk and exposures has become increasingly difficult and is taking up more "corporate energy".

Regulators can act with national mandates and protect national interests, even if in the guise of taking actions based on global activities and reach. The impact of this on a company, and therefore the GC, will of course vary, but the key point is that managing these competing priorities, processes and interests requires more time and attention than at any point in the past, and this continues to be a core responsibility of the GC.

The complexity of global regulatory engagement is a theme which has come to the fore and puts pressure on the GC's priorities, including how they contribute to a corporate sustainability strategy.

The Board & the "C-Suite"

GC are not divorced or somehow separate from the issues, opportunities and challenges confronting the companies they are part of. Therefore, it is an evident truth underpinning all aspects of this Guide that, for GC, the matters driving their agenda are the same as those impacting the agenda of the company, the board and the "C-Suite".

In particular, many issues that have not historically been thought of as core to the long-term commercial viability of an enterprise (particularly those related to areas of traditional sustainability, like human rights, the environment or anti-corruption) are becoming more core.

Given the underlying drivers of change affecting companies and their impact on corporate priorities and strategies, boards and the C-Suite are relying on their GC to be at the heart of an increasing number of important legal and operational issues.

Searching for growth means new business models, strategies, geographies, markets, products, customers, stakeholders, financing needs, rules, regulations, and therefore new expectations and obligations. For GC, these translate into new challenges and new opportunities for them to help define how their businesses will be sustainable over the long term.

Therefore, as matters related to “corporate strategy” converge with matters related to “corporate sustainability”, GC have a real opportunity to drive both.

Searching for growth

Searching for growth means new business models, strategies, geographies, markets, products, customers, stakeholders, financing needs, rules, regulations, and therefore new expectations and obligations. For GC, these translate into new challenges and new opportunities for them to help define how their businesses will be sustainable over the long-term.

The fact that companies are pursuing growth across a wider number of “markets” (whether that means geography, product or consumer) means that the picture is more complex than ever. For example, mapping stakeholders and their interests is no longer done by looking at the relationship they have with the company, but also includes mapping their relationship with governments, regulators, consumers and other stakeholders and needs to include an assessment of their levels of sophistication, resources and impact

– all of which has to be understood against a backdrop of instantaneous and continuous information flow.

That search for growth also sits against a backdrop of legal and regulatory change that is rapid, increasing in scope, more sophisticated, more robust and increasingly independent.

GC are no different than any other C-Suite executive – by enabling growth, they are fulfilling one of their core objectives. Commercial success and viability is fundamental to corporate sustainability. However, the pursuit of growth can also create complexities on nearly an exponential scale. Particularly, where for many industries (like oil and gas, mining and energy), growth does not occur in the most straightforward of places, and where the issues presented to the GC may not easily sit within their comfort zone or they must rely heavily on subject-matter expertise that may not be within the legal department (such as matters related to human rights, supply chain or the environment).

Therefore, GC recognize that they and their teams need a broader skill set to help achieve corporate growth ambitions and to do so on a long-term and sustainable basis. In order to achieve that, GC are quite focused

on team capabilities, the degree to which those teams are aligned to and embedded within the organization and how they can best prioritize demands to ensure effective and efficient delivery of core legal and risk management services. GC recognize that multiple tactics for engagement and leverage need to be deployed based on the priorities, capabilities, demands and constraints they face.

Ultimately, all businesses value sustainable growth and the better equipped the GC and the legal department are to facilitate that growth, the more credible and influential they will be.

However, GC also understand their role to “guide the business” and to simultaneously “guard the business”. Clearly, the balancing of those two roles is a core and continuing challenge for GC as each aspect will become more complex as growth is pursued.

Increasing stakeholder expectation

Traditionally, stakeholders and their representatives may not have been as sophisticated as the companies and corporate advisers they faced – however, that has changed significantly.



LEADING THROUGH ENGAGEMENT & TRANSPARENCY

One of my key internal focus areas as GC has been ensuring that the business sees how we as a legal team bring value to Yahoo!. It starts with building the right relationships and ensuring that the team deploys the right skills and embraces the right standards to support business objectives. Another big part is giving employees transparency about the breadth of things we contribute across the organization and across our industry. We do that by being present throughout the 'life-cycle' of important issues, by highlighting sustainability issues at company meetings and trainings, and by using technology, including blogs and electronic newsletters to surface the work our legal team does globally and how it intersects with Yahoo's sustainability effort. This includes areas like human rights, data privacy, and the environment, as well as the pro bono work we do. We strive to illustrate how the legal team embraces and supports the values of Yahoo!, its users, and the communities we serve.

Ron Bell, General Counsel, Yahoo!

This is particularly the case in areas like labour, supply chain, human rights and the environment; however, these areas are not the only ones.

In addition, it has become more evident that there is increasing awareness and expectation articulated by consumers and investors related to sustainability and brand-reputation issues.

Without question, stakeholders have become more proactive and aggressive in seeking redress for perceived or established corporate "wrong-doing". In addition, many of them are represented by former employees, other dedicated experts and, increasingly, well educated, well financed and very capable lawyers.

As a result, companies and GC understand clearly that mismanagement of those stakeholders (and their concerns) can bring serious reputational, operational and financial harm — whether that happens over time, or instantaneously with the press of "send" on a smart-phone screen.

While dispute management and resolution remain key issues for GC, since they are inherently legal in nature and often involve actual or the

threat of litigation, new strategies are also being embraced. Many GC were very clear that active engagement has become a more prominent strategy for them to deal with their stakeholder universe (even a potentially hostile one). They were equally as clear that making that strategic shift presents both an opportunity and a challenge to them and their teams.

At a minimum, GC see that as an opportunity for them to engage in true risk management and, hopefully, risk mitigation. But, GC acknowledged that in order to really deliver in that context, they and their teams needed to be at the table early and be seen to contribute across a wide range of issues raised by stakeholders and the business. There is an increasing cohort of GC who believe that taking a more open approach to collaboration with non-governmental organizations and other stakeholder bodies can yield positive outcomes and increased credibility for the company.

GC did express mixed experiences about whether their internal colleagues were prepared to entertain involvement of the "lawyers" (particularly where legal teams did not benefit from a strong reputation amongst traditional sustainability colleagues). However, where

legal teams had been involved in stakeholder engagement or risk management strategies early, all parties felt as though a better result had been achieved, both internally and externally.

In addition, GC also feel that the increasing sophistication and range of external stakeholders, particularly when combined with their ability to communicate and leverage across issues, requires corporate teams with broad and capable skillsets to manage those relationships, which should include lawyers.

Voluntary commitments made by companies have come under greater scrutiny and critique. As a result, managing the exposure that voluntary commitments can represent has become an increasing focus for GC, and therefore also has given them a bigger role in managing the expectations of internal and external stakeholders.

GC are very focused on reducing the number and scope of the voluntary commitments that their companies are making. There are a number of drivers for this ranging from ensuring that the companies were living up to and tracking their compliance with these commitments to trying



THE BENEFIT OF CROSS-FUNCTIONAL TEAMS

Within Statoil, our lawyers are recognized as having a key role within the business, whereas in other companies, lawyers may be seen as impeding the business. We encourage our lawyers to use their commercial skills, as well as their legal ones. We develop these by embedding them within the business, including within the sustainability teams. Crucially, these teams also include Statoil employees that are focused on overall corporate strategy. We believe this cross-functional team-work allows us to take a flexible and commercial approach to sustainability issues.

Carine Smith Ihenacho, Chief Compliance Officer, Statoil
Malin Helgesen, Leading Counsel, Legal, Statoil



to minimize the risk exposure to the company if there are breaches or perceived breaches of the principles underpinning these voluntary initiatives. However, the increased focus in this area is affording common ground for lawyers, sustainability experts and the business to engage in discussion and debate on important corporate sustainability issues.

Certainly one avenue that has been used by investors and other stakeholders to drive change within companies is through requesting more public disclosure – often with emphasis in areas of traditional sustainability. GC are attuned to this issue, and the exposure and risk that needs to be managed with increased disclosure requirements.

GCs's views on how best to strike the right balance do vary; however, GC recognize that companies are becoming more transparent, either by strategic choice or because they are compelled to do so.

This means that proactive teamwork (often alongside sustainability experts), engagement and compromise are of increasing importance to securing positive outcomes.

For guidance on how to make choices between, navigate engagement with and derive maximum value from voluntary sustainability commitments, see:

Accountability/UN Global Compact, **Growing into Your Sustainability Commitments: A Roadmap for Impact and Value Creation** (2013), available at: <https://www.unglobalcompact.org/library/551>

The battle for resources

GC feel that they are subject to significant (and in some cases, increasing) resource constraints. The focus on resources is not surprising – GC are also business managers, with services to deliver, teams to manage and motivate and budgets to account for.

We feel it is important to underscore this point, as it can be too easily forgotten that the GC must balance the needs of the company, including other functional areas, with the need to deliver a core service in the most efficient and effective way possible. There is a tension between playing a broader and, perhaps more meaningful, role within a company –

thereby making a broad contribution to corporate sustainability – and having the financial and human resources to deliver.

This means that prioritization and discipline are key to success, and have become more acute in light of the changes to the expectations of GC and corporate legal departments.

Where there is a commitment and a desire for the GC to play a wider role, there is a clear business case for the deployment of greater resources to, and by, legal. Where that commitment was not there, or was not evolved, there were perceived constraints on how the GC could fulfil their “day-job” and still satisfy any ambition for a broader role. To some, this issue may be seen as a real limitation, but to others it has led them to develop solutions based on proactive engagement and leverage through cross-functional teamwork.

In other words, GC will always have to prioritise the time and resources legal spends on any particular matter; however, where engagement happens early and is managed over time, and legal works alongside other functional areas to deliver results, resources can be efficiently used, and also a broader business case can be built.

There is a tension between playing a broader and, perhaps more meaningful, role within a company – thereby making a broad contribution to corporate sustainability – and having the financial and human resources to deliver.

Please refer to the UN Global Compact Value Driver Model for a tool that utilizes key business metrics to determine the return on investment of corporate sustainability activities. This tool offers companies a simple and direct approach to assess and communicate the financial impact of their sustainability strategies. GC could use it to show the value of their contribution as an investment, rather than a cost to the business. To access the model, go to:

<https://unglobalcompact.org/take-action/action/value-driver-model>

FINAL THOUGHTS: THE DEGREE OF CONSISTENCY WAS NOT EXPECTED

While there will always be industry and jurisdictional specific drivers that will set the scene for any GC, it was surprising to see how many of these were felt around the world fairly uniformly by GC. Speaking to GC and having the ability to look across the globe in the way that we have, has really proven to give us an interesting perspective and insight on these key trends.

However, the breadth, complexity and interconnection of these drivers is not surprising when they are considered against the global economic and business backdrop of the last ten years.

GC agreed that as the drivers discussed above caused their roles and responsibilities to change, there was increasing overlap with both traditional and expanded principles of corporate sustainability. That convergence meant that GC would inevitably have an ever-increasing role in helping their companies secure long-term commercial success.

Indeed, one of the key takeaways is that these drivers have made the business case for GC to be engaged broadly across the issues facing their respective organizations.

The last point which was consistent throughout our discussions was that while many GC understand the challenge and opportunity ahead of them, they also understand that they cannot make progress alone.

In particular, a number of GC noted that they need external counsel to provide them with complementary skills, expertise and support to satisfy the demands of their changing role.

Therefore, GC expect external counsel to evolve their perspectives, skills and approach too in light of the world that their clients are facing.

In the next section, we'll look at some of the core themes that GC are thinking about, and through the lens of sustainability, discuss the challenges and opportunities they present to them, their teams and ultimately, their companies.

03_GC FEEDBACK ON CORPORATE SUSTAINABILITY – CORE THEMES

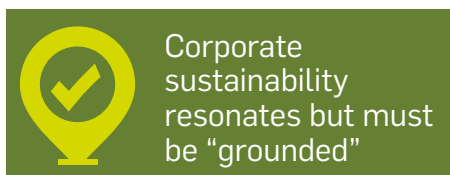
This Guide encourages discussion and debate amongst GC about the best, most practical and effective ways for them to continue to be partners with, and guardians of, their respective businesses; and to think about “corporate sustainability” as the right framework to capture and enhance the value they and their teams bring to the table.



BEYOND THE FOUR WALLS, SEEING THE BUSINESS

One key aspect of getting close to the business in order to understand it and better advise is spending time with our colleagues in the field. Not only does it create connection and build our credibility as lawyers, it also makes the breadth of issues facing our company come to life. This is particularly the case with traditional sustainability issues, like human rights, environmental issues and stakeholder engagement. These issues are core to our business and as GC, it is my role to engrain those same values and priorities into our lawyers and other colleagues. I encourage my lawyers to get out into the field, which means some pretty remote locations for us. This makes our strategic and sustainability priorities 'real' to them, and also enables our business to see them adding value in real time. As GC, I set the tone and I make sure to get beyond my 'four walls' too.

Maarten Scholten, SVP & General Counsel, Total



The idea that corporate sustainability encompasses the delivery of long-term value creation in financial, social, environmental and ethical terms by a company is not well or uniformly understood by GC or in-house lawyers.

It is clear that in the minds of a majority of GC there is not perfect alignment between their understanding of corporate sustainability, their role and the UN Global Compact's definition.

However, when GC focused on the drivers of change and their "day-to-day" role within their companies, they became engaged in topics and with questions that were easier to give tangible and practical responses to.

As GC talked to us about their role, and most importantly about how the scope and complexity of their role had evolved over the last 5-10 years and would continue to evolve in the future, it became evident to all of us how increasingly important they

were becoming to executing on the corporate strategy and ensuring the long-term commercial viability of their respective companies.

At one level this apparent disconnect could be one of terminology and misunderstanding, but that is too cursory an explanation.

We believe there are two principal reasons for this disconnect between the definition of corporate sustainability and the understanding held by GC and large parts of the legal community:

Sustainability goes beyond the "traditional"

For many companies, past and present, the role of the GC and the legal department is very much still (and appropriately) rooted in the delivery of a core legal service to the organization.

For many GC, the responsibility for sustainability lies elsewhere and they do not see themselves as primary actors or contributors to it – and are more likely to become involved only when there is a problem. Very clearly, that experience shapes their views about the risks and opportunities that come from aligning their role with corporate sustainability principles.

However, nearly every GC expressed the view that the world is changing around them and many recognised that they are becoming more central to internal and external discussions and debates regarding a range of issues that were not the traditional territory of the GC or legal department. This merely reflects the impact of the drivers of change discussed in this Guide.

It was clear to many GC that, at the very least, they would need to prepare themselves, their teams and their other colleagues to be working more closely together to better identify, understand and mitigate risks arising in a range of areas – whether or not they were within the traditional remit of the lawyers or not.

Specifically, with respect to aspects of the UN Global Compact's Ten Principles, GC agreed that at a minimum the risks and potential reputational damage of not managing issues related to human rights, employees, communities, anti-bribery and corruption, and the environment (for example) were real and were unquestionably having a broader impact across their respective businesses.

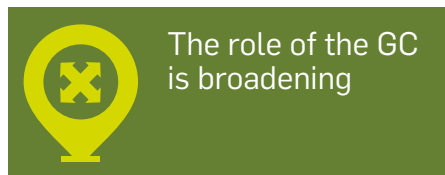
GC that see their role as expansive and that are looking to become more central to some of the key strategic and risk management decisions are more likely to see and understand how their role furthers a corporate sustainability agenda.

Although not all “sustainability issues” are seen as “traditional legal issues”, there is a clear basis for GC and legal departments being involved at early stages in connection with managing these matters. In other words, a number of GC told us to forget about whether issues are traditionally legal or non-legal, but instead focus on risk management and protecting the long-term interests of the company, because if these issues are not handled right, they represent real and potentially lasting risk to the viability of a business.

Sustainability is a “function”

The second reason is that “sustainability” within many organizations has historically equated to a function limited to areas like human rights, community affairs and the environment. In addition, the champions of sustainability have traditionally been people with specific ‘subject-matter’ experience.

However, many GC believe the overlap between the lawyers and sustainability experts is only likely to increase, and building familiarity between the teams must be a core strategy for them going forward.



It is evident that the role of the GC has changed greatly over the last 5-10 years, and without a doubt GC expect the role and the expectations for it to continue to evolve. We have discussed what they believe to be the key drivers of that change above, so we won't recount those factors here. However, we will examine some key observations GC have made to us in the context of taking on a broadened role.

Finding the right approach

GC that see their role as expansive and that are looking to become more central to some of the key strategic and risk management decisions being made in their organization are more likely to see and understand how their role furthers a corporate sustainability agenda.

GC who focus more strictly on the provision of traditional legal services in traditional contexts are less likely to be seen to have a broader impact within their organization, at least from a sustainability perspective. They can

clearly have a large and meaningful impact by delivering efficient and fit for purpose legal services; it is just that the perspective they have, and that the organization has, about them, will be relatively confined. The question for them is whether they have sufficient flexibility to continue to evolve their role to respond to still deliver a core legal service, where the challenge of defining what that is and the complexity of delivering it can be daunting enough on its own given recent basic underlying trends affecting their companies.

It also should go without saying that while there are two ends of the spectrum, there are lots of areas representing shades of grey in the middle. There are a myriad of factors, which go into what will be the right approach for any particular company and any particular GC.

Even though we recognize that GC operate along a spectrum, the majority of the GC we spoke to believed that being able to handle a broader array of issues in more complex environments was the way of the future for them and perhaps the best way to change the “value proposition” of legal within their companies.



BEING CONNECTED, BALANCED & INDEPENDENT

The role of GC and in-house counsel has grown with the increasing legal and regulatory complexity facing the business. The accompanying growth in their authority and influence must be exercised responsibly to be effective. Legal teams must have credibility based on their ability to integrate the “legal” and the “commercial”, while maintaining objectivity and independence. When those things come together, lawyers can become a valued trusted adviser to the business. From a sustainability and risk management perspective, it is important that we are connected to the business. The more we understand it and the more informed we are on sustainability issues, the more influential we can be. It is unhelpful if lawyers and sustainability specialists are separate from each other or the business.

Rupert Bondy, Group General Counsel, BP

Even where GC were trying to maintain their focus on the strict provision of legal services, they felt the “pull” from the rest of the organization to provide experience and expertise to a wider range of issues than historically they were asked to.

Therefore, the debate for many GC seems to focus on how best to make the change and reposition their own role and the role of legal within the company in order to strengthen their own business case, contribute openly and broadly and to do so in the most efficient manner possible.

The GC is well placed to drive a sustainability agenda

If the GC’s own observations are correct, and the underlying trends continue, it is apparent that GC will continue to be at the center of some of the most important issues facing companies in the years to come. The underlying drivers of these trends are unlikely to abate and, quite frankly, it is ill-advised to suggest anything more than they are going to increase.

However, we should not assume that GC and their legal teams can or should continue to expand or leverage their

role beyond current recognition to address each and every one of those issues, challenges or opportunities.

Nevertheless, it is clear that there are a number of GC that do believe they are, or will be, well positioned to contribute to corporate sustainability.

However, we did not run across a single GC who understood it, or even thought it, to be their role solely. The relevant question was how best and most effectively to deploy the skills, experience and resources that the legal team had to offer across the appropriate range of issues facing the company.

The GC can be very well positioned within the organization to contribute to corporate sustainability, but their real ability to do so depends on the nature and scope of issues facing the company, what remit they are given by the C-Suite and the board, how broadly the GC see their role within the organization, how they are able to deploy their expertise and resources within the organization and how effective they are at embedding themselves across different

functions and working with others to deliver results.

The key point here is that it is not a one-person mission or job – the conditions for success need to be cultivated. But, where the conditions exist, GC have a real opportunity to be an agent for change and a key component in the drive for corporate sustainability.

Elements of success

GC identified the following characteristics as the ones that were essential to success in the role generally, but also with respect to driving their company’s sustainability strategy:

- **Proactive and connected internally and externally**

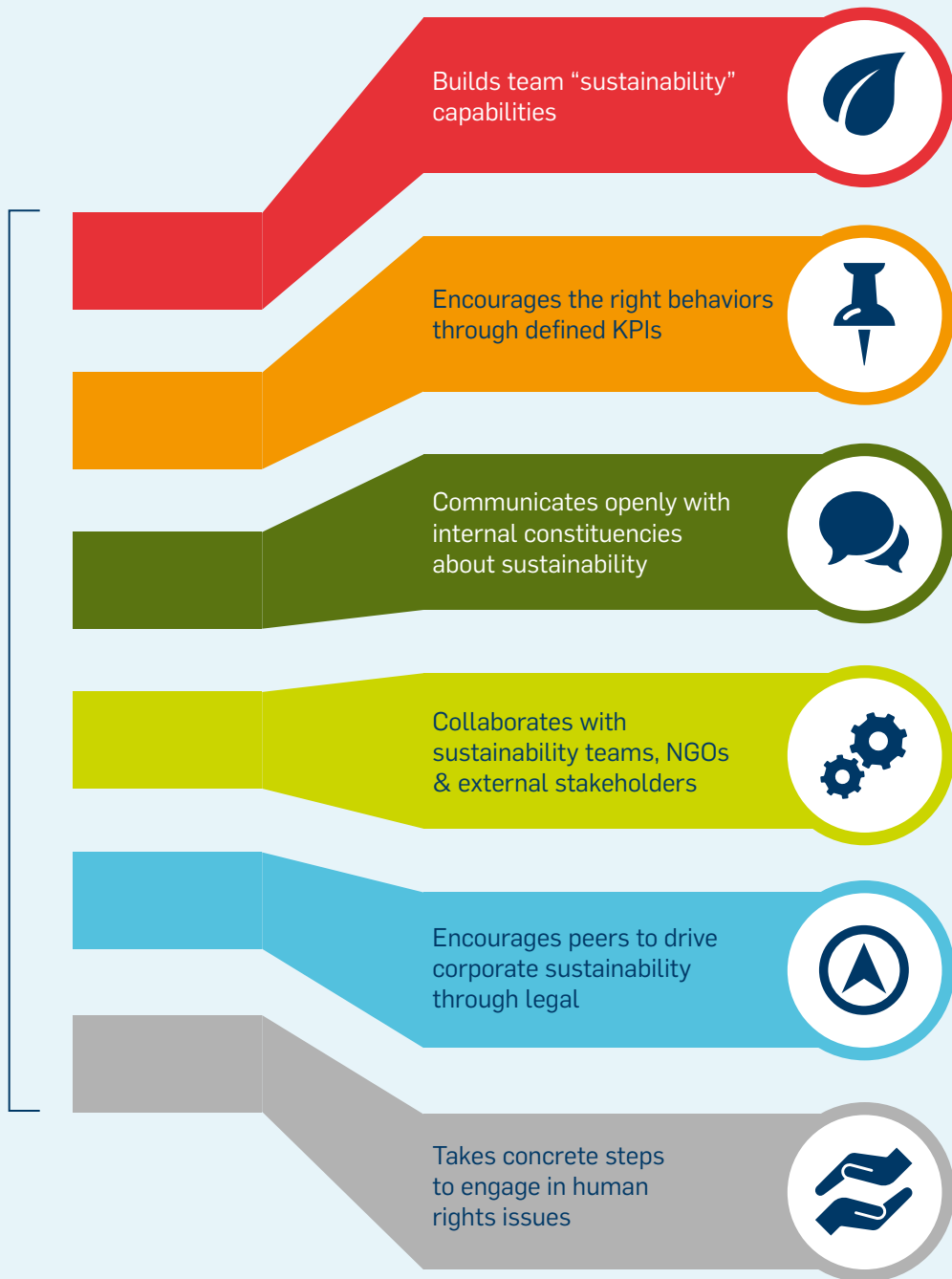
GC must look for opportunities to add value, and be well connected within the business, but also outside of it. The external connections allow them to improve their capabilities, understand and manage risk, and also provide them with perspective and access necessary to solve problems and help to seize opportunity.

GC feedback: What's necessary for the GC role in corporate sustainability

KEY ELEMENTS FOR SUCCESS



KEY OUTPUTS AND ACTIONS



REINFORCES THE UN GLOBAL COMPACT TEN PRINCIPLES

It is clear that the underlying trends are changing the demands put on GC and the legal function, and therefore it is becoming more likely that maintaining a narrowly construed focus will become harder, and potentially of less relative value.

- **Aligned with corporate vision, purpose and strategy**

GC must continually ensure that their role is fully aligned to the commercial realities and imperatives of the business. An effective GC is one that is grounded in the practicalities of their role and their business. In order to achieve their objectives, which may include driving change through their function, they must be closely aligned to the business and have a firm understanding of the commercial, financial and legal/regulatory landscape that their colleagues are operating in.

- **Well-versed in all aspects of business strategy**

GC not only need to be aligned and have a firm understanding of operating environments, they also need to be well-versed in understanding all components of business strategy (including being financially adept). Their ability to see across the business and operational strategy better positions them to understand and engage in a broader range of sustainability issues.

- **Embedded in the business, but have independence of thought**

GC and their teams are best able to perform their roles where they are embedded within the business teams. This does not mean that they need to be assigned as dedicated resource (in

fact GC had mixed views about that). They need to be seen as partners in the business and not just the providers of a legal service. However, GC also feel very strongly that they had to maintain independent thought and objectivity. The ability to balance those two issues is felt to be fundamentally important to their effectiveness.

- **Willing to go beyond compliance**

GC articulated that “compliance is the lowest bar” in many respects and that their roles often required them to ensure that their organizations went beyond mere compliance. GC said they were focused on creating an environment where obligations were not only assessed by strict compliance with the “letter of the law”, but also against the principles underpinning the law and, importantly, corporate values.

In the circumstances where they had to make those assessments, GC said that principles of risk and reputational management, as well as the discipline of “hindsight” guide them.

- **A leader and advocate for change**

GC are senior executives, team leaders and role models. GC see their role as an advocate and strategic adviser as core to their ability to succeed and contribute across a broad corporate sustainability agenda.

In addition, they were keenly aware that their teams, more broadly than just legal, would be taking a cue from them as they would be seen as the “pace-setters” for how lawyers were to be perceived and utilized within the organization.

Therefore, GC said that if they wanted to drive change internally, they needed to lead by example, create the right conditions for broad-based engagement to occur and reinforce the importance of corporate sustainability to them and to their teams.



Tone from the top must prioritize sustainability

Probably the single most important theme coming from GC related to their ability to drive corporate sustainability would be either enabled by, or limited by, the “tone from the top”.

In other words, in order to have a seat at the table, the table had to be there, and that decision would be within the clear remit of the C-Suite and the board. GC do not believe that they can or should be, the sole agents for change.

Simply put, corporate sustainability needs to be a priority for the entire organization, not just for the GC.



VALIDATING THE CASE FOR CHANGE

Nestlé faces an increasingly complex and interconnected set of challenges, but that is the 'new reality' for our company and for me as GC. As a result, my role as GC has expanded dramatically. Taking the steps necessary to prepare myself and our legal team has not always been like 'sleeping in a bed of rose petals'. However, the board and our executive team clearly see the changes affecting our business. We, as lawyers, have been proactive in bringing corporate sustainability issues to their attention given their wide-ranging impact on our business and strategy. That has been seen to create 'shared value' and has made it easier for me not only to articulate the rationale for changes I have needed to make, but more importantly, to get validation for them.

Ricardo Cortés-Monroy, Senior Vice-President, Chief Legal Officer, Nestlé

For more information on how the board can effectively oversee and help drive the company's sustainability strategy, please read **UN Global Compact Board Program: Unlocking the Value of Corporate Sustainability** and visit:

<https://www.unglobalcompact.org/resources/1101>



The model needs to change in light of increasing demands

Every GC said that they are being asked to satisfy more needs and demands from their organizations than at any time previously.

GC believe they are driven to engage more broadly because of the demands, the need to develop cross-disciplinary solutions and the expertise/capability gaps that they perceived in their own legal teams.

This is causing GC to rethink their internal models and adjust them to ensure that they are at least able to continue to deliver what they define as their core service, while making strategic decisions about the allocation of finite resources and the retooling

over time of a legal team that will range in capabilities, experience, expertise and appetite for change.

Due to the increasing demands placed upon them, GC are playing, by choice or by exigency, a greater role in furthering corporate sustainability principles. And, importantly, that they are being asked by their businesses to move in that direction, and it seems to us and to them an organic state of affairs likely to continue, rather than one generally artificially forced into existence and only there on a temporary basis.



Resource constraints present challenges

GC feel the inherent tension between the number of demands that are being placed on the legal function and the financial and human resources that can be "allocated" to them.

The allocation of legal resource is a cost to the business, and too often is not seen as an imperative for securing the long-term commercial success of the business. Lawyers are still too often seen as technocrats capable of managing "downside risk" only.

GC want to change this dynamic and a number are employing a broad-based engagement strategy to achieve it, using prioritization, engagement and leverage.

Therefore, where budgetary constraints exist and may be limiting the potential role that GC and legal teams are playing in corporate sustainability, creating the conditions and opportunities for change requires:

- keen prioritization in order to focus on areas that make a real and tangible difference;
- capacity and capability-building within legal teams so that they can establish credibility internally; and
- a willingness to engage on a cross-functional basis to ensure that legal resources are used as efficiently as possible, across a wider range of issues.



Prioritization is key for success

The ability to prioritize has always been an essential trait for a successful GC, but like so much else that has changed for them, the number of items



TOMORROW'S LAWYERS ARE LOOKING FOR MORE

We see a change in the lawyers we are attracting, namely they are looking for different things from their career and experience at a company. We need lawyers that have the right skills to allow them to think more broadly and to become a valued commercial partner of the business. Ultimately our job is to help accelerate growth at NetApp. I believe that many of our lawyers want to work in a company that evidences values consistent with their own. As GC, I want to make sure that our lawyers are broadly engaged in the business, and at the same time, focused on its long-term commercial sustainability. I expect that approach will give our legal team the right tools and perspective to advise the business, and also to motivate and retain the team.

Matthew Fawcett, Senior Vice President, General Counsel & Secretary, NetApp

they are managing on their plates has increased dramatically, as well as the implications of getting those decisions wrong.

Prioritization itself is not static, and needs to be continually revisited. This aspect of managing the increasing number of issues that face a company and GC is often not fully appreciated. Where an agenda is not their own, and the biggest component of which will be set by the C-Suite and the board, that presents a particular challenge.

Clearly, to be effective, GC must also engage with their colleagues to communicate how legal is managing the balancing act between increasing demands and tight resource constraints.

GC also said that it was increasingly important for the legal department to use its broad “touch-points” across the business to create a “feedback loop” to the GC so they could ensure they were focused on the right priorities.

Uniformly, GC were thinking more broadly about the tools and strategies being used to deliver legal services across their companies, and recognized that trade-offs are required to be made.

However, GC were also clear that corporate sustainability issues were increasingly core to the business and expected that these issues need more attention rather than less.

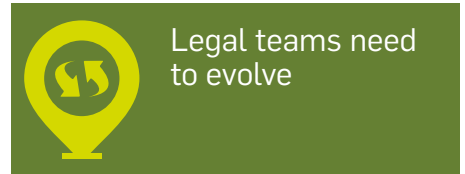


Engagement,
internal leverage
and building
credibility

In light of the ever-changing corporate landscape and issues faced by their companies, many GC said they need their lawyers to be part of cross-disciplinary teams capable of looking at and managing issues from a more holistic perspective.

Therefore GC are increasingly turning to a leverage model which requires a keen understanding of organizational priorities, legal and other operational capabilities.

That keen understanding, when deployed across a business, means that the GC and the lawyers are almost uniquely placed to help deliver on a range of strategic priorities and initiatives, and importantly to reinforce a company’s commitment to corporate sustainability.



Legal teams need
to evolve

Uniformly, GC believe that if they are honest about their teams – while filled with very capable lawyers – they do not yet have the right mix of expertise, skill or attitude necessary to deliver against the changes GC see occurring.

That should not be understood to mean that the GC see their teams or the way they approach their jobs as somehow deficient; in fact, it is a simple recognition that the game has changed – and not just for the GC.

In addition, GC also recognize that making changes to a legal department like those we discuss in this Guide can be a challenge in their own right. In particular, the changes that may be required may seem to be “even bigger” when examined in the context of a profession that can be very slow and resistant to change.

However, the changes that may be required within a legal team can be built of the core skills and attributes of lawyers and of the legal profession

THE SPACE BETWEEN CORPORATE POLICY AND LOCAL LAW

GC also deal with the “gap” that can exist when corporate policy is more sophisticated than local law and regulation. Where companies cannot implement corporate policy, particularly in human rights or the environment, because it conflicts with local law and regulation, it is recognized that while compliance is required, so too is the need to uphold corporate values and principles. Interviewees told us that often means “doing the best you can” to bridge the gaps that exist while not doing damage or creating undue risk doing so. These are the types of issues that can make human rights issues inherently difficult and uncomfortable, but also give lawyers a real opportunity to add value by helping to strike that balance and protect corporate values.

Ultimately, companies may have to make decisions about whether they will operate in or enter markets depending on these issues. Again, where these circumstances exist, GC and in-house lawyers can play a valuable role from a strategic perspective (perhaps alongside other sustainability experts) and the decisions they make can have a real and lasting impact on the business and a whole range of stakeholders, including other employees, communities and consumers.

generally. The key issue will be to have those changes grounded in priorities and actions that are recognized to be driven by the needs of the business, delivered in the context of cross-functional teams and valued by the GC and the rest of the C-Suite.

Each GC we discussed this with had very specific observations about their organizations. However, there were a few interesting observations that we share here because of their potential impact on the ways that in-house teams contribute to corporate sustainability.

“Millennial” lawyers want something different

This has certainly been a trend that has evidenced itself in a number of different ways, both within business, but also more broadly. More than one GC noted that they believed that the “younger” members of their team had a much stronger understanding of and connection to sustainability issues. The view expressed was that these “millennial” lawyers want to have broader roles within their companies and want to work for companies that evidence a commitment to sustainability principles and strong business ethics. The GC saw it as their role to give these opportunities to their team. These new expectations from

within the legal team will undoubtedly increase the rate of convergence between the role and responsibility of in-house legal teams and corporate sustainability principles.

Legal “silos” are breaking down

GC recognized that many of their legal teams were still organized in functional silos, meaning that many lawyers were subject-matter experts. However, many GC did not feel that they could afford to keep a high degree of specialism within their teams, except where they absolutely needed it. Essentially GC needed lawyers who “wore more than one hat”, and siloed expertise was a luxury no longer justified.

Lastly, many GC feel it is extremely important to break down silos because effective risk management requires an ability to look across an organization and means that lawyers must engage more broadly to continue to deliver that core service effectively in the modern company.

Clearly, a meaningful broadening of responsibility for lawyers also translates into greater engagement across a range of issues impacting the business.

The UN Global Compact and the International Bar Association, with support from LexisNexis, have produced video training manuals entitled **Lawyers as Leaders: The Essential Role of Legal Counsel in the Corporate Sustainability Agenda**. These videos present analysis, commentary and interviews from GC and other senior lawyers discussing various legal issues centred around the four UN Global Compact principles – Labour, Human rights, Anti-corruption and Environment.

To access the videos, visit:

<https://unglobalcompact.org/library/2571>

ENCOURAGING ENGAGEMENT IN HUMAN RIGHTS





MAKING HUMAN RIGHTS AN IN-HOUSE PRIORITY

At Barrick, there was always a high level commitment to acting responsibly. However, the commitment did not always translate into respecting human rights on the ground, and we needed to move to truly embedding human rights principles across our business and stressing its importance as a legal and compliance issue. Legal drove that process. Our objective was to make sure that every functional unit integrated human rights principles into its day-to-day responsibilities, and understood its potential impacts on human rights. This was more than a “tick-the-box” exercise.

Jonathan Drimmer, Vice President and Deputy General Counsel, Barrick

Third parties and outside advisers have a role to play

Team development is an area in which third parties and external advisers can have real impact. The point was fairly straight forward – sometimes the case for change within an organization is helped by the work that is being done outside it. Given the resource constraints in-house legal teams are operating under, training and development activities, particularly related to market trends and drivers, by external advisers (who can bring a breadth of experience and exposure with them) are valued. Many GC want their external advisers to be talking to them about the trends and issues they are seeing that can translate into new ways of working and bringing tangible benefit to the business. In other words, GC want to go beyond training and technical skills. Specifically, a number of GC welcomed further discussions and training related to human rights.

traditional or evolved definition of corporate sustainability. But, from the outset of this initiative, the topic of “human rights” seemed to make many GC uncomfortable.

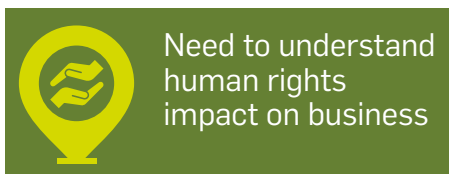
In this Guide, rather than repeat or seek to cover the questions of human rights law per se or the UN Guiding Principles on Business and Human Rights, we decided it was better to highlight some of the key concerns expressed by GC.

Further, there is a lot of work on-going in the area of human rights by very engaged and capable lawyers through the International Bar Association and American Bar Association, and other organizations, like Shift. We could not do the substance of the topic justice here, but we want to highlight some important comments made by GC globally and provide some guidance on how to get broader engagement by in-house legal teams in human rights matters.

Based on the feedback from GC – both where they have seen “successes” and also where they have not – any plan for engaging in-house lawyers more proactively in human rights matters requires greater clarity, an internal engagement framework, enhanced familiarity by lawyers and broader buy-in across functions.

We believe that focusing on these four concepts can turn an uncomfortable conversation into one that enables lawyers to build confidence and credibility, and encourages them to play a bigger and more engaged role in human rights issues faced by their companies and colleagues.

Looking at each of those four concepts in turn:



Six of the ten principles of the UN Global Compact relate directly to human rights, which themselves are anchored in the UN Guiding Principles on Business and Human Rights. Clearly it is a core component of any

The International Bar Association Business and Human Rights Working Group has published guidance for bar associations and business lawyers on the implementation of the Guiding Principles.

To download your copy, go to:

<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=c9bd50c6-c2b3-455b-b086-a7efbfe1f6a5>

In many respects, GC and their legal teams are uniquely placed to see across the organization and assess the human rights impacts and exposures that exist. The terms of engagement on matters of human rights needed to be recast by increasing levels of familiarity and comfort within the legal teams around human rights issues.

Enhance “clarity” by focusing on impact and practicalities

Many corporations and other organizations around the world have committed to upholding principles of human rights, including through direct undertakings either as part of a commitment to the UN Global Compact’s Ten Principles or through acceptance of the UN’s Guiding Principles on Business and Human Rights.¹ It is very clear that many of those corporations and organizations take their commitment to human rights principles very seriously and have devoted significant resources to embedding them within their businesses.

However, it is equally clear that some of the existing principles, frameworks and engagement mechanisms related to human rights do not always provide the type of clarity that many GC and lawyers feel they need. One of the fundamental issues raised fairly consistently by GC related to the perception that human rights was not the type of law in which traditional corporate lawyers could

meaningfully engage, and, therefore, the issues were better handled by sustainability experts.

On the other hand, sustainability specialists may only seek to involve lawyers where risk or dispute management skills were required. However, if engagement between the two constituencies happens solely in that context, it is not surprising that issues related to human rights can be uncomfortable to all involved.

There is undoubtedly a certain degree of merit to the GC concerns around the lack of clarity in human rights issues. Indeed, there are many initiatives aimed at embedding human rights principles in tangible codes of conduct, clearly articulated behavioural norms, legal and regulatory frameworks and impact-exposure assessment tools.

That being said, there also seems to be an underlying issue relating to the fact that human rights issues can be hard, complex, messy and carry significant reputational risk for an organization – many times without clear guidance on how to manage or navigate through them.

The guidance and frameworks in this area are increasing, and there is a track record being built about how to engage with and manage human rights issues proactively. Also, through dispute, litigation and resolution, there are norms being developed which help fill in some of the grey areas and perhaps make it easier for lawyers to see a role for them in managing and addressing human rights issues.

The more that companies, GC and lawyers recognize that human rights issues arise across a wide array of governance, commercial and legal areas and that a respect for human rights needs to be embedded across all aspects of a business, the practicalities of doing so will provide the grounding and clarity that GC and legal teams are seeking. By focusing on the human rights aspects of things like supply chains, labor, taxation, data protection and privacy, transactional due diligence, M&A, dispute resolution and enterprise risk management, lawyers will see that human rights issues are just one additional aspect of the “familiar” issues they are already responsible for managing.

¹ Guiding Principles on Business and Human Rights: <https://unglobalcompact.org/library/2>

But, where the conditions exist, GC have a real opportunity to be an agent for change and a key component in the drive for corporate sustainability.

For additional information on this topic, see: **UN Global Compact Good Practice Note: Organizing the Human Rights Function within a Company** (2014), <https://unglobalcompact.org/library/921>

Also see: **UN Global Compact Good Practice Note: Developing Corporate Human Rights Policies and the Role of Legal Counsel** (2012), <https://unglobalcompact.org/library/971>

Create an internal engagement framework

GC consistently refer to having the right “framework” for engagement within their organization.

GC that have a more progressive understanding of how human rights impacts broadly across their business, realise that it is important to deploy proactive risk management strategies against those issues and, because human rights issues can be quite complex, create cross-functional teams to tackle them.

For those GC, it was clear that lawyers have an important role to play in human rights issues, particularly

since they firmly believe that risk management, dispute resolution and legal and regulatory compliance are all within the core competency of the legal department. Most importantly, they don’t believe the legal team’s role changes merely because the issues were related to human rights.

So, for an increasing number of GC, the real question is not “if”, but “how” they deploy their teams and expertise in a way that manages the resources in the right way, and also puts them in the best position to add value across human rights matters.

The answer to that question depends at least in part on the capabilities that exist within and the nature of the company. Clearly, where there is an existing structure that “owns” or is primarily responsible for matters of human rights, GC and legal teams will seek to support or integrate into that functional team. Where there is no dedicated internal resource that “owns” human rights issues, that presents a different challenge.

Each of these we think about as “integration” issues, but one is integration of the lawyers within

existing teams and the other is integrating the responsibility for “owning” human rights within the organization, and to what extent the GC and the legal teams are or can be key drivers of human rights within the organization.

Where there is an existing functional team that owns human rights issues, there is an established framework for integration. GC believe that a successful engagement framework relies on there being clarity on the reason lawyers were part of the team, a consistent and regularized level of engagement by the lawyers and a “reporting back” mechanism for feedback to be relayed to the GC and the rest of the legal team. This approach builds familiarity and credibility within the legal team — both of which are essential success factors.

In circumstances where there is not a clear “owner” of human rights issues within the organization, the question arises regarding what the role of legal should be in that regard. In that circumstance, GC generally communicated that there were two options — either lawyers would engage



WE ONLY HAVE ONE STANDARD

Our business operates globally, and the legal and regulatory environments in which we conduct our business can be overlapping, complex and have differing minimum standards. Clearly our first priority is to ensure that we are compliant with the relevant laws and regulations in whatever jurisdiction we have operations – that is fundamental to our licences to operate. However, we believe that it is essential for our business to operate globally to the same standard – even if that is higher than what is required locally. At times that can place us at a competitive disadvantage or increase our costs of doing business. We have made a choice to do that because it is consistent with Caesars' core values. It also allows us to be creative about the initiatives we develop internally, for example, relating to the environment and community engagement, and puts us in a leadership role across the industry.

Scott Wiegand, Deputy General Counsel, Caesars Entertainment

on an ad hoc basis as issues arose or would engage with functional areas to ensure they were cognizant of the human rights considerations that arose in their area of operations.

In this circumstance, there is clearly merit in GC and legal teams supporting their business to ensure they are cognizant of their human rights impact and to conduct an assessment, with remedial plans developed where necessary. That is undoubtedly a core risk management function where GC and the legal department have a key role to play.

However, we do believe that human rights issues should also be driven by the in-house lawyers too. In many respects, GC and their legal teams are uniquely placed to see across the organization and assess the human rights impacts and exposures that exist. Human rights should be seen as another aspect of the issues lawyers are considering already, and one that benefits from the application of the core risk management strategies that are typically within the traditional skillset of internal counsel.

Enhance familiarity

Within some organizations there is a very high level of expertise amongst certain members of the corporate team that specialise in human rights. However, that expertise may not exist within many legal teams or it is not held by the GC. Many GC and members of existing legal teams do not come from a background, either through legal training or work experience, that builds a high degree of familiarity with the core principles that underpin the area of human rights.

In addition, even for organizations that have a certain degree of human rights expertise within their legal teams, that resource is often deployed where a “problem” has developed, whether that be crisis management or dispute resolution. It was consistently recognized by GC, and sustainability experts alike, that such a model was a broken one and needed to be fixed.

The terms of engagement on matters of human rights needed to be recast by increasing levels of familiarity and comfort within the legal teams around human rights issues.

GC that built strong legal capabilities in human rights felt that it was essential that human rights issues be prioritized by the GC and there is a commitment to training the team on the core principles and to having them understand how those principles apply across the range of operational activities.

Making progress in building comfort levels within their legal teams on human rights issues focused on reinforcing the point that lawyers need to be both enabling of the business, and also grounded in proactive risk management. That requires a broad-based knowledge of the business and issues (including human rights issues), as well as flexibility in approach.

GC also noted that it was important for their team to have some additional scope to “get it wrong, provided they were proactively trying to get it right.” That “safety net” is essential, particularly given the complexity of these issues and relatively high reputational risk that can crystallize.

KPIs: BUILDING A CASE FOR CHANGE





SUSTAINABILITY: REFOCUSING ON A CORE PURPOSE

Following the global financial crisis, banks and other financial institutions have had to refocus, revise and even abandon their business models. The changes in our sector have had broad implications for both global markets and local economies. Our response has been to focus more on our core purpose and to develop a new vision, which is to help customers and the community to grow and prosper. This refocusing has shaped how we think about our sustainability strategy as an organization, and as a legal department. Sustainability has moved beyond traditional areas and is now woven throughout our business. As a legal department, we are engaged in all aspects of our sustainability efforts, including in policy formulation, the development of position statements, stakeholder engagement initiatives and disclosure and reporting.

Rebecca Lim, General Counsel, Westpac

Build consensus and broad-based “buy-in”

Ultimately having the right frameworks to promote engagement and building familiarity are two key aspects of creating conditions for “buy-in” by the organization and the relevant legal and operational teams. GC thinking about how to achieve “buy-in” focused on making attention to human rights a priority for the entirety of their legal team (not just for a few lawyers). That prioritization also needs to be communicated and agreed with the operational and sustainability teams. As a general matter, that approach was felt more effective in getting the legal teams engaged in managing human rights matters across the totality of the business.



KPIs supporting the business case for change

GC and the legal department are judged, like many other parts of their organizations, by identifiable and measurable performance objectives. Unlike many other parts of the

business however, it can be difficult to quantify the value that legal brings, and therefore the analysis can often focus solely on the cost to the business.

GC understand the importance of focusing on cost control, both internal and external. It is a key issue for them, however, if the internal conversation focuses primarily on cost, it tends to drive a particular view within the legal team and the organization generally.

If corporate sustainability is to truly be the right framework to drive change within legal departments, GC will have to make the objective and “quantifiable” business case for change.

GC who have developed KPIs for their teams, taking into consideration sustainability matters, gave the following guidance:

Decide what is important and aligned with the corporate strategy

In order to develop any performance-based metrics, the GC must spend time thinking about what changes or behaviour they want to encourage and how that aligns to the overall corporate strategy. Clearly, achieving

alignment with corporate sustainability principles is easier where they feature as a core part of the overall corporate strategy. However, even where they do not, given the underlying trends, there are clear opportunities for the GC to establish a broadened set of priorities.

One GC we spoke to used management consultants to help them develop the right metrics for driving change. They were very clear that the external and objective view was helpful to them, and even though there was some cost to it, it helped them prioritize issues and achieve greater alignment within their team and to the business generally.

Examples include:

Improving external relationships and influence

For example, by measuring the number of contacts with key stakeholders, including regulators, community groups and/or industry bodies that members of the legal team had during the year, or by measuring the number of external engagements participated in by the legal team (including speaking engagements).

Improving internal relationships and influence

For example, by measuring the percentage of time spent in cross-functional teamwork during the year, or by measuring the percentage of time spent “in the field” with the business, or by tracking the degree of engagement reported back by the business of their legal support.

Tracking value delivery and quality of service

For example, by tracking efficiencies gained through process improvements (such as through automating processes, like using electronic signatures), or external awards and recognition of the legal teams.

Tracking team development

For example, tracking the number of hours spent on training and development on “core technical skills” versus other areas of importance (e.g., financial/operational/strategic competencies, human rights, environment, community engagement frameworks, risk management, etc.).

Agree the metrics with the relevant “client”

Another key point is that whatever metrics are chosen to drive change, they need to be relevant to the business. That is a fundamental point in order to move the conversation beyond cost and to value.

Embed the metrics into performance objectives and assessments

Embed these items into the regular objective setting and performance reviews. It is important that the lawyers think about how they will progress against these objectives throughout the year, and that performance or non-performance will have a real impact on compensation and promotion.

Seek specific feedback from business on service delivery and impact

The use of engagement surveys is common within business; however, GC feel that the use of these techniques and technologies for legal departments may be not as developed as in other functions within the business.

Whether or not that is the case for

any particular organization, the feedback on the quality, proactiveness and value of the legal service provided is key and should be a primary area of focus. The importance here being that the feedback needs to be meaningful, and based on the agreed performance criteria.

Reward based on performance and progress

It is widely understood that people perform against those things that are tied to incentives (monetary and non-monetary). In order to really drive change, broader performance metrics tied to compensation and promotion are key. The challenge will be to ensure they balance the need for change with a degree of objectively measureable progress.

Report on progress regularly

A “feedback loop” is important. In order for teams to believe in the changes that are being driven, there need to be team-based discussions on progress. These need to be regularized and sufficiently prioritized in team meetings.

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05_METHODODOLOGY

The United Nations Global Compact, in conjunction with Linklaters LLP, and with guidance from an Advisory Group of GC, has prepared this 'Guide for General Counsel on Corporate Sustainability'.

Through this exercise, our objective has been to better understand the expanding influence that GC have on key issues that impact on the long-term commercial success and viability of their companies, while providing guidance to GC about how they can drive corporate sustainability.

To that end, we conducted interviews with over 40 GC (some of whom are also Company Secretaries) in 16 jurisdictions, with the sole purpose of developing practical guidance borne out of their own views, experiences and concerns.

The interviews were conducted under "Chatham House" rules, and comments have only been attributed where permission has been granted by the individual concerned.

This effort has been guided by an Advisory Group comprised of current and ex-GC, whose primary role was

to make sure that the Guide is an accurate reflection of the challenges, opportunities and environment they and their colleagues have to operate within and confront on a day-to-day basis.

We have also solicited "external" observations about the role of the GC and legal teams within organizations in order to ensure the views we have captured are rounded, balanced and in context. Our efforts were also augmented by our review of a host of recent thought leading publications and articles regarding the role of lawyers in today's corporate world, including those that focused on changes to the role, the "new expectations" of lawyers and the importance of their role in sustainability.

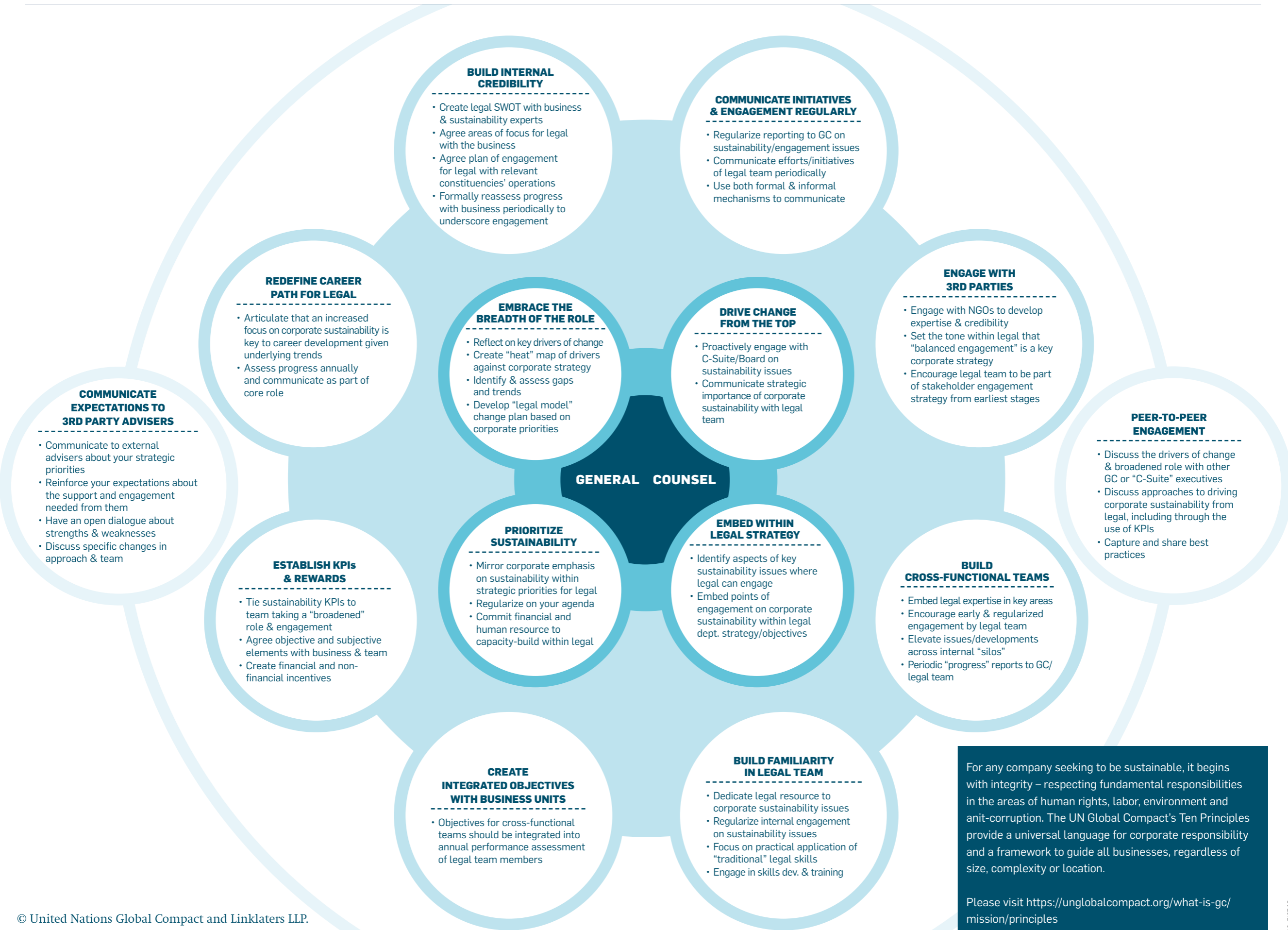
Although the Guide has been drafted primarily for GC, we expect that the observations and feedback will

resonate with that wider audience noted above as well, and importantly, prepare the ground for proactive engagement by all parties.

While the focus on value creation from financial, social, environmental and ethical perspectives discussed herein has been the core framework for our analysis, we also seek to reinforce the UN Global Compact's Ten Principles which focus on Human Rights, Labor, Environment and Anti-Corruption.

This Guide encourages there to be discussion and debate amongst GC about the best, most practical and effective ways for them to continue to be partners with, and guardians of, their respective businesses; and, to think about corporate sustainability as the right framework to capture and enhance the value they and their teams bring to the table.

06_DETACHABLE GUIDE



UN GLOBAL COMPACT TEN PRINCIPLES

The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labor standards, the environment and anti-corruption:

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: Make sure that they are not complicit in human rights abuses

Labor

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: The elimination of all forms of forced and compulsory labor;

Principle 5: The effective abolition of child labor; and

Principle 6: The elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: Undertake initiatives to promote greater environmental responsibility; and

Principle 9: Encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

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This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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