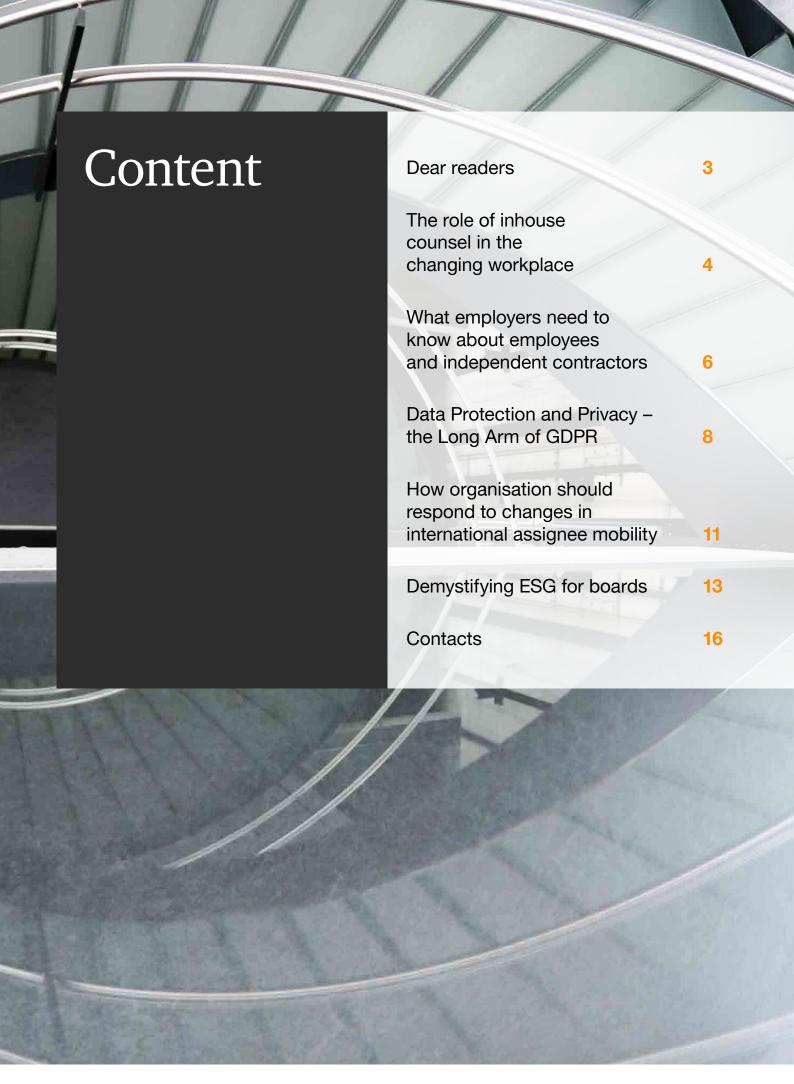
Know how to win

Premier publication for legal practitioners





#### Dear readers





#### Welcome to our premier publication for legal practitioners.

Economies, Uganda's included, are just beginning to catch their breaths as the world emerges from the trenches of the war on the COVID - 19 pandemic.

We have seen a number of ethical, legal, and social issues arise as the pandemic spread and this publication has been designed to cover a broad array of topics that are a must-know for today's legal practitioner. The topics are drawn from our experience and the realities that are currently affecting the legal and regulatory environment, both globally and in Uganda. Whereas some of the topics may have come to the fore during the pandemic, others pre-date the pandemic while some will remain with us for a while, long after the pandemic has subsided.

Topics such as the changing workplace and new ways of working, the data privacy and protection discourse and the ESG expectations of business stakeholders are demanding more of today's legal practitioners, who must continuously upskill and rethink their role in a dynamic economic, social and political landscape.

In this publication we share insights that we believe warrant serious consideration by all stakeholders, with particular focus on the chief legal and compliance officers, who play a key role in driving innovation and helping their organisations to deliver on their business' outcomes.

I trust that the insights will facilitate, and form the starting point, of several conversations between you and the people, businesses and organisations that you serve.

#### Crystal Kabajwara

Director Tax & Legal Services

### The role of inhouse counsel in the changing workplace



#### " **Summary**

Following the gradual lifting of lockdowns globally and the eventual return to normalcy, there is a need for organisations to assess what work will look like in the future and devise the appropriate short-, medium- and long-term responses. Factors that should be taken into consideration include the increasingly competitive labour market, changing workers' expectations and the automation of workplace tasks.

Inhouse counsel are pivotal in helping their organisations adapt, develop, and sustain a thriving workforce despite the tectonic shifts in workplace and workforce relations.

#### Introduction

The COVID-19 pandemic continues to present unprecedented challenges for employers and the workforce as new variants emerge and infection rates rise. Uncertainty has become the norm as organisations navigate the balance between employee safety and productivity. While tech-enabled businesses have adapted to new working practices, challenges have emerged in sectors that are more dependent on a physical presence at the workplace. Employees too have been affected as shift working and furloughs have led to falling wages and redundancies. The new normal has also changed the employer-employee relationship, with increasing focus on flexibility, compensation, and employee rights.

The hybrid model of working (which enables employees to blend working flexibly from different locations such as home, office and on the go), automation, the demand for new skills, shift working and changing demographics are all changing the workplace.

#### How should inhouse counsel respond?

The increased uptake of technology and automation and the transition to the hybrid model of working presents challenges for certain categories of workers, such as the older generation, who may not adapt so easily to the new ways. Preferences for a specific demographic can lead to workplace discrimination and pay inequality. Re-skilling opportunities should instead be extended to the older generation to help them adapt to the new culture. Inhouse counsel should work closely with HR executives to identify employees' skills gaps and recommend upskilling courses. Dismissal for poor performance due to changes in technology must only be considered after all reasonable steps have been taken to support the employee to adapt.

While the benefits of remote working are clear, the model is prone to weaknesses such as absenteeism which is difficult to monitor - making the gathering of evidence for disciplinary measures a challenge. Employers need to put in place protocols that facilitate the monitoring of employee productivity such as the use of timecards, clearly defined performance metrics, out-put based performance indicators and regular check-ins to enhance accountability. Developing these tools and standards will help employees to remain accountable for their work assignments. This will also assist employers to maintain the relevant supporting records in the event that disciplinary measures for non-performance are disputed.

The use of different categories of workers such as temps, part-time, casual and independent contractors is on the rise as organisations look to manage their wage bill during challenging economic times. There's a tendency for the lines between such categories of workers and permanent employees to be blurred, which could pose tax risks to the employer. For example, while PAYE and NSSF need not be accounted for independent contractors and casual workers, the position is different for persons classified as full time employees. Therefore, the consequences for misclassification can be severe. This makes it imperative for inhouse counsel to closely examine the letter of the contracts and establish the actual conduct of the relationship to identify any mismatches (see next article on classification of workers as independent contractors or employees).

The need to restructure and rationalise the workforce is top of the agenda for many organisations right now. While this has commercial benefits such as reducing duplication and operational inefficiencies, inhouse counsel have a key role in determining the most appropriate approach to implementing such measures.

The relevant laws pertaining to redefining, modifying, or eliminating job roles and rethinking compensation and benefit structures must be evaluated beforehand. The correct procedure for communicating such decisions must be followed in line with the law and the organisation's policies. This would entail communication of the reasons behind the decision, obtaining feedback from the employees to be affected, following legal process, payment of terminal benefits and notification to the authorities where applicable. Prior communication and following due process in decision implementation is very crucial as disputes may arise if the right procedure is not undertaken.

Health and safety amidst a pandemic poses issues that may require inhouse counsel to think outside the box of traditional legal principles. For example, whether occupational safety, health and workers' compensation issues can apply to remote workers. inhouse counsel have a role to play in guiding HR teams on the appropriate content of remote work policies in this regard.

For example, when drawing up remote work policies, organisations should investigate whether the employee's

home or secondary residence is suitable for remote work and how to take occupational safety and data security into account. Extending insurance cover to employee's homes should also be taken into consideration.

The issue of mandatory vaccination for employees has generated significant debate. Imposing mandatory vaccinations as a condition of continuing in employment could also result in legal breach and negative publicity which can affect the recruitment and retention of staff. Mandatory vaccination could give rise to claims of discrimination against employees who may have a legal basis for non-vaccination such as religion, beliefs, or age. While there may be cases where employers will be able to justify a requirement for mandatory vaccination, this could prove challenging where there are effective and less discriminatory methods such as regular testing and remote working to achieve the required business outcome. Depending on the circumstances, inhouse counsel will need to assess employees' rights to avoid a discrimination claim.

In summary, inhouse counsel have a critical role to play in helping organisations to navigate the legal and business challenges posed by the changes in workplace culture. Advising and guiding leaders, supporting business objectives, managing legal risk and compliance, promoting best governance practices, and offering risk analysis are some of the key contributions that inhouse counsel can make in this process.

#### Stella Nakazibwe

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# What employers need to know about employees and independent contractors





A survey that was conducted by the Centre for Global Development during the period between February 2019 and November 2020 found that almost 60% of youth in Uganda are now involved in the gig economy due to job losses arising from the COVID-19 pandemic.

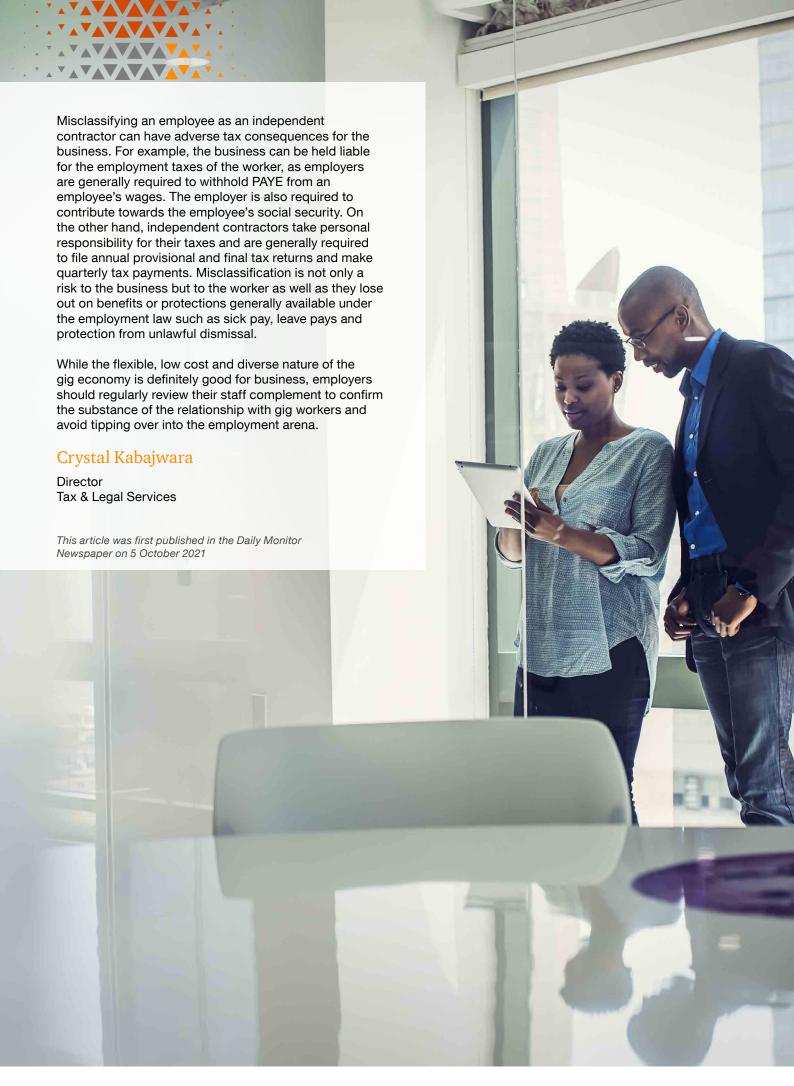
The survey was based on interviews conducted among 13,732 households. The gig economy refers to a labour market characterised by short-term contracts or freelance work as opposed to permanent jobs.

Today, more employers are scaling down their reliance on permanent employees and have turned to independent contractors to meet their human resourcing needs. While this may reduce the wage bill and limit employers' obligations towards workers, it may have significant tax consequences if not done right. The line between independent contractors and employees is often blurred and employers run the risk of having their workers treated as employees for tax purposes if certain considerations are not carefully thought through.

Whether a worker is an independent contractor or an employee depends on the relationship with the employer based on a range of factors. One critical factor is specifically the level of control exercised over the worker. If the employer controls what will be done and how it will be done, then the individual is most likely an employee. For example, a person can be regarded as a permanent employee if they are required to report to work by 8 AM, use the office-assigned laptop for their work, are restricted from accessing certain websites on the work laptop, are prohibited from providing services to other entities and must also account for their time by completing a daily timesheet.

That said, it is often not black or white and there are certain other factors that are considered when assessing the level of control / relationship between the worker and the employer. For example, whether the employer directs or controls the financial and business aspects of the worker's job, whether they provide the worker with tools for use in their work (computers, stationery, printing facilities) or determine how the worker is paid (periodic payments regardless of the work done) and whether the worker enjoys employee-type benefits such as leave pay, health insurance and sick leave.

In February 2021, in a landmark legal battle involving Uber, the ride sharing company, the UK Supreme Court ruled that Uber drivers were employees and not self-employed independent contractors. To a large extent, the degree of Uber's control over its drivers (e.g., the fact that the company sets fare prices, collects customers' payments, and charges fees, pushes drivers to accept fares when they may not want them and has the right to tell drivers to leave the platform) was a critical factor.



# Data Protection and Privacy – the Long Arm of GDPR



### Summary

The shift to remote working and virtual business operations poses challenges to data protection and privacy obligations. Organisations are increasingly at risk of data privacy breaches, heightened by the growing volumes of data that is collected, processed, and controlled across multiple jurisdictions. This exposes organisations to the laws of different countries and regions, including the EU's General Data Protection Regulation (GDPR).

Therefore, organisations should continuously review their data privacy policies and processes so that the right solutions and personnel are deployed to avoid breaches and exposure to penalties.

This article assesses the key obligations set out in the GDPR and Ugandan laws on data protection and privacy. It also provides some practical insights on managing the associated risks.

#### Data is the new gold

It has been said that data is the new gold and the increased regulation and enforcement against violations of data protection laws on a global scale has lent credibility to this statement. The GDPR is possibly the most prominent of the data protection laws.

Amazon was recently fined €746m (\$886m) by the EU for compliance failings with the GDPR. The fine dwarfed the €50m penalty that the French data regulator CNIL imposed on Google in 2019. Other fines related to breach of data protection laws include the UK's Information Commissioner's Office (ICO) fines against British Airways and Marriott of £20m and £18.4m respectively in October 2020; the Irish Data Protection Commission's fine of €450,000 against Twitter, and a provisional decision in January 2021 to fine WhatsApp €50m.

#### Understanding the GDPR

The GDPR came into effect on 25 May 2018 in the EU with flexibility for member states to pass national laws to supplement some of the provisions.

The regulation restricts the processing of personal data, subject to statutory exceptions. Personal data processing refers to the carrying out of any operation on personal data including collecting, recording, organising, storing, retrieving, using, disclosing, or deleting data.

Personal data includes any information that alone, or in combination with other information, identifies or is likely to identify a living person, or data subject, including an individual's telephone number, home and email addresses, job title, online identifier, employment history, education and training, financial and payment details.



The GDPR also governs the processing of special categories of personal data, including racial or ethnic origin, political opinions, religious and philosophical beliefs, trade union membership, health, sex life or sexual orientation, and genetic and biometric data.

The fines that can be issued under the GDPR may go up to €20m or 4% of annual global turnover (whichever is higher).

#### How does the GDPR affect your business?

The GDPR is extraterritorial in scope and applies to:

- Controllers and processors of personal data relating to activities of an EU establishment, even where the data processing takes place outside the EU.
- Controllers and processors outside the EU who do not have an EU establishment but offer goods or services to individuals in the EU or monitor individual behaviour that takes place in the EU.
- Controllers not established in the EU but in a place where EU member state law applies through public international law.

Therefore, any person who transacts with EU entities or individuals is within the scope of the GDPR and should comply with the requirements regardless of the person's location.

Consequently, several countries have put in place laws and regulations to entrench the data protection rights provided for under the GDPR. As this has made compliance tracking onerous for organisations that are operating in multiple jurisdictions, it is advisable that such organisations develop a central data protection and privacy programme, framed in compliance with the strictest requirements.

#### Data protection in Uganda

The right to privacy in Uganda is guaranteed by Article 27 of the Constitution of Uganda which provides that no person shall be subjected to unlawful search of the person, home or other property, or the unlawful entry of the premises of that person. It further provides that no person shall be subjected to interference with the privacy of their home, correspondence, communication, or other property.

In 2019, parliament passed the Data Protection and Privacy Act, 2019 (DPPA) and the Regulations followed in 2021. To a large extent, the legislation adopts the principles established under the GDPR.

The National Information Technology Authority of Uganda (NITA-U) is mandated to implement the data protection laws. NITA-U has taken steps to set up the requisite infrastructure for the implementation of these laws, including the recent appointment of the national director of the Personal Data Protection Office under NITA-U.

Further, in November 2021, the Personal Data Protection Office (PDPO) of NITA -U issued a public notice requiring all persons who collect, process and/or control personal data to register with the PDPO. This was an important step in the implementation of the Data Privacy and Protection Act as all registered persons will be required to keep track of the ongoing compliance obligations.

#### How should organisations comply with data protection laws

The successful implementation of the data protection requirements necessitates considerable investment in systems, people, and processes.

The GDPR sets out principles which must be followed while processing personal data. The principles seek to protect the rights of data subjects throughout the different stages of personal data handling, including collection, processing, control, and retention. Therefore, it is crucial for organisations to follow these data protection principles when designing data privacy and protection systems and processes. Below are some of the practical ways in which organisations can apply the principles.

#### Collect only the information needed for a specific purpose

There are several reasons why organisations collect personal data, including compliance with regulatory requirements, such as the current requirement for every owner, person in charge, or occupier of premises to record the contact details of individuals entering their premises for tracing purposes.

While collecting personal data, assess and document the purpose for collecting it on a case-by-case basis, and where practicable, obtain consent from the owner of the data. In addition, consider the kind and amount of data you collect and its relevance to the purpose.

#### ii. Use the personal information you collect only for the purpose you collected it

It is important that the information that is collected is used strictly for the purpose for which it was collected. The data must not be used for any other purpose and must be disposed of securely as soon as the purpose for which it was collected is satisfied. For example, contact details collected for security or tracing purposes cannot later be used for marketing purposes.



#### iii. Ensure that all the personal information you have is accurate and up-to-date

The accuracy of information greatly depends on the source of the information. Organisations should, as much as possible, obtain the information from the owner of the information and regularly request for updates of the information.

Once information is collected, it should be recorded accurately and kept in a form and place that preserves its accuracy. Where it is obtained from any source other than the owner of the information, the source of the information should be recorded and the accuracy of the information should be verified for example by conducting due diligence inquiries to address any discrepancies. Inaccurate information should be rectified or deleted as soon as the inaccuracy is discovered.

#### iv. Do not keep personal information for a period that is longer than necessary

There is no prescribed period for the retention of information under the data protection laws. The test of necessity depends on the purpose for which the information was collected or processed.

It is important to have policy and procedures in place which govern your retention of personal data, with clear responsibilities, review terms, consequences of breach and enforcement mechanisms. These should be clearly communicated and accessible to all employees and stakeholders of your business to ensure their implementation.

There are a range of laws that prescribe the retention period with respect to record keeping as well as limitation periods for bringing certain legal claims in Uganda, such as five years for tax matters, 10 years for financial information kept by banks, 12 years for land matters and six years for contract-related claims. These periods can be relied on to justify the period of retention of personal information which may be required for legal reasons. However, caution must be exercised, and each case should be assessed independently to determine the necessary period for retaining specific personal data in your possession.

#### v. Keep all personal information safe and secure in order to protect its integrity and confidentiality

This entails identifying reasonably foreseeable internal and external risks to personal data, establishing and maintaining appropriate safeguards against such risks and regularly verifying that the safeguards are effectively implemented.

Organisations must also observe generally accepted information security practices and procedures in the maintenance of data, i.e., confidentiality, integrity, and availability. In addition, they should adopt appropriate audit trails, software updates, access controls and monitoring tools to warrant the proper access, storage and usage of data held by staff and third parties. This may necessitate recruitment of cybersecurity professionals to develop and implement the necessary control measures. Continual training and upskilling of staff on the key aspects of data protection, as well as emphasising the importance of compliance, are also imperative.

The GDPR requires persons to notify the EU within 72 hours of the occurrence of any breach. Under the DPPA, persons are required to notify NITA-U immediately upon becoming aware of any unauthorised access and outlining the remedial action taken. In addition, persons are required to submit reports of all complaints and data breaches to the Personal Data Protection Office of NITA-U within 90 days after the end of every financial year.

#### vi. Whatever you do in relation to personal information, make sure it is lawful, fair, and transparent

The best way to guard against breach in respect of this principle is to obtain the consent of the owner of the information. Where it is not possible to obtain such consent, a court order must be sought authorising the collection and processing of personal data. The court order should be valid, detailed, and specific in order to avoid exposure to a risk of breach.

For purposes of transparency, organisations should inform the data subject about their data protection processes, including the reasons for collection, use and any access by third parties. This may be achieved by publishing the organisation's data privacy statement on the company's website, in the staff handbook, on notice boards at the organisation's premises or verbal communication to the data subject prior to collecting the information.

#### Other considerations

In addition to the above measures, it is advisable for organisations to take out insurance against risks associated with cyberattacks which may not be completely warded off due to their constant evolution. Further, continuous review of the organisation's processes and stored data is imperative for the sustained compliance with the data protection laws applicable to the organisation's activities.

#### Hilda Kamugisha

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# How organisations should respond to changes in international assignee mobility



### Summary

Travel restrictions have required businesses to reassess their need for expatriate hire and the attendant recruitment and relocation processes. Alternatives such as cross-border remote working, contingency support and upskilling of local employees are some of the measures that businesses can deploy to cope with the immediate and long-term disruption.

#### Introduction

The pandemic has affected businesses that rely on an international workforce particularly in highly technical sectors such as energy, mining and oil and gas. Workers may have found themselves stranded and displaced from their ordinary places of work for uncertain periods of time. This has created challenges for organisations in terms of productivity, maintaining minimum staffing levels and cost containment.

The international mobility challenges are expected to remain long after the pandemic as countries introduce vaccination passports which could potentially lock out individuals from some countries. Further, overall headcount reduction remains a challenge for some while for others the recovery in economic activity will require a re-hiring of previously furloughed workers in an increasingly competitive labour market.

While short term responses such as contract variations, extended leave and remote working have provided temporary relief, organisations must now take a longer term view to expatriate staffing requirements bearing in mind the changing sentiments around business travel and international assignments.

#### Responding to the changing international assignee mobility landscape

Sending employees on international assignments has never been riskier. Assignees might need to be evacuated at short notice while others may choose to stay at their deployment locations where practical support may be limited. This raises several issues for the employer to consider such as duty of care, risk management, relocation, tax, and reward.

As the issues go beyond HR, a multidisciplinary approach should be adopted which requires HR, legal, mobility, risk, and tax teams to work together to develop and implement a long term approach to the needs of the business.



Top of the organisation's agenda should be the health and safety of employees. Therefore, the robust monitoring of travel restrictions and the safety of personnel should be undertaken, as well as an increased focus on health and safety measures to keep staff safe in transit. This should also include the monitoring of strict adherence to quarantine requirements to ensure public safety and avoiding fines and penalties for non-compliance. Ultimately, there should be a balance between health and safety considerations and maintaining safe minimum staffing levels on critical projects.

From a tax perspective, it is important to monitor the time spent by expatriates in or outside their station country to ensure that residence (or non-residence) criteria are met. Breaching prescribed thresholds could trigger adverse tax consequences for the employee and the organisation.

Care should be taken to avoid triggering a permanent establishment of the home country/ entity in the host country, particularly by international consultants. In addition to monitoring the days spent in the host country, the nature of the work being performed should be evaluated and where possible, duties and responsibilities should be re-assigned to manage the permanent establishment risk.

A workforce review that focuses on the capabilities of expatriates and the attendant job descriptions is necessary as, for certain functions, place of work may not be as critical as how work is delivered. The review will identify jobs that can be performed remotely and those that require deployment. The digital capabilities of the organisation to support remote working should also be assessed and remote working policies should be put in place or enhanced as the case may be. The policy should stipulate the compliance processes that must be followed by the affected employees.

Upskilling of local personnel is more critical now than ever before. The pandemic has shown that the business environment and the labour market can shift drastically and this, coupled with the growing sentiments against international travel, requires a sustainable approach to talent management. It is now prudent for organisations to have a deliberate capacity building strategy that identifies and upskills local workers to fill the roles that expatriates would normally occupy. Upskilling and capacity building can itself be done in new ways, such as virtual secondments and assignments.

Business continuity can be affected by disruptions to international travel especially when key employees leave suddenly en masse, or critical deployments cannot be undertaken. Therefore, this should be prioritised. Potential service gaps and rotational challenges caused by travel restrictions or displacement of individuals must be flagged early and addressed by identifying essential staff and putting contingency measures in place.

While the identification of essential staff and processes is essential to business continuity, the informal cooperation between employees, which is often not captured in organisational charts, should also be taken into consideration. This requires a collaboration analysis which looks at how individuals support each other and how information flows within business units, while identifying the connection points between teams as well as the choke points that slow down or block knowledge transfer.

Cost of living (CoL) analysis, a key factor in determining reward and remuneration for expatriates is now a more complicated exercise thanks to the current uncertainty. Further, CoL is a key consideration for the attractiveness of a destination for assignees and for organisations looking to expand their geographic footprint. Employers must review the competitiveness of reward and remuneration packages for expatriates in view of changes to the CoL. This requires organisations to regularly monitor aspects such as currency fluctuations and assess inflationary pressures on key benefits for international assignees in all locations.

Inevitably, the prolonged impact of the pandemic and travel related restrictions must lead businesses to rethink, remodel and reflect on international assignee mobility, its effectiveness and overall contribution to the success of the business. Certainly, the pandemic will continue to affect talent mobility and should compel organisations to question the traditional approaches to expatriate hire and deployment.

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## Demystifying ESG for boards



## **Summary**

The corporate morality of business enterprises is an increasing concern for investors. For this reason, non-financial factors such as respect for human rights, equal treatment of employees and environmental impact are gaining significance in measuring performance. Boards can no longer afford to ignore these factors and should now seek to understand and identify which non-financial factors affect their business, assess the risks attached to these factors and the relevant risk mitigation measures.

#### Introduction

Financial indicators such as profitability and return on investment, that have traditionally been the key measures for the health of a business, are no longer the final word for success. Non-financial indicators have become equally important as shareholders and other stakeholders now seek to understand the diverse social and environmental risks that businesses face. The non-financial factors can be summed up by the 'ESG' acronym which represents the Environmental, Social and Governance issues that affect businesses.

Whilst some may dismiss ESG as a passing fad, investment trends show record inflows into ESG funds as investors, lenders and rating agencies expect greater visibility of such non-financial metrics. Further, customers, especially the younger generations, are more conscious of the social and environmental impact of products and services and are making purchasing decisions with this in mind. Therefore, companies that incorporate ESG into their overall risk management framework will definitely lead both the sustainability and financial race while those that fail to embrace it may suffer significant value erosion.

The global pandemic has also contributed to the ESG momentum as it has amplified issues such as workforce diversity, executive pay, as well as how companies treat their employees.

#### The board's role in identifying ESG risks

ESG risks can affect corporate strategy, business objectives and the company's short and long term performance. Directors therefore need to be able to identify, understand and evaluate the risks that arise from ESG factors. Common ESG risks include bribery and corruption practices, disregard for human rights, unsafe working environments for employees, non-compliance with existing laws and release of waste and pollutants into the environment.

The first step is to determine whether the existing risk processes include ESG risks and whether they allow for the discovery of such risks.



Where the existing risk processes do not identify the ESG risks, the directors should work with management to examine how ESG should be included in the existing processes.

In identifying ESG risks, management and the board should look at all relevant internal and external sources of information about the risks that pose a material impact to the company. The impact of the risks should be classified into the short, medium, and long term to determine the impact of the risks on the company's corporate strategy over each time frame. ESG risks should also be included in the company's risk register so that they are continuously monitored.

In addition, an assessment of the enterprise risk management (ERM) processes is critical as incorporating ESG in the ERM connects risk, strategy and decision making. This will require identification of the risks, the activities that expose the business to the risk and assessing the internal controls and the extent to which they are able to mitigate the identified risks.

Determining who within the organisational structure owns each ESG risk and is tasked with evaluating the risks within the ERM process is key. For example, it is advisable for the board to set up a board committee which oversees the implementation of the ESG strategy. Alternatively, an already existing committee may be assigned the sustainability agenda, or the full board could take on the responsibility.

However, formalising the ESG agenda under a specific committee allows for in-depth discussion and resolution of key ESG issues. Nonetheless, it is important that the committees set up within the company take on the responsibility for implementation of different ESG factors. For example, the audit committee may be responsible for disclosures and reporting metrics such as cost savings resulting from the use of alternative fuels in manufacturing processes while the nominating and governance committee could be responsible for board training on ESG and board diversity.

#### **ESG** reporting

The identification of ESG risks should be followed by disclosures to key stakeholders on how the company is delivering its ESG strategy. Reporting mechanisms for ESG compliance include the company website, the annual report, or a stand-alone sustainability report.

The board should also determine the best communication platform to use to disclose ESG compliance and ensure the consistency and clarity of the company's ESG narrative.

Disclosures should include useful quantitative and qualitative information and create a baseline level of standardised data to support relevance, objectivity, and comparability to enable investors to make informed decisions.

Further, the company should have robust disclosure processes and controls in place, including data integrity, to build stakeholder confidence in the reliability of the information disclosed.

If investors are to better identify a company's role in society and its prospects for long term financial returns, the board needs to articulate and disclose the company's value proposition and its drivers.

#### Considerations for effective board oversight of ESG

Attention to ESG issues will enable boards to build long term competitive advantage, enhance the business' resilience against sustainability risks and attract socially and environmentally conscious investors and customers who will drive the long-term success of the business.

As boards have oversight of the company's strategy and its implementation, they are uniquely placed to connect sustainability with corporate purpose and strategy. This however requires a mindset change from compliance to sustainability and achieving this will require a deepening of the board's knowledge on ESG. For example, bringing external insights into the boardroom through board education programmes can help the directors to understand ESG related trends that affect the company's business.

ESG is broad and not every factor will affect or be relevant to the business strategy and value proposition of the company. For example, whereas a manufacturing company should be concerned about the pollutants and waste it releases into the environment, such concerns would not affect a technology business which would be more concerned about privacy and data protection. Identifying and specifying the ESG factors that are material to the business should be done by way of a sustainability materiality assessment.

The assessment involves engaging with the business' most important stakeholders such as customers, employees, and investors to identify and prioritise the ESG topics that are material to the company and where the business can have the most meaningful impact.

The feedback from the assessment can be used by the board to formulate an ESG strategy while also managing the risks related to the company's ESG profile. The board together with the management should discuss and agree on the ESG targets and performance indicators that need to be set, measured, and rewarded and these should be communicated to all stakeholders including staff and shareholders.

The targets set should be specific, measurable, achievable, relevant and time bound (SMART) and performance should be measured and monitored regularly to assess progress and impact.



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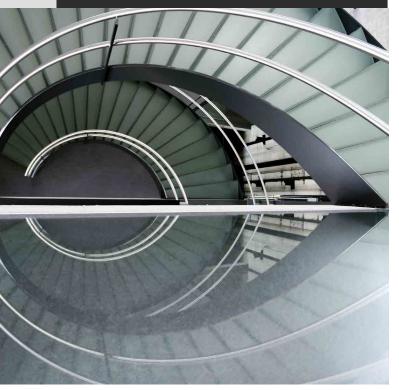
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