

Environmental, Social, and Governance (ESG) Resource Kit

Practical Guidance Lawyer Team

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Maintained

This ***Resource Kit*** includes materials from multiple Practical Guidance practice areas. If you do not subscribe to certain practice areas, you may be unable to access all the materials referenced.

This ***resource kit*** lists ***resources*** relating to environmental, social, and governance ("**ESG**"), as well as corporate social responsibility ("CSR"), in Canada. The ***resource kit*** will be updated as new **ESG/CSR** content is published.

Background

The term **ESG** relates to factors used by investors and market participants in assessing companies and enterprises, as well as strategies applied by those companies and enterprises, relating to the following three areas:

- **Environmental** — includes how a company or enterprise addresses areas like climate change, pollution, greenhouse gas emissions, **resource** depletion, and sustainability;
- **Social** — includes how a company or enterprise addresses areas like diversity and inclusion, health and safety, compensation and benefits, employee relations, and corporate giving; and
- **Governance** — includes how a company or enterprise addresses areas like board and committee structure, executive compensation, audit oversight, disclosure and reporting, cybersecurity, and privacy.

Practical Guidance Documents	Practical Guidance Content Type
Environmental, Social, and Governance (ESG): Public Company Considerations	Practice Note
ESG and Impact Investing in International Jurisdictions	Practice Note

Expectations around **ESG**

Reporting Issuer Disclosure

For reporting issuers in Canada, staying up to date on **ESG** developments is critical. In recent years, the demands of investors and the obligations imposed by Canadian securities regulators have called for more fulsome **ESG**-related disclosure. The voting policies implemented by proxy advisory firms have also increasingly focused on **ESG**-related matters, such as gender diversity and climate change plans, and also required enhanced disclosure in these areas.

Practical Guidance Documents	Practical Guidance Content Type
Environmental, Social, and Governance (ESG): Public Company Considerations	Practice Note
Diversity Disclosure Obligations (Canada)	Practice Note
Corporate Governance Disclosure Requirements under Securities Legislation	Practice Note
Proxy Circular Content	Practice Note
Disclosure Best Practices Presentation	Practice Note
Diversity and Inclusivity Policy (Board of Directors)	Precedent
Diversity and Inclusivity Policy (Company)	Precedent
Management Information Circular (TSX) (CBCA)	Precedent

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Management Information Circular (Annual Meeting) (TSXV)	Precedent
Diversity Disclosure Clause (Proxy Circular) (CBCA) (Sample)	Clause
Management Information Circular: Form Check Table	Table
Proxy: Form Check Table	Table

Shareholder Activism and Voting

Boards are also focusing more and more on these topics, as **ESG** is especially important for companies with high shareholder activism. With its rise in prominence, activist shareholders have been looking increasingly to **ESG** related issues in their campaigns. Shareholder proposals with an **ESG** theme have been gaining increasing support, and institutional investors have increasingly engaged with public companies to bolster their policies and procedures in these areas.

Practical Guidance Documents	Practical Guidance Content Type
Shareholder Activism	Practice Note
Shareholder Activism: Preparation and Response	Practice Note
Shareholder Proposals	Practice Note
Say-on-Pay Voting (Canada)	Practice Note
Shareholder Activism and Engagement in International Jurisdictions	Practice Note
Director Resolution: Say-on-Pay	Precedent
Say-on-Pay Policy	Precedent
Shareholder Resolution: Say-on-Pay	Precedent
Shareholder Activism Preparation Checklist	Checklist
Shareholder Activism Response Checklist	Checklist
Shareholder Meeting Checklist (Public Company) (Full Set Delivery)	Checklist
Shareholder Meeting Checklist (Public Company) (Notice-and-Access)	Checklist

Supply Chain Concerns

Within the context of commercial transactions, **ESG** and CSR considerations arise in many ways. One of the most prominent is with local and global supply chains. The supply chain model of business, within the context of the increased importance of **ESG** and CSR considerations, means that companies operating within the chain should ensure third-party suppliers act responsibly with respect to human rights, labour rights, and the environment.

Practical Guidance Documents	Practical Guidance Content Type
Supply Chain Fundamentals	Practice Note
Governance in Outsourcing	Practice Note
Corporate Social Responsibility Representations Clauses	Clause

Environmental Considerations

Environmental considerations arise in many ways. Understanding environmental and climate change regulations, locally and globally, is critical to managing risks created for a business and how these risks impact contracts and transactions. Increasingly, contract parties are seeking to include provisions related to the performance of environmental obligations. For instance, in the M&A context, purchasers are being increasingly careful to carefully consider environmental risks when evaluating targets in due diligence and drafting representations and warranties in acquisition agreements. In transactions involving property, the owner may be asked to indemnify other parties

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against **claims** or losses relating to environmental contamination, or to provide environmental site assessments conducted by an environmental consultant.

Practical Guidance Documents	Practical Guidance Content Type
Environmental Risks in Business Transactions	Practice Note
Environmental Compliance and Enforcement	Practice Note
Environmental Inspections, Investigations and Statutory Compliance	Practice Note
Environmental Law and Corporate Liability	Practice Note
Environmental Law and First Nations	Practice Note
Environmental Powers of Inspection and Investigation	Practice Note
Environmental Risks	Practice Note
Environmental Site Assessments	Practice Note
Environmental Offences	Practice Note
Environment and Climate Regulation in International Jurisdictions	Practice Note
Renewable Energy in International Jurisdictions	Practice Note
Spill Prevention and Contingency Plan	Precedent
Environmental Indemnity Agreement	Precedent
Limitations on Vendor's Environmental Obligations Clause	Clause
Environmental Responsibilities and Indemnification Clause (Pro-Purchaser)	Clause
Environmental Representations and Warranties Clause (Detailed)	Clause
Environmental Representations and Warranties Clause (General)	Clause
Environmental Site Assessment and Clean-Up Clause (Detailed)	Clause
Environmental Site Assessment and Clean-Up Clause (General)	Clause
Environmental Access and Testing Clause	Clause
Environmental "As Is" Sale Clause	Clause
Environmental Liability Due Diligence Checklist	Checklist
Environmental Agreement Checklist	Checklist
Environmental Concerns Checklist	Checklist
Employment and Labour Law Checklist (ON)	Checklist
Employment and Labour Law Issues Checklist (AB)	Checklist
Environmental Issues Checklist (ON)	Checklist
Key Environmental Contractual Provisions Checklist (ON)	Checklist
Environmental Issues Checklist (AB)	Checklist
Key Environmental Contractual Provisions Checklist (AB)	Checklist
Environmental Issues Checklist (BC)	Checklist
Key Environmental Contractual Provisions Checklist (BC)	Checklist
Environmental Liability Legislation (Federal & ON)	Checklist
Environmental Liability Due Diligence Checklist	Checklist
Director and Officer Environmental Liability and the Due Diligence Defence: Selected Statutes Table	Table

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Environmental Compliance and Enforcement Legislation Chart	Table
Canadian Environmental Protection Act (1999) Enforcement Provisions Chart	Table
Environmental Implications of Transactions Legislation	Table

Social Considerations

The social aspect of **ESG** relates to a wide range of issues and considerations. It is particularly prominent in the employment and compensation sphere and can relate to issues ranging from the working conditions within a business to a business's emphasis on diversity and inclusion. However, it also arises in a company's commercial relationships and external commitment to causes. When businesses do not meet expected standards in these areas, it often impacts reputation, shareholder perception, and even share price, as well as the ability to attract investors and retain policies. As a result, it is critical that employers carefully consider and address issues such as working conditions, executive pay, diversity and inclusion, discrimination, and harassment. Maintaining detailed policies and procedures is especially critical in this area, and also ties into the Governance Considerations discussed below.

Practical Guidance Documents	Practical Guidance Content Type
Discrimination and Harassment	Practice Note
Duty to Accommodate: Training Presentation	Practice Note
Workplace Health and Safety in Canada	Practice Note
Workplace Violence and Harassment: Training Presentation (ON)	Practice Note
Equal Pay and Pay Equity	Practice Note
Human Rights in the Workplace (AB)	Practice Note
Human Rights in the Workplace (BC)	Practice Note
Human Rights in the Workplace (Federal)	Practice Note
Human Rights in the Workplace (ON)	Practice Note
Equal Pay and Pay Equity	Practice Note
Equity Compensation	Practice Note
Workers' Compensation (ON)	Practice Note
Cultural Awareness in the Workplace	Practice Note
Diversity Disclosure Obligations (Canada)	Practice Note
Say-on-Pay Voting (Canada)	Practice Note
Business and Human Rights in International Jurisdictions	Practice Note
Diversity and Inclusion in International Jurisdictions	Practice Note
Executive Compensation and Employee Benefits in International Jurisdictions	Practice Note
Accommodation Policy (ON)	Precedent
Anti-Harassment and Anti-Discrimination Policy (AB)	Precedent
Anti-Harassment and Anti-Discrimination Policy (BC)	Precedent
Anti-Harassment and Anti-Discrimination Policy (Federal)	Precedent
Anti-Harassment and Anti-Discrimination Policy (ON)	Precedent
Discrimination and Harassment Training Presentation: Post-Training Assessment Questions	Precedent
Discrimination and Harassment Training Presentation: Post-Training Assessment Answers	Precedent
Gender Transition Policy	Precedent

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Anti-Sexual Harassment Policy	Precedent
Sexual Harassment Policy (Sample)	Precedent
Honesty, Integrity and Company Image Policy	Precedent
Director Resolution: Say-on-Pay	Precedent
Say-on-Pay Policy	Precedent
Shareholder Resolution: Say-on-Pay	Precedent
Diversity Disclosure Clause (Proxy Circular) (CBCA) (Sample)	Clause
Harassment and Discrimination Representations and Warranties Clause	Clause
Corporate Social Responsibility Representations Clauses	Clause
Equality and Diversity Clause (Cross-Border)	Clause
Accommodations for Employees with Disabilities Clause	Clause
Human <u>Resource</u> Documents Checklist	Checklist
Discrimination Complaint Prevention and Response Checklist	Checklist
Disability Defined by Jurisdiction	Checklist
Employment Equity Act Compliance Checklist	Checklist
Employment Equity: Communication Plan Checklist	Checklist
Sexual Harassment Policy Checklist	Checklist
Duty to Consult Indigenous Groups: Key Considerations Checklist	Checklist
Employment Discrimination: Prohibited Grounds by Jurisdiction	Table

Governance Considerations

Governance is an important aspect of **ESG**, as it tells investors how a company's management and board of directors address stakeholder needs, ensure transparency and accountability, and comply with the various requirements aimed at these goals. Topics like the structure of management, board composition and committees, and executive compensation gain particular attention from proxy advisory firms and investors generally. In-house counsel typically play a critical role in identifying the needs of the corporation in this area, and establishing policies and procedures to mitigate risks and improve governance frameworks. Investing in **ESG** initiatives as a company, including establishing good governance, has been shown to improve performance and financial outcomes for companies overall, meaning that aligning corporate governance and strategy with **ESG** initiatives is beneficial on many fronts.

Practical Guidance Documents	Practical Guidance Content Type
Board Composition Requirements	Practice Note
Code of Business Conduct and Ethics Presentation	Practice Note
Corporate Governance: Documentation and Framework	Practice Note
Corporate Governance: Introductory Concepts	Practice Note
Corporate Governance: Roles and Responsibilities	Practice Note
Corporate Governance Best Practices: Use of Industry Standards	Practice Note
Director and Officer Duties and Liabilities	Practice Note
Director and Officer Duties and Powers	Practice Note
Director and Officer Liability and Indemnity	Practice Note
Governance in Outsourcing	Practice Note
In-House Counsel as Leaders	Practice Note

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Risk Management	Practice Note
Equity Compensation	Practice Note
Say-on-Pay Voting (Canada)	Practice Note
Executive Compensation and Employee Benefits in International Jurisdictions	Practice Note
Audit Committee Charter (Public Company)	Precedent
Audit Committee Charter (Public Company) (Alternate Version)	Precedent
Board Assessment Questionnaire	Precedent
Board Committee Assessment Questionnaire	Precedent
Board Mandate	Precedent
Code of Business Conduct and Ethics (Public Company)	Precedent
Code of Business Conduct and Ethics (Public Company) (Alternate Version)	Precedent
Code of Business Conduct and Ethics (U.S. Company)	Precedent
Code of Conduct and Disciplinary and Dismissal Procedure (U.K. Company)	Precedent
Compensation Committee Charter (Public Company)	Precedent
Compensation Committee Charter (Public Company) (Alternate Version)	Precedent
Disclosure Committee Charter	Precedent
Disclosure, Confidentiality and Insider Trading Policy	Precedent
Governance and Nominating Committee Charter (Public Company)	Precedent
Governance and Nominating Committee Charter (Public Company) (Alternate Version)	Precedent
Risk Management Committee Charter	Precedent
Whistleblower Policy (Public Company)	Precedent
Whistleblower Policy (Public Company) (Alternate Version)	Precedent
Legal Services Procurement Project Plan	Precedent
Value of In-House Legal Teams	Precedent
Creating a Compliance Program Checklist	Checklist
Board Committee Compliance Checklist	Checklist
Board Mandate Checklist	Checklist
Board or Committee Assessment Issues and Processes Checklist	Checklist

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End of Document