

Supporting your ESG needs

Grow | Protect | Operate | Finance

ESG impacts every organization, everywhere. A range of stakeholders are holding business to account for its impact on people and planet. For many organizations, ESG also presents opportunities.

This truly global dynamic requires change informed by rapidly evolving global and local disclosure and compliance standards and regulatory regimes and court judgments across the world.

ESG legal advice protects you from liability risks that arise from the gap between established regulation and the standard of care that society expects business to adhere to. It enables you to confidently grow, meet environmental targets and deliver impact, and can allow your organization to shine.

What makes our advice different

ESG & Sustainability issues are not separate issues; that's why we provide an "all of the firm approach" with comprehensive and multidisciplinary advice, with a finger on the pulse in local markets.

Our **"all of the firm"** approach means combining specialisms from our different practice groups to provide you with tailor-made assistance based on your industry needs, business objectives and the particular phase of your business life cycle.



This **comprehensive** advice we provide extends to all Canadian and International sustainability related legal frameworks, policy instruments and standards.



To meet all needs, we can draw on other professional teams within our firm, such as Innovation & Legal Technology team and Dentons Global Advisors, to provide complete, **multidisciplinary** advice.



Key service areas

M&A ESG due diligence

We assess a broader range of liability risks arising from environmental and social impact than traditional permit, compliance, legacy pollution, and health and safety at work risk. We use the Dentons ESG Impact Filter to produce an ESG frame of reference for the diligence exercise. This enables a business with an ESG proposition to understand gaps in the performance level of a target. The deliverable here is a transition report that informs risk management post-closing.

Greenwashing defense

Claims that overstate the environmental or social performance of a business or product are misleading and create an unfair advantage. This underpins litigation in several ways: shareholders who argue that an enterprise-wide misstatement detrimentally impacts value; misled consumers who have paid a premium; and NGOs'/activists' actions founded on tort. We assist with the framing of environmental claims and commitments; the substantiation that must be undertaken; and the defense of investigations/actions.

Competition and consumer protection regulation

Our competition and dispute resolution lawyers also have experience advising on and defending against greenwashing risks tied to investigations and enforcement actions by regulatory bodies. In particular, recent years have seen a dramatic increase in greenwashing complaints by activists and other third parties to the Competition Bureau premised on alleged violations of the *Competition Act's* criminal and civil prohibitions on deceptive marketing. Companies also face risks under similar laws enforced by provincial consumer protection authorities. We assist clients in complying with the evolving regulatory framework relevant to ESG claims, constructively engaging with agencies and defending against actual or threatened complaints or enforcement actions.

Supply chain management

With the emergence of regulatory regimes in Europe and modern slavery and forced labour import prohibitions and reporting laws in multiple countries, and the proliferation of international sanctions regimes, importers need to assess risks and exercise due diligence on their full supply chains. New environmental regulations also require that companies know the carbon footprint and other environmental impacts of their supply chains. This creates a new dynamic between legal and procurement functions. We can help in supply chain risk assessment and mapping, supplier intake and know-your-supplier protocols, supplier codes of conduct, procurement policies, contract redrafting, management systems implementation, auditing of supplier representations and evidence preservation. With high risk supply chains, this may involve far-reaching work, including industry-wide collaborations (which brings anti-trust into play) and creating verifiable schemes to track sustainable, ethically sourced raw materials.

ESG legal risk management

In respect of specific environmental and social impacts, the standard of care consists of (1) statutory responsibilities of business, and (2) societal expectation of acceptable performance levels. The former is rapidly changing as governments legislate to reflect ESG requirements. The latter can be seen in global case law and anticipated from indicators of societal sentiment. Our ESG legal risk management systems are built on a baseline that arms you with knowledge of both. Visibility of the statutory responsibilities is provided through jurisdictional content covering disclosure and reporting obligations and additional regulatory duties and requirements. An understanding of societal expectations is provided through global case law and activist trends.

Carbon advisory

Dentons' lawyers are architects of emissions trading and strategists behind greenhouse gas regulation, emission reduction solutions and monetization. Regulatory requirements, emission reduction project protocols and environmental commodity transactions can be complex. We advise emitters, exchanges and clean-tech project developers. We also help governments deliver world-class, world-first carbon strategies, such as carbon capture and storage programs. Our depth and breadth of experience means we can provide the insight and practical advice that makes these challenges manageable.

Climate-related disclosure

Dentons lawyers have been advising clients on making appropriate climate-related disclosure under voluntary frameworks like the Task Force for Climate Related Financial Disclosure. We have been assisting clients in preparing for making climate-related disclosure pursuant to the International Sustainability Standards Board's Climate-Related Disclosure Standard (S2) as well as under the proposed Canadian Securities Administrators regulatory requirements (proposed national instrument 51-107) and the US Securities and Exchange Commissions proposed rules. Dentons lawyers are also familiar with the OSFI Guideline B-15 disclosure requirements applicable to federally regulated financial institutions and advise on the implications of those requirements for banks, insurance companies and other organizations.

ESG governance

Dentons lawyers pro-actively advise clients on the implications of ESG-regulation and disclosure requirements and trends on their governance processes and structures. Using materiality-based analysis we can advise on appropriate structures that are both effective, efficient and reflective of a client's unique circumstances and the evolving regulatory and risk environments.

ESG disputes advice

Dentons dispute resolution lawyers are adept at pursuing claims involving breaches of contractual representations and warranties, indemnities, and other matters relating to ESG assurances along with addressing defences raised regarding purported breach of ESG obligations whether in domestic or international litigation or arbitration, including under investor-state treaties. We can advise with respect to appropriate strategy when facing a potential claim and help you navigate the nuances of disputes once they arise based on your commercial goals.

In addition to the above themes, we also provide a range of bespoke advisory solutions to support your ESG journey. This includes ESG strategy development, materiality and agility assessments, sustainable finance, funds and tax advisory.

Key contact



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