

ON THE HORIZON:
EMERGING TRENDS AND
REGULATION IN COMPANY
GOVERNANCE
A Mini Guide

Certified



Corporation

Introduction

Has all the press around COP26 and the IPCC report made you think about what the legal landscape might look like in 2030 and how that might affect your governance? Have you heard about B Lab's **Boardroom 2030** campaign and wondered what it means for you?

There is growing concern in the UK that capitalism isn't working. Campaigns like the **Better Business Act**, the **British Academy's Future of the Corporation** summit and movements like **B Corp** are gaining traction, fast. Recent **research** shows that younger people in particular, but also the UK population in general, are less likely to have the wool pulled over their eyes by greenwashing practices and that they want businesses to address social and environmental issues.

What can you do to make sure that your company isn't left behind in this groundswell of change and where should you start? We've put this guide together to look at the likely trends and regulation over the coming years and to suggest steps you might want to think about to future-proof your business.

Triple bottom line

There is an increasing movement pushing for business to take a triple bottom line approach, where environmental and social considerations have to be taken into account alongside financial interests in company decision making. In the past, socio-environmental interests have been seen as in conflict with financial interests. However, that assumption has been challenged, and likely will be completely archaic by 2030. The trouble is that while there are countless well-meaning, innovative and excellent entrepreneurs using the levers available to them to thrive in a sustainable way, the change is not widespread or fast enough. The trend towards conscious consumerism is expected to ignite a legal revolution to improve business practices.

What can you do about this?

- **Look at your company's purpose and values**, are they reflected in the way you operate and the products or services that you sell? If not, think about steps that you can take to address this.
- **Do you want to take a triple bottom line approach?** If so, you might need to articulate and embed purpose in your governing documents and get consent from your key stakeholders. You can find out more on the **Purposely** website or by getting some advice from one of our experts.



Regulation

By 2030 we should expect to see increased regulation to tackle social and environmental issues. What is called environmental law has typically been constrained to businesses or practices which directly affect the environment, in the sense of physically affecting it, but we would expect the entire regulatory landscape to be infused with environmental law factors over the coming years. This reflects the acceptance that all business practices have an effect on our world and the urgent need to address the climate crisis.

Recently passed and expected regulation and guidance that could affect your organisation:

- The Companies Act currently embeds the idea of “shareholder primacy”, which is the idea that companies exist to make profit for shareholders. This idea is clearly no longer fit for purpose. The Better Business Act is seeking a change to director duties so that other important considerations are equivalent to shareholder interests. If passed, this will require all company directors to give real weight to things that society as a whole considers to be important and will empower more progressive directors to take decisions that they might not otherwise have been able to take.
- The European Parliament recently adopted a resolution with recommendations to the European Commission for a directive on mandatory human rights, environmental and governance value chain due diligence. The directive would apply to non-EU undertakings that operate in the EU’s internal market by selling goods and providing services, so we can expect this to have an impact on UK based companies supplying Europe.

- The Department for Environment, Food and Rural Affairs (Defra) recently announced that it is introducing new clauses to the Environment Bill that will prohibit UK businesses from using products grown on land that was deforested illegally and will introduce a new due diligence requirement in respect of deforestation in businesses' supply chains. As and when these requirements come into force, customer organisations are likely to push these requirements up their supply chain.
- The Competition and Markets Authority has recently set out some **guidelines** to help companies avoid making unsubstantiated sustainability claims. This signals not only a shift in people's expectations but also that there is appetite to encourage better practice from the state.



Resilience

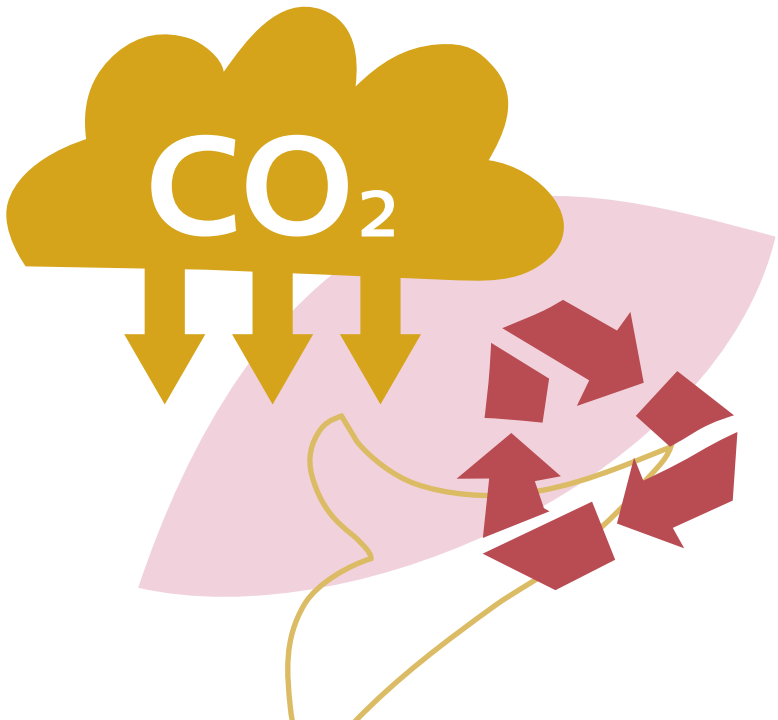
Taking account of environmental impacts are increasingly critical to business and the last couple of years have shown us that we need to build resilience and flexibility into our businesses if we are to survive. A range of factors from the pandemic to the climate crisis to Brexit will increasingly have an impact on day-to-day operations. Building resilience now just makes good business sense and we would recommend that boardrooms of today start to plan for this from now.

Some ways to do this could include:

- **Think about how you can build sustainability into your corporate strategy.** If you haven't already, set targets and work towards reducing your emissions and operating in a way that minimises your impact on the environment.
- **Look at your supply chain,** are there any weak links in the chain? Do your suppliers have sustainable and fair practices that mean they are more likely to survive in challenging times? If you do a lot of work to build sustainability into your operating but don't address your supply chain, you could get tripped up. Think about working with other purposeful businesses where you can and be clear about how your suppliers operate.
- **Think about your building or property strategy in a more rounded way.** **Research** is showing that buildings that take wellbeing and sustainability into account result in a more productive and happier workforce. Think about how your work space helps you to meet your environmental aspirations – what are the emissions from it, what are the waste facilities like, how clean is the air inside the building, how does it work for your people?

- **Look at your tax affairs.** Businesses which aim to be tax efficient, using offshore entities to avoid paying their fair share in UK tax, will have to reconsider whether this is still appropriate in light of the fact that social and other considerations will be as important as financial interests.

This is all a manifestation of a longer-term way of thinking about business. It is no longer appropriate simply to think of short-term financial interests as the world has become too fragile for that. The recent fuel crisis shows not only the need to move away from fossil fuels but also the impact that one disruption in the supply chain can have on business. We would expect that boardrooms of the future will need to have a dedicated person or sub-committee looking purely at resilience.



Investments

We anticipate that by 2030 there will be changes to the law that are likely to impact the fiduciary duties of those in charge of investing our money. This includes the trustees of investment and pension funds as well as those charities with larger investment portfolios. This means that boardrooms should start thinking about where their investments are held now with a view to staying ahead of regulatory change and avoiding any cliff edges. Certainly, by 2030, boardrooms will need to ensure their investment portfolios are consistent with socio-environmental factors.

- **Look at where your investments are held** and what sorts of activities they fund, if they fund activities that do harm you might want to consider making changes now.
- A quick and hugely impactful act is to **change your pension investments**. If you have a workplace pension in place, can you switch to more sustainable funds?
- **How green is your bank?** Do you know whether their investment practices align with your values? If not, should you?



Accountability

Of course, these legal changes are blunt tools if there is no accountability.

This word – accountability – is a cornerstone of the recent **British Academy report** which calls for purpose to be brought to the heart of business.

Accountability also features in the recommended legislative amendments suggested by the Better Business Act. This would require directors to include in their annual report a statement of how they have satisfied their duties by placing stakeholder interests on parity with financial interests. We would expect that reporting requirements will become increasingly focused on social and environmental factors by 2030, so boardrooms would be well-advised to start thinking about whether their reporting structures merely meet current regulatory requirements or whether they go further than that. Many purposeful organisations like B Corps will already be ahead of the curve on this front.

- **Start measuring and reporting on your impact now.**
- Think about your strategy and whether this meets your organisations needs and aspirations.
- Can you set KPIs that help you to meet your obligations and aspirations and build achieving these into your performance and appraisal system?
- Think about what your stakeholders want to know about your business and how you can go about being more transparent with them.

We believe that we are in the relatively early stages of a fundamental shift in the type of capitalism applying to our society. Even those who have typically been advocates of free market economics are shifting the way that they speak about business; for that reason, we think these changes are likely to happen within the next few years.

Get in touch



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Making a profit is core to all businesses but our goal is to combine this with a real social purpose. Our values are important to us, they shape our decisions and our working life.

Since opening in 1970, we've focused on positive social impact as much as we have on being a successful law firm and we were the first UK law firm to achieve B Corp certification.

Today, our clients are diverse – from corporate household names, to public bodies, to start-ups. We're also the firm of choice for thousands of charities and social enterprises. We continue to lead the market we helped to shape.

As a purpose and values driven firm we show commitment to our clients, our people, the environment and society. We see it as our purpose to create a positive impact. The impact we have on our people, our communities and our planet does more than inform our work – it gets us up in the morning.

Bates Wells challenges what is possible in legal expertise delivery.

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