



REPORT

Drilling Down

Boards are expected to meaningfully report on their actions in regards to ESG matters

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The growth in importance of environmental, social and governance (ESG) matters as issues of boardroom significance has accelerated of late. There has been something of a gear-change in the expectations placed on companies to operate in a responsible and sustainable way and to report meaningfully on their actions.

Those reports are now required to be ever-more detailed and specific. Comforting generalist remarks, confirming the organisation has implemented appropriate policies, and boilerplate assurances on the commitment the business has to operating sustainably, are no longer sufficient.

Investors, in particular, are becoming increasingly specific about the detail they require and there has been an especially marked rise in the interest they take in human rights issues. To a greater extent than ever before, institutional shareholders are drilling down into the detail on how human rights are protected by businesses and their supply chains and they are expecting boards to step up with comprehensive answers.

The United Nations, in its guidance *Guiding Principles on Business and Human Rights*, is also clear that, how an organisation approaches protection of human rights is a board level issue. The

guidelines require statements of policy on human rights to be approved at the 'most senior level', to be informed by expert advice, to state the company's expectations of its suppliers and other partners and to be embedded throughout the organisation. The first of these requirements is perhaps no surprise given that the latter cannot be achieved without leadership from the top.

Since the United Nations' 1948 Universal Declaration of Human Rights, the freedoms that all people should enjoy have been internationally understood and agreed. Several of these rights relate directly to the working environment and conditions, for example the right to reasonable limitation of working hours and periodic paid holidays, the right to join a trade union or the right of remuneration at a level to support a dignified standard of living.

The situation can be more complex, however, when business interests become entwined with those of the state as HSBC discovered when it froze the accounts of certain Hong Kong pro-democracy activists. The tightening controls implemented against Hong Kong by the Chinese government and disqualification of members of the opposition from parliament have been roundly criticised internationally as breaching the Sino-British joint declaration and concerns about China's record on human rights

continue to escalate. HSBC have argued that they had no choice but to freeze the relevant accounts as they were under a legal obligation to do so. HSBC have undoubtedly been put in the most unenviable situation but, nevertheless, they face suspicion that they are placing their commercial interests above their obligation to protect human rights.

For most businesses, human rights issues will be less political than this HSBC example and more likely to relate to areas within the company's immediate sphere of influence, including their own and their suppliers' employment, health and safety and anti-corruption practices. This is not to say, however, that such issues cannot still be nuanced and less than straightforward. How does a business determine, for example, what it classes as adequate remuneration to maintain an acceptable standard of living? Is it enough to pay workers in a developing country sufficient only to provide food, clothing, shelter and medical care for the family notwithstanding that such a basic standard of living may not be considered enough to meet the dignity threshold for workers in richer countries?

The issues are undoubtedly tricky but, regardless, there is no hiding from them. There used to be a widely accepted view that doing business in certain countries required the payment of inducements. And yet, when the Bribery Act 2010 introduced personal responsibility and sanctions for directors, such practices were quickly barred through the implementation of robustly worded internal policies and compliance checks. It demonstrated that change is possible if the consequences of maintaining the status quo are sufficiently unattractive.

To borrow a quote from a 1783 anti-slavery speech by William Pitt the Younger, "necessity is the plea for every infringement of human freedom". In other words, being able to find an excuse for slavery did not justify its impact on others. This principle holds true today and the condemnation HSBC has endured recently has lessons for us all. The bank undoubtedly appears to have been very much caught between a rock and a hard place for which it must generate our sympathy, but its decision to comply with Chinese orders has arguably caused it to undermine its own stated commitment to the protection of human rights and, as such, it cannot expect to be immune from what follows.

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