

COVID-19 and ESG: Empowering change during uncertainty



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Have the recent events of 2020 influenced how businesses value culture, diversity, and mindset?

The pandemic has brought on many changes for organizations around the world as they raced to support the health and safety of their employees and protect the overall well-being of their businesses. While there have been many fallouts as a result of the pandemic, there have also been some unintended but positive changes in the way businesses operate.

This paper outlines some of the highlights and themes that emerged from a recent virtual roundtable with some U.S.-based clients on how environmental, social, and governance (ESG) issues have helped empower change during a period of uncertainty.

This roundtable was part of Reed Smith's wider series designed to create a platform for senior business leaders, general counsel, and senior management representatives to share experiences, discuss live issues, and explore solutions for the future. Our aim is to foster a collaborative peer-to-peer learning environment, allowing clients to participate in informative discussions of real-time and current events in an informal setting.

As our virtual and in-person roundtable events are held under the Chatham House rule, we have confined this report to themes without specific reference to the participants. Where relevant, we have included "lessons learned" that seem to be highlighted and that seemed to emerge during the discussion.

As we continue to explore some of the critical issues on the "to-do lists" of in-house legal teams, we are grateful to our clients for their participation. We look forward to continuing the dialogue with them as we all move together into our global "new normal."



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Please note: Throughout this report quotes in *"blue italics"* are direct quotes from the session

The mindset of environmental, social, and governance

For many organizations, environmental, social, and governance (ESG) has *“taken on a more prominent place”* and *“has been at the forefront”* in management’s considerations. However, it is not always straightforward and often is a *“more complicated answer,”* particularly when it comes to the *“social”* aspects of the equation. ESG has become *“part of the overall company culture, mission, and values.”*

Business leaders in legal departments are taking an active role to aid their companies’ understanding of ESG and to assess areas where implementing new policies could be beneficial to their organizations. *“We have elements of ESG happening in different divisions across the company, but we don’t necessarily have an aggregated look and defined strategy. That is the part that we are trying to bring together.”*

Environmental, social, and governance (ESG)

Environmental, social, and governance (ESG) criteria are a set of standards for a company’s operations that socially conscious investors use to screen potential investments. Environmental criteria consider how a company performs as a steward of nature. Social criteria examine how it manages relationships with its employees, suppliers, customers, and the communities where it operates. Governance deals with a company’s leadership, executive pay, audits, internal controls, and shareholder rights.

What we heard from clients



While an ESG policy was a “nice-to-have” prior to COVID-19 and the ‘Black Lives Matter’ movement, it has become an elevated priority for organizations adapting to the “perfect storm” of 2020’s societal unrest, community health insecurity, and economic uncertainty.



Companies that previously were not familiar with the definition of ESG and how it might apply to them can benefit from engaging external counsel or consultants for guidance.



To be most effective, clients suggested exploring how to objectively measure ESG in order to develop a true standard “guide” for business and cultural change.



“Integrating cultures [following a merger] is the real battle and needs to get done right”

Lessons learned



ESG policies can be a useful guide when integrating businesses after an M&A transaction. *“The integration of our businesses has been typically led by what makes sense for scaling, but sometimes [integrating] the people, who come in with the business, is the hardest part. Even if you can figure out logistics from a technological standpoint, if the people don’t want to come along, and aren’t ready from a mindset to let go of the old and be part of one new, [the venture] is not going to [succeed].”*



While not easy, management’s focus should be on *“finding a way to fully integrate from a mindset perspective for all to be one part of the team vs. having two cultures, branding, and ways of doing things.”* *“You can figure out the technological barriers, silos, but [it is] much more difficult for the human element.”*



Cultural integration may take time, and there may be holdover areas that may never fully mesh. *“The completion of the work to bring together the two significant cultures never got done until recently, and there are remnants of two separate worlds out there. The depth of ESG work in each of those corporate heritages varies differently.”*



Clients noted that external resources could be helpful for comparative purposes and for providing a wider picture of what is happening across different sectors and geographies. Some companies have tackled some of their longstanding issues by taking proactive steps to implement change: *“We brought in a consultant to help with a gap analysis of where we are and where we want to be from an ESG perspective.”*

A new wave of costs for businesses

Businesses and organizations have had to embrace a wave of changes to supply and demand and become much more creative in the way they operate in 2020. For example, the rise of online sales has created a path for brick-and-mortar retailers to continue to engage with their customer base, and for some, has even led to increased revenue. However, this has led to a significant change in the form of new costs for them to assume.

Businesses have not previously needed to consider the additional labor costs of employees working in an environment involving new ways in which consumers are interacting with businesses. *“Third-party delivery services are contributing to an increased cost model.”* In the traditional way, *“if the customer does [their shopping], the cost is on them picking stuff out of the shelves... If the business does introduce enhanced safety measures for their employees, it is an additional cost”* which they have had to assume. For publicly traded companies, *“these are some of the things that we have to think through. How do we do it efficiently and still demonstrate growth as a new player in the public markets and be able to win/take into consideration all the stake holders?”*



What we heard from clients



Increased online delivery sales and new demand models are impacting cost trends and revenues, even for thriving companies. The loss of revenue from traditional retail bases and the additional labor costs to address the increase in e-commerce demand have been added to the equation.



Clients are working through the development of new, profitable models, while considering any follow-on effects of pass-through costs on the consumer – particularly those economically affected.



Decentralization vs. centralization – one size does not fit all.

While we tend to frequently hear about businesses employing “*decentralized*” models of operation, there are organizations that are moving in the opposite direction for a greater “*centralized*” structure. This has resulted from the forced trend of remote working post-COVID and the unintended “*benefits*” it has brought with it. Businesses have realized that they can now recruit talent across borders, states, and beyond and that it is not always necessary for key personnel to work at the central operation, i.e., headquarters. The new era of remote working has regenerated the old debate of decentralization versus centralization for certain businesses.



As an unplanned consequence of the current remote working environment, a key lesson learned is for management teams and senior executives to review their long-term business strategies *“in light of the current environment”* as they *“calculate where to place [their] resources”* with a view to enhancing their talent and outlook.

As part of the climate of change that COVID has unintentionally inspired, some of the recent boardroom-level conversations that are guiding current business decisions have touched on:



Leveraging scale

“Some [of our] markets have a franchise model, each with a varying level of obligations and different amounts of risk. [The company] is looking to leverage its scale to achieve its sales goals. There has been the desire to move quickly and address the current situation. The only way to do this is to come out with one solution and try to have it fit all as best as possible. This has helped us to centralize.”



Smaller footprint

“We’ve discovered that we don’t need four floors in an office building in a posh neighborhood in Paris – we can move to the suburbs or maybe we need only two floors. This is the part of working in a remote environment that people are waking up to.”

“Do we need to have large internal meet-ups if it gets the same effect remotely? Maybe bring people together less often – every other year or quarterly? There is a lot of questioning and support that things can be done virtually.”



Technology best practices

“We want to deploy technology to have a standardized way of doing business.” This is particularly true for businesses that have utilized an in-person social selling model in the past and are moving into social media.

“Technology has been a tool that we’ve used to talk about changes faster. It has been difficult, we have all been impacted by this... But from a pure business day-to-day standpoint, it has helped our company go in the direction we want to go in.”



Implementation of a more flexible business model

“Do we have to have everyone here [at headquarters]? Now that we’ve proven to ourselves that we can be effective and efficient remotely, why do we want to lose out on talent that doesn’t want to live in a particular place? Why do we want to invest the expense? If I get you to move and your heart isn’t in it and you get an opportunity to go back to where you want to be, you probably will go.”

“Management is starting to get used to lower levels of expenses by saving on real estate, travel, and entertainment expenses... Teams in the financial arm look at that and see that we are still operating and sales are increasing. Do we need those expenses? Maybe redirect these investments into salaries or other items that help people in getting used to this environment.”

What we heard from clients



The desire to develop a better organization has aided the drive toward, or away from, a centralized business model. Businesses are revisiting discussions around how to maximize leverage of their current footprint, technology, and budget allocations, while considering necessary reductions. There is a collective sense that proper balance of these elements is *“more art than science.”*

The many facets of diversity

The events of 2020 have been a catalyst for global corporations and businesses to start a discussion and take action in the hope of breaking down barriers of racial inequality in the corporate world.

Diversity and inclusion (D&I) emerged as a common underlying theme as our roundtable explored ESG, providing segue to the practical changes corporations are making, or need to make, in order to promote a truly inclusive workforce. Some of the areas discussed include:

The global nature of diversity

While diversity is currently *“front and center”* in the United States, *“we need to stay mindful”* of the fact that *“oppression of minority people is a global issue.”*

U.S.-headquartered organizations with significant international business are reflecting on and working to balance domestic initiatives with their local partners. Global communities may be at varying stages of reckoning, but U.S. offices can lead by example in *“coordinating deliberate responses”* to domestic issues. *“What we are focused on in the U.S. is how it is playing out here.”*

Management is asking *“How are others around the globe reacting to this?”* *“Are we weaving into our [diversity and inclusion] message that this is a global issue?”* *“Let’s ask questions, let’s see what happens.”*

Diversity starts at the top

Clients recognized the importance and need for strong leadership and management engagement to help make real progress in overhauling the existing workforce structures and to help implement more diverse representation. It was also suggested that current managers could benefit from modeling the efforts of similar organizations that have been successful *“and further along in their diversity conversation.”*

As a starting point, clients suggested taking a *“hard look”* at the *“underrepresentation of diverse talent in the ranks”* across all levels. Organizations are *“leveraging a remote environment to bolster diversity ranks. Not everyone will want to move to where [a] company is located – that’s OK. [One’s] best work is done when someone feels happy where they are.”*

An important challenge will be in *“sustaining representation [on board and in management] and understanding the value that it adds.”* Organizations with very few diverse people run the risk of being *“just one bad day away from having no [diverse] talent.”*



“This is much more important than check writing”



While diversity is currently *“front and center”* in the United States, *“we need to stay mindful”* of the fact that *“oppression of minority people is a global issue.”*

Legal guiding corporate responses and efforts

There is a general sentiment that the business world is only at the beginning of their D&I journey. *“There is much more work to do.”*

Many corporations have *“made the statement, written the check, created a diversity counsel, dusted off ERG [Emergency Response Guidebook],”* but there is a genuine drive from clients that their *“actions have an impact at a systemic level.”* *“We are [being] careful that we aren’t just doing things that look good on the outside. We are looking to grapple with issues in order to come to understand why there is a leak in the pipeline in our organization.”* *“Some corporate responses have been troubling.”* There therefore seems to be a genuine desire for change, and the mood has shifted from that of a tick box exercise to a genuine need for change – and the change to stem from the top.

Brick-and-mortar businesses with local presence have a *“particular opportunity to be an amazing partner to the community because of their local connection.”* In order for them to be the leaders for implementing changes, their management are *“not just looking at the representation in [their] workforce, but how they partner with communities to unlock deeper areas of collaboration.”*

Training has also become a forefront priority within businesses as part of a *“post-George Floyd movement.”* Businesses with in-person customer interaction have become *“aware of the implication an ill-trained employee”* can have. Legal is helping to steer the conversation internally, asking: *“Are we ready? Have we trained people? Have we elevated awareness? Have we looked internally to decide when to make a call to authorities or to make other decisions? What have we learned?”*

What we heard from clients



The shock of major events in rapid succession, and their fallout, added another layer of responsibility and commitment to many organizations’ well-being – leaving businesses to ask *“How [do we] integrate, drive forward, and heal?”*



While conversations around diversity were running on a parallel before COVID, the question now is: will different cultures (corporate and global) hear the call and adapt? Is it sustainable to only *“walking the talk”*? Diversity has now become a priority item on the corporate agenda with a desire for changes pushed by management and employees alike.

Returning to the office – the debate continues

While there is collective sentiment of wanting to regain a “pre-COVID” sense of functioning at an organizational level, some businesses are understandably taking a cautious approach when looking at the “return to office” phase of recovery. Managers continue to seek out ways to engage with employees to maintain productivity, collaboration, and morale, but are not necessarily in a “*rush*” if teams have adjusted and have been “*equally as successful remotely.*”

What we heard from clients



Remote working has its evident advantages and disadvantages, however the safety of and concern for organizations' employees is paramount, particularly the critical on-site staff. As this period of unknown continues, the sentiment to have staff physically present in the office is becoming louder across a number of verticals.



The dialogue continues, and solutions will emerge that limit potential harm to employees in an effort to improve productivity. However, in the interim, businesses continue to operate in an environment of flexibility and, to some extent, uncertainty.

Lessons learned



Investments in technology spurred by the initial waves of government restrictions helped historically reluctant sales teams to embrace new ways of working, with surprising success. Sales teams have been able *"to reach beyond who they can have physically present."* *"Now that we are utilizing technology, our sales partners are able to be more impactful."* One client noted, *"we made sure that we all had the technology that we needed, and we realized that 'wow, we are built for this.' So, what does that mean going forward is the next challenge? What does that mean for our real estate holdings and usage and those costs to the business?"*



However, this period of change has not been without its difficulties. *"It has been particularly difficult for the business that had a culture of meeting people face-to-face, having sales rallies – and now all that is virtual. This has been a cultural shift for a lot of people."*



An emerging foremost concern, outside of protecting continuity of the business, is the consideration of the sobering reality and the risk for people. *"While there are downsides of missing the connectivity [in remote working], is it worth losing someone's life? Especially when you have a small segment of the workforce that must be on-site. We cannot risk that population because some want to be in the office."* *"No company wants the headline to be that they rushed back to the office and that there was an outbreak, and someone dies."* *"We want to achieve productivity, but at what cost?"*



Management and legal are engaging in these conversations in the open and listening to the concerns of employees across organizations. Some businesses are considering operating in the "new normal" until there is *"a vaccine that has been proven to work well and [we] have other therapeutics."*

Adaptation through a shift in mindset

Consistent with discussions at our other roundtables of our 2020 series, discussion around accelerated change emerged as an important silver lining as a result of the pandemic. In order to adapt, clients credited a collective shift in *“mindset that has come out of the needed quick response”* driving *“change that otherwise we would have studied for quite some time”* before being implemented.

Pre-COVID, *“if we told [segments of the business] that we had to do certain things, we would have had to spend [a considerable] amount of time to study it, think about it, resist it, versus overnight saying that we are [making the change].”*

This is particularly true with “brick-and-mortar” businesses, who at the beginning of the lockdown period had to rapidly embrace an online strategy and work through contactless purchasing and delivery alternatives. *“For those in the technology and e-commerce side of the business, they are thrilled that the agendas that they have been working on are front and center.” “Enough piloting, go now!”*

This more flexible mindset also seems to have had an impact on management’s attitude toward staff and remote working. *“Before, we would have thought that certain segments of the business could not be done remotely. We*

thought people had to be sitting ‘butts in seats’ in certain parts of the business, because ‘that’s just the way it was.’ ... All of a sudden, we were able to make that shift almost immediately, and it was done seamlessly.”

Now that organizations have *“proven an ability to adapt to change and [make] a cultural shift in thinking,”* management is shifting focus to how to maintain the same *“nimbleness”* without an external trigger. *“What we have to work on is our ability to lean into change and not have it brought out of us only because of a pandemic.” “It is great that we could respond so effectively, but what have we learned about ourselves in doing what we would have resisted? What other things are there that we are inclined to resist, but need to do differently?”*

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What we heard from clients



Do not waste a crisis – At the most successful businesses, management will reflect on the lessons learned from their decisions to balance the cost/benefit of this reality – reallocating assets, both financial and human.



All of the challenging elements that culminated in 2020 must be met head-on in order to position businesses for future and continued success and to ensure their longevity. There have been increased calls for action, spurring a *“lean into change”* across organizations. The current crisis has had some serious and fatal consequence for many, but it has also led to some unintended positive changes in attitude, mindset, and cultural (business) changes to the way some businesses operate – do not waste the lessons learned from the crisis. It is a time to reflect, react, and reconsider.



“The most important part was the mindset issues...”

Lessons learned



The pandemic has forced businesses and management to think more broadly and to consider what further efficiencies and changes they can implement which they previously would not have considered or would have thought impossible to implement without triggering a change in their business model. It has encouraged *“outside-the-box”* thinking, flexibility, and a desire for making more positive changes, including in the diversity space.



More than ever, management is paying close attention to their businesses and *“closely considering if what they are seeing in the market [is] ‘a new trend, a shift, or a blip.’”*



Leverage trusted resources for another perspective – External counsel can be great partners to businesses thinking through how to continually drive innovation. Clients can directly benefit from the successful practices currently in place with others across industries.



When planning for the future, remember to take into account *“human toll.”* *“There are some costs and benefits [for employees] associated with not being in the [physical] workplace – less in-person connectivity, but an upside of not having to commute, lower real estate footprint, and other issues.”* *“Management is focused on the thinking and mindset behind it which is far more a piece of the puzzle and where we’ve had to readjust.”*

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