

Trends in dispute resolution - ESG compliance and risk management in Africa



By [Darryl Bernstein](#)

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Disputes in Africa continue to grow in complexity as businesses enter new markets against a backdrop of increased digitalisation and tighter regulatory scrutiny. Now business is being called to focus on environmental, social and governance (ESG) strategies as an essential component of their operations and in order to stay competitive. Organisations with operations in Africa must engage meaningfully with ESG to build robust sustainability strategies that meet stakeholder expectations and enable compliance with global and domestic mandatory and voluntary ESG standards and codes. Let's take a closer look at each of these components.



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Governance: Focus on anti-corruption and security

The Governance aspect of ESG, wide-ranging such as it is, has seen an increased focus on anti-bribery and corruption, data privacy and cyber security issues. Baker McKenzie's recently released [Global Disputes Forecast 2022](#) revealed that digital transformation was driving around 30% of global disputes, followed by cybersecurity/data issues (25%).

In terms of the types of disputes expected to be a risk going forward, 57% of respondents said that cybersecurity issues were going to be a major cause of risk in their organisations in the next 12 months. Data disputes were cited as a risk for 46% of respondents. The report also combined the responses for cybersecurity and data disputes, and found that 72% of respondents considered these issues to be a risk, making it the standout disputes risk for most companies in the next twelve months.

The direct risks to organisations include loss of IP and confidential information, theft and fraud, disruption to business and reputational damage. Legal risks flow from these, including regulatory and law enforcement action, claims for breach of contract and class actions for breach of privacy.

Environment: Keeping clean and green

The Environment aspect grows in emphasis as climate change impacts become clearer and nearer. To counter climate change, initiatives in Africa now have a heightened focus on green, low-carbon and sustainable development, via, for

example, clean energy production, community care initiatives, green transport and sustainable water projects, wildlife protection programmes and low-carbon development projects.

Organisations in Africa are adopting new sustainability strategies that address climate change risk and identify the sustainable opportunities that arise from addressing climate concerns.

Countries in Africa that have published climate risk disclosure guidance include Mauritius, Kenya and South Africa. Kenya issued Guidance on Climate Related Risk Management for financial services companies in 2021. The Bank of Mauritius issued guidelines on additional macro-prudential measures for the banking sector, including a standardised approach to credit risk and climate risk management, in April 2022. The Johannesburg Stock Exchange published the Sustainability Disclosure Guidance and Climate Change Disclosure Guidance in June 2022.

Also in 2022, the South African Reserve Bank's Prudential Authority noted that it would "issue specific regulatory guidance in 2023 on its expectations on how climate risks should be integrated into supervised institutions' risk management, governance and reporting processes in accordance with its internal roadmap. This regulatory guidance will be aligned with emerging international best practice." Other countries that have issued climate related regulations or guidance on disclosure, best practice or stress tests, include Egypt, Ghana, Morocco, Nigeria and Zimbabwe.

Social: Workplace culture and employee welfare

The Social aspect emphasises protecting an organisation's workers and the wider local populations in which these businesses are rooted. Organisations are looking at ways to build better social programmes that are more resilient to future pandemics and ensure good business practice.

“ A focus on issues such as enhancing considerations around the health and safety of employees and communities, implementing diverse and inclusive workplace cultures, and building good management teams that can pull employees together in all kinds of remote, physical workplace and hybrid settings, put companies in a strong position to move forward. ”

Updates to frameworks

Some of the larger African jurisdictions have already implemented mandatory ESG and sustainability reporting frameworks and, going forward, more African regulators are expected to replace current voluntary frameworks with mandatory ones or to adopt new mandatory frameworks. In turn, organisations operating in Africa will seek guidance and more detail from corporate regulators on how they want to see ESG reported and the practices behind the reporting process.

In South Africa, there are many laws that govern ESG factors, including business and financial sector conduct, economic and social empowerment and environmental protection. Voluntary codes such as the King IV Code on corporate governance and the Code for Responsible Investing in South Africa also serve as a guide to businesses on ESG

considerations.

Globally, in addition to numerous country-specific laws, there are a plethora of voluntary sustainability-focused codes and standards, including the UN Guiding Principles on Business and the Human Rights and UN Guiding Principles Reporting Framework.

Increasing accountability

ESG risk management has become a mainstream component of corporate due diligence programmes, and corporate boards are being held accountable for their ESG practices by their shareholders, stakeholders and management teams. Risks for non-compliance with the multitude of global and local laws, voluntary codes and best practices governing ESG factors range from criminal prosecution and hefty fines to reputational risk and business failure as a result of not fulfilling ESG commitments.

For African organisations, maintaining a long-term sustainability strategy ensures sound financial performance, full compliance with local and global laws and frameworks, and substantially increased resilience in the challenging post-pandemic socio-economic environment.

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