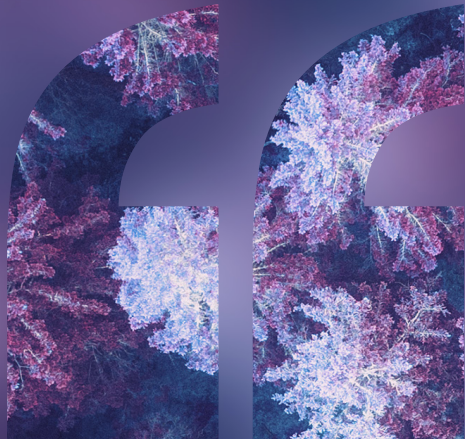
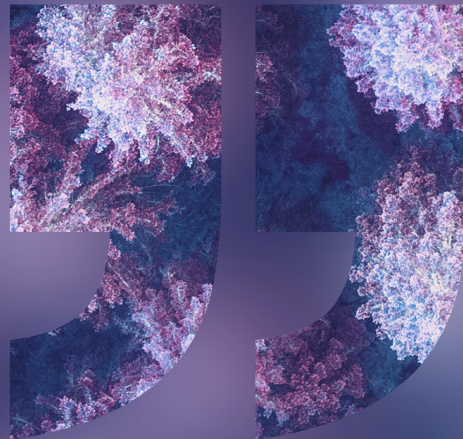


C L I F F O R D

C H A N C E



**WHAT IS THE ROLE  
OF CORPORATES  
IN SOCIETY?**



**— THOUGHT LEADERSHIP**

OCTOBER 2020



## WHAT IS THE ROLE OF CORPORATES IN SOCIETY?

Businesses are under increasing pressure to balance profit and shareholder value, with environmental, social and governance factors (ESG). In this extract from a recent client webinar, Clifford Chance experts discuss the challenges of defining company purpose in increasingly uncertain times with John Barton, current chair of easyJet plc and retailer, Ted Baker plc.

“The role of corporates in society has come under scrutiny over the past few years as trust in many businesses, across a number of sectors, has been at an all-time low,” says Clifford Chance Partner Daud Khan. “The growing importance of ESG has been instrumental in shifting the corporate mindset from a solely profit-driven endeavour to one that engages with the interests and concerns of all stakeholders, from shareholders to customers, suppliers and employees to the communities in which they operate.”

“However, the challenges faced by corporates to enshrine these changes within an organisation have never been as acute, particularly in the face of a global pandemic, and its widespread economic and societal consequences,” says Khan.

It’s a view shared by John Barton, who says that whilst regulators decided a number of years ago that boards should report on their culture, it is difficult for boards to do that objectively. “In truth boards can set a direction, but they can’t change or direct the culture of a company. If you want to know the culture of a company look at the Chief Executive. If they are passionate about ESG that will go through the whole business,” he says.

Barton adds that it’s crucial that a company’s annual report is a clear and accurate reflection of its culture. “I was on a board where the annual report was written by the finance department and the company secretary who would include aspirational goals that they believed the company was adhering to. My question to them was – ‘Can you show that this is true? If you can’t demonstrate it to me then it’s not going in the annual report.’”

Alistair Woodland, co-head of Clifford Chance’s global employment practice

says that one of the biggest challenges for companies is working out how to test and measure a concept as nebulous as corporate culture. “I think there are ways of doing that. You can ensure that it is built into appraisal objectives, into targets, remuneration schemes and plans; that you have training which is specific to the code of conduct; and that training is tailored to the jobs that people actually do and the things they will experience on the ground, so they’re not just dealing with esoteric concepts such as ‘you must behave with integrity,’ but that they actually understand what that means on a day-to-day basis,” he says.

He adds that companies also need to ensure that they have a culture where people feel able to speak up. “You could measure, for example, what happens to whistle-blowers. What happens to the employees who raise those issues and what happens to employees who raise grievances? Are they all magically made redundant, or are the issues addressed?”

At easyJet, Barton says that a whistle-blowing culture is embedded for the safety of passengers and crew. “If one pilot notes another pilot is a bit odd and not doing things they should, then they report them. Neither the reporting pilot, nor the pilot being reported will be punished. It’s very important that whistle-blowers have the confidence of knowing they will not be punished for what they are doing. We will not do that – it’s the only way you can really have a culture of trust,” he explains.

### What are the risks?

Woodland warns that there are risks associated with making statements about corporate values that are not credible to external stakeholders or employees. “There is no better way to engender

cynicism than by having a bunch of policies that people think you don't live up to and that you can't live up to," he says. There are also legal risks, as he explains: "During the Covid-19 crisis, employers, with absolutely the right intentions and wanting to reassure their staff about returning to work, have made rather overblown statements about the measures they're taking to ensure the absolute safety and security of all of their staff when they get into the building. Of course, there are inherent risks in the current situation that you can't, as an employer, completely control and I think sometimes the employers need to be realistic and honest with their workforce about what those limitations are."

He adds that handling issues raised by the Me Too and Black Lives Matter movements are an increasing concern for companies. "Clients have been very keen to speak to us about how they might to respond to those two very different movements. I think that there's a sense that it's no longer sufficient to rely on general internal statements about discrimination or being an equal opportunities employer. There's much more pressure on employers to come out and be quite vocal about how they respond and support those movements." Regarding Me Too, which has been in the public eye for longer, he says, "When employers come to us it's much less about damage control, limiting liability or asking how do we get out of this situation. Now, it's more about what is the right thing to do in this situation, recognising the importance of being seen to follow through, and actually living up to the values that they espouse, even if the consequences for the company are difficult, such as parting company with a successful CEO or senior manager." Disciplinary procedures are often carried out behind closed doors for good reasons, but it is important for employers to find ways of demonstrating to their workforce that they are taking action and are not rewarding bad behaviour with compensation.

Barton says that demonstrating your organisation's values to employees is crucial. "When things go wrong, which they do in all businesses, taking the opportunity to find out why, to deal with it

and to treat the people who have made the mistake and who have been affected by the mistake openly, is a really, important thing."

## Supply chains

Managing global supply chains across different countries with different standards in a responsible way that respects human rights is complex and enormously challenging, says Rae Lindsay, Clifford Chance's co-head of the Clifford Chance public international law and human rights practices, but businesses are becoming huge drivers of change. "Some of the work I'm doing involves clients looking beyond the law to broader respect for human rights and what that means in terms of developing positive purpose, how they can contribute to societal issues and also manage risks through their supply chains," she says.

"It is important to have risk management systems in place that align with your values and that are consistent with how you will conduct your business. It is about recognising that some of those really difficult issues, such as child labour, will need to be grappled with and having the resources to deal with it," she says.

This means that companies should have resources in those countries where their supply chains are based who can help to find a solution that is consistent with internationally recognised human rights as well as taking proper account of local cultures, values and laws. "It's very much about knowing and understanding what's in your supply chains, assessing and addressing your risks and making sure values have been integrated within your risk management frameworks in practical ways that are fit for purpose. It is also about recognising where you have leverage and the ability to influence how things operate in your supply chains through educating your suppliers, understanding what the issues are and grappling with them and doing that in a systematic way."

She adds that it is vital that employees know what the company expects of them regarding supply chain risk management and that they are given the tools to make the right decisions. "They may not always be the right decisions, but as long as you



are equipped to understand what is expected of you, consistently with the company's values, and that processes are available to guide the exercise of judgments in the face of real-life dilemmas, you are a long way down the road," she says.

In the past, organisations grappling with these issues may have batted down the hatches and issued "no comment" statements, but now the focus is much more about being prepared to identify where you might have made mistakes, where you might have had gaps in your processes, and then having a plan to address them.

Barton cites an example of human rights abuses uncovered by fashion and home retailer Next, where he served as Chairman until 2017. "You can imagine our shock when we discovered that some of the sofas we were buying were being made by slave labour. The slave labour wasn't in the factory that we were buying from, but in a subcontracted factory in Leicester, and it was the worst case of slavery we'd seen anywhere in the world. You have to be alert because these things happen everywhere."

He adds that at Ted Baker "We have to make sure that the factories we deal with recognise and respect the human rights of the workers. The only way that we can do that is by visiting them, by checking what they're doing, by burrowing in to the business to make sure they're doing things correctly and, if they aren't, work with them to bring them up to a higher standard."

### **Regulation and its impact on driving change**

"We have seen examples of governments intervening with mandatory requirements in respect of some issues, such as gender and diversity, pay gap reporting, soft targets for better gender balance on boards and modern slavery legislation, for example, but the question is how effective have those regulations been in instigating change within organisations?" asks Daud Khan.

Barton gives as an example the publication of directors' remuneration, which had unintended consequences. "Rather than directors being shamed into being paid less, it had completely the opposite effect because the moment that Joe in Company A saw that Fred in Company B was being paid 50% more than he was, he wanted the 50% more. Fred never wanted 50% less so as to be equal to Joe, and that led to a huge inflation in remuneration."

And Alistair Woodland says that recent regulation has had mixed results "I think after an initial flurry of interest in gender pay gap reports, my sense is that employers have put out their gender pay gap information, and perhaps it is of interest in some situations, such as graduate recruitment. People do look at those numbers, but I think interest dropped off after the rules were brought in, and it remains to be seen whether that legislation will really have much of an impact." He adds that the introduction of the Senior Managers Regime in the financial services industry, whereby senior managers are accountable for particular activities of the firm, and sanctions are in place, has been quite effective.

"That particular industry has a regulator that is engaged and has powers, but overall I think regulation is a very much a mixed bag, and that societal changes are equally important."

Changing societal attitudes are likely to be the driving force behind company purpose, says Daud Khan. "The ESG movement is very much here to stay, and the sophistication with which investors are evaluating ESG compliance means that the days of paying lip service to these issues are gone. Companies now more than ever need to ensure that they approach these changes in a structured, measurable and transparent way in order to effect meaningful change," he says.



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