

ESG Due Diligence

Bringing value to your
acquisitions: now and
in the future

Why is ESG planning and due diligence necessary?

The due diligence process exists to make sure issues that impact value are identified and that liabilities and risks facing the purchaser are understood. As public and investor consciousness grows around ESG, traditional due diligence needs to evolve to address a broader range of reputational and legal risks.

Organizations are coming to Dentons to provide specialist ESG due diligence services because we understand the moving dynamics of regulation, risk and stakeholder expectations. Our bespoke approach goes beyond existing regulation to provide sophisticated outputs and roadmaps to ensure the target you acquire meets your organization, investor and customer expectations.

Key themes ESG due diligence should address:

Developing a robust ESG strategy takes time and depending on your organization's footprint, sector, investors, ambitions and market position, the points of focus will vary. However, some of the key themes due diligence should address include:

- Will the target's current business practices be regarded favourably by stakeholders (principally investors and customers) – particularly in relation to supply chain, emissions and modern day slavery? Even if current business activities are legal, that may not be sufficient to avoid significant reputation and brand value erosion.
- Does the target comply with the 'soft law' or industry standards expected for their sector?
- Will your current organizational narrative around ESG be challenged or undermined by activities undertaken by the target?
- Can the climate-related claims the target has made be validated (put another way, what risks do you face regarding greenwashing claims?)?
- Has the target put adequate clauses and warranties into supply/third party contracts? Are contractual provisions enough or should further investigations be undertaken?

Due diligence covers:

Stakeholder expectations



**Standards/
principles**

**Legal
requirements**

Litigation risk

**Ratings
agencies**

**Third
parties**

**Organizational-specific
brand and
operational risks**

Funders

Insight informed by data

We review global greenwashing case information to provide an overview of the most likely impacts that would provoke a claim for failure to meet the expected standard of care. Some examples of 'claims by sector' can be seen below. What this means is that our data driven approach will help you identify the potential (material financial and reputational) risks for your organization and sector and help you prioritize.

Greenwashing claims by sector and impact					
	Carbon / net zero	Modern day slavery	Product sustainability claims	Product claims specifically relating to recycling	Particulates / air pollution
Automotive					
Agri / Forestry					
Chemicals (non-pharma)					
Energy Generation					
Energy Transition					
Fashion					
Financial Services (not borrowers)					
Food and Beverage					
Manufacturing (non-automotive)					
Pharmaceuticals					
Real Estate Investment					

Our experience

The below ESG credentials demonstrate a bespoke approach needs to be taken for each transaction – each company, investor and sector will have unique issues to consider.



Total | Africa

Dentons tailored our bespoke ESG due diligence reporting to Total's targets and ESG commitments. Our approach identified gaps in the performance of the target entities. We advised on the acquisition of trophy assets in Mozambique, Algeria, Ghana, South Africa and Uganda. In a sensitive social and economic context that requires special measures for the environment and the rights of local communities, our work underpinned the management of key legal risks. We also helped to support and integrate the acquired businesses post-closing.



Modus | Poland and Norway

Dentons advised Modus in performing a full scale ESG (Environment Social and Governance) due diligence of a number of project companies (and the supply chain companies) in connection with the contemplated acquisition of 100% shares in the project of 28 photovoltaic projects (altogether up to 30 MW) in different locations in Poland and two other companies involved in the transaction, including its mother company with headquarters in Norway.



Tea business | Kenya

Dentons undertook the ESG DD for a private equity house in relation to its investment in a tea business in Kenya. DD included:

- Workplace welfare and equality – gender based violence, working conditions, fatalities, election violence
- Community and indigenous peoples – historic land ownership and displacement of local people
- Human rights – actual and threatened litigation and parent company liability for actions of subsidiaries
- Resource efficiency – water access and use
- Product recalls and quality issues



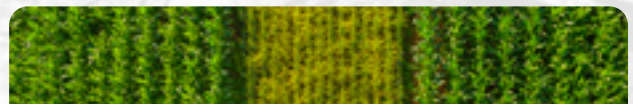
KKR and Global Infrastructure Partners | International

Dentons advised on financing the US\$15 billion acquisition and financing of CyrusOne. In relation to this transaction our ESG and environmental law team performed a full ESG due diligence of a REIT in six different jurisdictions across the European Union, examining among others HRI, D&I, Biodiversity, Energy and Climate Change policies.



Global impact investment fund | UK

Dentons advised on the legal framework for sustainability investments. We assisted with integration of legal liability consideration in the overall strategic investment review by the fund. We carried out ESG due diligence on specific investments which were targeted as having a high impact potential due to the implementation of relevant regulatory frameworks to support sustainable development.



Group of energy companies | UK

The team undertook a significant environmental due diligence as well as reviewing:

- Target group's communications with regulators
- ESG warranties and pre-closing undertakings regarding pending surveys
- Buyer's W&I insurance policy

Identifying your risks and concerns

Typically you will want to target due diligence at areas of perceived risk. You may wish to direct due diligence at some, if not all, of the areas listed and you may also want to benchmark the target against the competition, to see what competitive advantages the deal delivers.

We'll discuss with you the relative importance for you of reviewing the following:

Supply chain – general issues including carbon emissions

Communications with regulators and formal disclosures

Workplace welfare & equality

Geographical risk – where are you manufacturing, distributing, selling or buying from?

Sanctions

Organizational ESG maturity/ management of ESG risk – dedicated resource, prevalence of policies, audits undertaken, reporting & disclosure validation protocols

Compensation of Directors & accountability for ESG

Impact on community & indigenous peoples

**Environmental impact
– carbon emissions,
waste, biodiversity**

**ESG warranties
and pre-closing
undertakings**

**Key suppliers
(third party review, note
geographical risk also)**

**Prevalence of green
claims and substantiation
protocols e.g. advertising
and sales slogans and copy**

**Waste efficiency/
prevalence of
recycling programs
& similar**

**Anti-Bribery
and Money
Laundering**

**Cultural impacts
e.g. heritage site**

**Template/key contract
review for optimized
terms and language**

**Financing
arrangements e.g.
using green or
sustainable bonds**

**Use of conflict
minerals/biogenic
materials/endangered
species**

**Buyers W&I
insurance policy**

Human rights

Our approach

1

Build ESG due diligence framework

- Define organization's current and future ESG position/claims
- Identify relevant sector standards
- Review current and forthcoming legal requirements & compliance/impact
- Confirm key areas of risk/investigation
- Budget and timeline



2

Diligence phase

- Tailor DDQs to elicit information beyond legal compliance data
- Wider sources than just the data room
- Distinguish between pre-transaction 'must knows' and post-transaction 'need to knows'



3

Reporting

- ESG RAG report (targeting issues as high/medium/low risk)
- Can be in stages – with new information being added at different stages of the transaction



4

Post-closing

- Ongoing benchmarking/regulation tracking
- Post-transaction suggested action plan



Developing your strategy and benchmarking your performance

Investor expectations are changing, regulation is changing, consumer expectations are changing. Keeping up with what good looks like in the context of all this change, and how you benchmark against others in your sector is a challenge for many of our clients. This is why we have developed an ESG benchmarking tool that provides societal, industry and legal insight that is tailored to your organization.

Building on the above we can also provide a dynamic database, that can be tailored to your needs, that will track:

- Your current ESG legal obligations
- Foreseeable ESG legal obligations:
 - new regulations
 - proposed law
 - regulations you do not yet meet the threshold for
- Horizon scanning of ESG legal liability risks:
 - Industry schemes
 - Global case law
 - Emerging regulation globally

External filters



Societal filter



Industry filter



Legal filter

Legal baseline

Current ESG legal obligations

Foreseeable ESG legal obligations:

- new regulations
- proposed law
- regulations organization does not yet meet the threshold for

Horizon scanning of ESG legal liability risks:

- Industry schemes
- Global case law
- Emerging regulation globally

For more information and support, our global team stands ready to support



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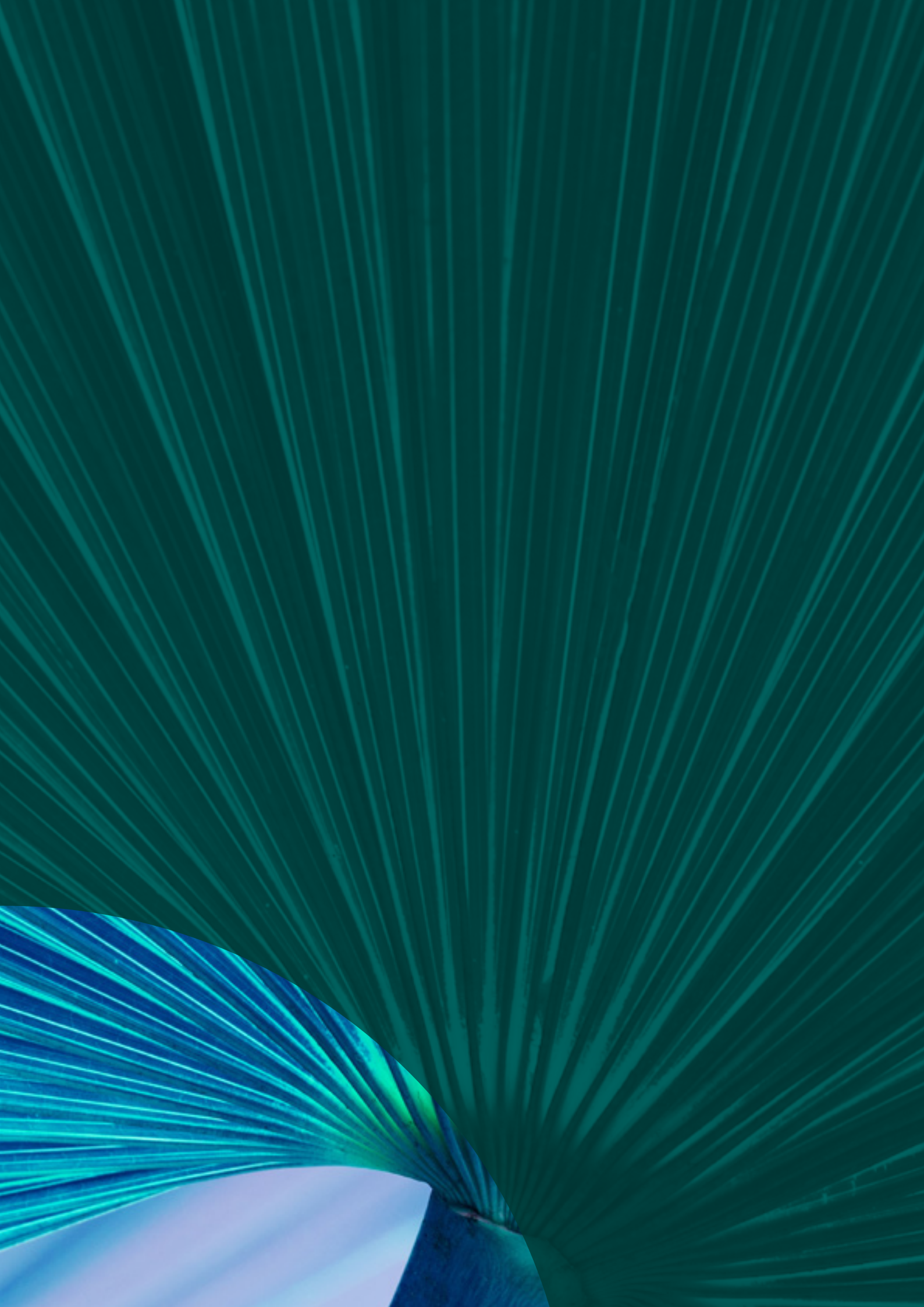
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