

The ESG Basics: What Every Board Should Know

Last year, we spoke extensively about legacy — how enduring families do not begin by dividing assets, but by transmitting values, philosophy, and intention. Assets that follow values tend to be used well. Assets that arrive without values are often lost.

The same principle applies to organizations navigating sustainability. A board that chases ESG frameworks before understanding why ESG matters is doing the equivalent of distributing assets before establishing shared values. The results rarely hold.

This year, we widen the lens. Over the next several editions we will explore ESG and sustainability — not as compliance burdens, but as frameworks for enduring, responsible business. We begin, as with all important things, at the beginning.

Recognizing What Boards Are Already Doing

Many boards reading this are not starting from zero. They are already governing organizations that care about their people, manage their environmental footprint, and take accountability seriously. ESG is not a foreign import. For most well-run organizations, it is a name being placed on work already underway.

What has changed is the expectation around that work — specifically, that it be documented, disclosed, and verified. Boards that have operated responsibly for years but without formal ESG structures are increasingly being asked to demonstrate that responsibility in writing. The frameworks exist to help with exactly that.

The good news is this: a board that is already asking questions about its environmental impact, its treatment of employees and communities, and the integrity of its leadership is already engaging with the substance of ESG. The task ahead is largely one of structure, language, and documentation — not a wholesale change in values.

Why the Conversation Has Become More Urgent

ESG has shifted from a voluntary aspiration to an expected standard. The pressure is arriving from three directions simultaneously — and they are reinforcing each other.

THREE FORCES RESHAPING THE BUSINESS ENVIRONMENT



Capital is moving

Institutional funds — pension funds, development finance institutions, sovereign wealth funds — are applying ESG screens to their portfolios. Boards that cannot articulate their ESG position are increasingly invisible to this capital. This is already shaping which organizations have access to which pools of funding.



Regulators are setting floors

The EU's CSRD (Corporate Sustainability Reporting Directive) entered effect in 2023, with large, listed companies beginning to report in 2025. Following a 2025 simplification, it now focuses on companies with over 1,000 employees — but non-EU parent companies with EU subsidiaries or significant EU revenue remain in scope, with consolidated reporting required from 2029. Closer to home, regulators are moving in the same direction. The Nairobi Securities Exchange has already issued ESG disclosure guidance for listed companies, the Central Bank of Kenya has introduced climate-risk management guidance for banks, and the

Capital Markets Authority's corporate governance code requires boards to disclose environmental and social policies. The floor is rising.

 **Supply chains are tightening**

Large multinationals are embedding ESG requirements into procurement contracts. Suppliers who cannot demonstrate environmental and social standards are losing business — not gradually, but suddenly, when contracts come up for renewal. This is now a commercial reality for organizations in agriculture, construction, retail, logistics, and financial services.

PRACTICAL ILLUSTRATION

THE SITUATION

A Kenyan supplier of agricultural goods has served a European retail chain for several years. The relationship is strong: quality is consistently high, deliveries are reliable, and the people running the operation treat their workers well and manage their land responsibly.

The retailer's new ESG procurement policy requires all suppliers to provide:

- Verified labour standards documentation
- Carbon footprint disclosures
- Supply chain ethics reporting

The Kenyan supplier has no documentation, no reporting system, and no policy in place — not because they are doing anything wrong, but because no one had asked before.

THE OUTCOME

At contract renewal, the retailer moves to a regional competitor that has its ESG documentation in order. The Kenyan supplier loses the contract — not because of poor product quality, not because of unreliable service, and not because they were treating their workers badly.

The loss is because good work was being done without the framework to show it.

ESG documentation does not create good behaviour. But it is now the evidence that good behaviour took place.

Clearing the Language

Before boards can engage meaningfully with ESG, a working vocabulary is helpful. Three terms are frequently used interchangeably but carry different meanings:

Sustainability The long-term capacity of a business to operate without depleting what it depends on — its people, its resources, its environment, and its relationships. It is the destination.

ESG The measurement framework used to assess whether a business is moving toward or away from sustainability. It stands for Environmental, Social, and Governance — three lenses through which non-financial performance is evaluated. **Climate risk** deserves a separate note. It generally arises in three forms. **Physical risk** refers to the direct impacts of climate change, such as floods, droughts, extreme weather events, and disruptions to infrastructure or supply chains. **Transition risk** arises as economies shift toward lower-carbon models, driven by changes in regulation, technology, investor expectations, and market sentiment. **Liability risk** refers to the growing possibility of legal claims against companies or financial institutions for contributing to environmental harm or failing to

manage climate-related impacts. All three categories carry material financial consequences for businesses that are unprepared.

Impact

The actual effect a business has on people, planet, and governance — intended or not. A company can have a strong ESG score and still have significant negative impact if the reporting does not capture the full picture.

The Three Pillars

Rather than define E, S, and G abstractly, it is more useful to frame each as a question the board should already be asking:

 E — Environmental <i>What does our business take from the natural world, and what does it return?</i> Examples: Carbon emissions, water use, energy sources, waste management	 S — Social <i>Who do we affect — employees, communities, suppliers — and how are we accountable to them?</i> Examples: Labour practices, community impact, supply chain ethics, health & safety	 G — Governance <i>Are we led with transparency, integrity, and genuine accountability?</i> Examples: Board composition, anti-corruption, disclosure policies, executive accountability
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A practical note: for most boards, **Governance** is the most familiar entry point. Questions of transparency, accountability, and ethical leadership are not new — they simply now carry formal ESG weight. If a board is uncertain where to begin, G is often the most natural place to start.

The Kenyan Legal & Governance Landscape

Kenya is not a regulatory blank slate. A layered framework of constitutional provisions, corporate law, sector-specific regulation, and voluntary guidance already creates meaningful ESG obligations — and in some cases, legal exposure — for boards operating in this market. Understanding this landscape is not optional. It is part of sound governance.

Constitutional Foundation

Sustainability is embedded in Kenya's constitutional order. **Article 42** establishes the right to a clean and healthy environment. **Article 69** places obligations on the State for environmental protection and sustainable development. **Article 70** provides enforcement mechanisms for environmental rights. Although these provisions focus on the environment, they also reflect a broader principle: natural resources must be protected, people's wellbeing safeguarded, and those responsible held accountable. For boards, this matters: sustainability is not merely a corporate policy aspiration in Kenya — it is a constitutional principle.

Environmental Law: EMCA and NEMA

The Environmental Management and Coordination Act (EMCA, 1999) is Kenya's principal environmental legislation and the most operationally immediate environmental law for businesses. It established the National Environment Management Authority (NEMA) as the regulatory body responsible for environmental oversight, and it creates direct compliance obligations that apply across

a wide range of industries. Boards should be aware of three specific obligations it creates: the requirement for Environmental Impact Assessments (EIAs) before projects proceed; ongoing environmental audit obligations for operating businesses; and NEMA's enforcement powers, which include the ability to issue stop orders, impose fines, and pursue criminal liability for environmental violations. A director who dismisses environmental compliance as a technical matter for operations is misreading the risk. EMCA creates board-level exposure.

Corporate Governance Obligations

The **Capital Markets Act (Cap 485A)** requires issuers of securities to disclose corporate governance structures to the Capital Markets Authority, shareholders, listing exchanges, and the public. The **Code of Corporate Governance Practices for Issuers of Securities to the Public (2015)** goes further, requiring boards to disclose corporate social responsibility and ESG policies, conduct annual governance audits, and report instances of non-compliance. Boards of listed companies are, in this sense, already operating within an ESG framework — whether or not they use that language.

Directors' Duties Under the Companies Act

The Companies Act 2015 embeds these considerations directly into corporate governance. Section 143 requires directors to act in good faith to promote the success of the company. In doing so, they must consider inter alia, the long-term consequences of their decisions, interests of employees of the company and the impact of the operations of the company on the community and the environment. For quoted companies, Section 655 goes further by requiring the directors' report to include a business review addressing environmental matters, community impacts, and the company's policies in relation to those issues. This is not merely aspirational language. It signals that environmental and social risks can affect the long-term success of the company. A director who ignores material environmental or social risks is not simply missing a reporting opportunity — they may be overlooking issues that fall within their core governance responsibilities.

ESG Disclosure: The NSE Framework

The Nairobi Securities Exchange ESG Disclosure Guidance Manual provides a structured framework for sustainability reporting by listed companies. It identifies a set of mandatory ESG disclosure topics that listed companies in Kenya are expected to report on within their integrated reports, including governance practices, environmental and social risk management, stakeholder engagement, regulatory compliance, economic performance, anti-corruption measures, labour practices, human rights, environmental compliance, emissions, consumer protection, and data privacy. The Manual also introduces a materiality assessment process through which companies identify additional ESG issues that are significant to their operations and stakeholders. In practice, many Kenyan companies rely on internationally recognised reporting frameworks such as the Global Reporting Initiative (GRI), which provides detailed indicators and methodologies for structuring these disclosures. This approach ensures that ESG reporting focuses not only on compliance, but also on the sustainability risks and impacts that are most significant to the company and its stakeholders.

Climate Risk: Companies and Banks

The **Climate Change Act (2016)** allows the Climate Change Council to require companies to report on climate obligations and demonstrate climate resilience measures, in alignment with Kenya's low-carbon development strategy.

For the financial sector, obligations are more specific. The Central Bank of Kenya's Climate-Related Risk Management Guidance requires banks to integrate climate risk into governance, strategy, and risk management frameworks, and to report regularly to the CBK on their implementation progress. Climate disclosures are benchmarked against the Task Force on Climate-related Financial Disclosures

(TCFD). This guidance builds on earlier initiatives in the banking sector, including the Kenya Bankers Association’s Sustainable Finance Initiative Principles (2015) and broader prudential frameworks such as the Internal Capital Adequacy Assessment Process (ICAAP), which require banks to assess and hold capital against all material risks — including climate-related risks where relevant. Together, these measures reflect a gradual shift toward integrating sustainability considerations into financial sector governance.

Greenwashing Exposure

Kenya does not yet have legislation specifically addressing “greenwashing.” However, boards should recognize that misleading ESG claims can still create legal liability under existing consumer protection and competition laws. ESG reporting, sustainability statements, and environmental claims are ultimately representations made to investors, customers, and the public. If those representations are inaccurate or exaggerated, they may fall within the scope of the **Competition Act (2010)**, which prohibits misleading representations in trade and carries penalties of up to KES 10 million and/or imprisonment of up to five years. The **Consumer Protection Act (2012)** similarly prohibits misleading claims about goods or services, with penalties of up to KES 1 million and/or imprisonment of up to three years. As ESG disclosures and sustainability marketing become more common, the legal risk associated with unsubstantiated environmental or social claims is likely to increase.

The Kenyan ESG Governance Pyramid

The layers below represent the regulatory architecture within which Kenyan boards operate — from constitutional principles at the base to global frameworks at the apex:



Five Questions for Every Board in 2026

ESG is not primarily a reporting function. It is a governance function. The board's role is not to manage the data — it is to ask the right questions and ensure that the answers are being pursued seriously. These five questions are a useful starting point:

1

Do we know our material ESG risks — the environmental, social, and governance issues that could affect our financial performance, regulatory compliance, contracts, or reputation?

2

Who on this board owns ESG oversight? Is ESG embedded within existing board committees — such as risk, audit, or governance — or is it still treated as an informal management topic?

3

Are we disclosing anything about our ESG performance — If we are a listed company, how are we aligning with the Nairobi Securities Exchange ESG Disclosure Guidance Manual and other relevant reporting expectations?

4

Are our supply chain and commercial contracts ESG-ready? Do we understand the environmental, labour, and governance standards increasingly required by international customers, financiers, and procurement partners?

5

Do we have the internal capacity — people, data, systems — to identify material ESG issues and report on them meaningfully?

These questions do not require immediate answers. They require honest engagement. A board that is asking them — even without complete answers — is already ahead of one that is not asking at all.

A Note on Where We Are

The goal of this article is not to make you an ESG expert. It is to ensure that the language is no longer unfamiliar, that the urgency is understood in both its global and local dimensions, and that the three pillars are clear enough to build on.

The Kenyan legal framework, in particular, deserves closer attention than it often receives. The obligations are not hypothetical. They exist now, they apply to boards now, and they will be enforced with increasing consistency as ESG moves from aspiration to expectation.

The conversation has started. Let us continue it together.

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