Article: **Global ESG Compliance and Litigation: Legal Insights for Cross-Border Business**

Executive Summary

ESG is no longer a voluntary corporate-responsibility vocabulary. For boards, investors, lenders, and multinational groups, ESG compliance now sits at the intersection of securities law, international law, sustainability regulation, fiduciary duties, supply-chain contracting, export controls, human rights law, and dispute resolution. The legal question is no longer whether environmental, social, and governance issues matter. The question is whether the company can prove that its disclosures, governance processes, transaction diligence, and operational controls are accurate, documented, and defensible.

This acceleration is visible in both regulation and litigation. The EU has embedded sustainability reporting into corporate reporting through the CSRD and ESRS, while the United States has moved through a contested climate-disclosure rulemaking cycle at the SEC. Outside the EU and United States, ISSB-based reporting is emerging as a global baseline: the IFRS Foundation reported in June 2025 that 36 jurisdictions had adopted or used, or were in the process of adopting or using, IFRS Sustainability Disclosure Standards.

The practical effect is that ESG has become a legal risk frontier and climate lawsuits, shareholder activism, anti-greenwashing enforcement, and contractual ESG disputes now test the credibility of corporate commitments. A multinational may face a CSRD double-materiality assessment in Europe, ISSB-aligned reporting in Brazil or Asia, or Africa, or SEC anti-fraud exposure in U.S. capital markets, and supply-chain due diligence obligations under EU law. ESG compliance therefore must be designed as a cross-border legal-control system, not as a communications exercise.

1. Global Regulatory Landscape: SEC Climate Rules, EU CSRD, and Emerging Market Frameworks

The global regulatory landscape is converging around disclosure, but not around a single legal test. The United States has focused on investor materiality and securities disclosure. The EU has adopted a broader model that includes both financial materiality and corporate impacts on people and the environment. Emerging markets on the other hand seem to be doing more by increasingly using ISSB standards to align local reporting with global capital-market expectations.

Regime	Core instrument and status	Legal design	Compliance implication
United States	SEC climate disclosure rules adopted March 6, 2024; the SEC later voted on March 27, 2025 to end its defense in Iowa v. SEC, and the rules had been stayed pending litigation	Securities-law disclosure of material climate-related risks and, for certain larger registrants, Scope 1 and Scope 2 greenhouse gas emissions	Do not assume U.S. climate disclosure risk has disappeared; anti-fraud, state, exchange, investor, and contractual pressures remain
European Union	CSRD and ESRS; first companies apply for FY2024 reports published in 2025; Directive (EU) 2025/794 delays certain later waves	Sustainability reporting on risks and impacts, with ESRS as the reporting architecture	Build auditable data systems, internal controls, and board

			oversight around sustainability information
Brazil	CVM Resolution 193, issued October 20, 2023; ISSB-aligned disclosures mandatory for publicly held companies from fiscal years beginning on or after January 1, 2026	IFRS S1 and IFRS S2 alignment, with assurance requirements	Use ISSB as a global baseline for non-EU listed-company reporting
India	SEBI introduced Business Responsibility and Sustainability Reporting for listed entities, with BRSR mandatory for the top 1,000 listed entities by market capitalization from FY2022-23	Securities-market sustainability disclosure across environmental, social, and governance indicators	Indian subsidiaries and listed parents need local BRSR mapping, not only group-level CSRD or ISSB mapping
Hong Kong	HKEX climate disclosure requirements published in 2024 and effective from January 1, 2025 in phases	Climate-related disclosure aligned with the ISSB direction	Hong Kong-listed issuers should align climate governance, metrics, and transition disclosures with international investor expectations
Singapore	ACRA and SGX RegCo announced mandatory climate-related disclosure in 2024; an August 25, 2025 update kept Scope 1 and 2 GHG reporting for all listed companies from FY2025 while extending timelines for most other requirements	Phased ISSB-based climate reporting	Listed groups should prepare Scope 1 and 2 controls now, even where Scope 3 and assurance timelines are deferred

The tension is materiality. A U.S. registrant may ask whether climate information is material to investors. A CSRD reporter must also evaluate how the undertaking affects people and the environment. An ISSB reporter will usually focus on sustainability-related financial risks and opportunities. Decision-ready insight: the most resilient compliance model starts with a global ESG data inventory, maps each data point to the strictest applicable regime, and then calibrates public disclosure to the legal test in each jurisdiction.

2. ESG in Transactions and Corporate Governance: ESG Due Diligence, Fiduciary Duties, and Shareholder Activism

In M&A, ESG due diligence now reaches beyond reputational screening. Buyers, sellers, lenders, and insurers increasingly test whether environmental permits, labor practices, human rights controls, biodiversity access rights, sanctions exposure, product safety systems, and climate claims can survive regulatory and litigation scrutiny. The EU Corporate Sustainability Due Diligence Directive, Directive (EU) 2024/1760, adopted on June 13, 2024, requires in-scope companies to address adverse human rights and environmental impacts across their chains of activities. That changes deal risk allocation: ESG warranties, indemnities, transition-plan covenants, supplier remediation obligations, and closing conditions must be drafted against actual legal obligations.

Corporate governance law reinforces the same point. In Marchand v. Barnhill, the Delaware Supreme Court allowed a Caremark oversight claim to proceed where the complaint supported an inference that Blue Bell's board lacked a board-level system for monitoring food safety, a mission-critical risk for the company. The lesson is not that every ESG issue is automatically mission-critical. The lesson is that where an ESG risk is central to the company's business model, regulatory license, or product safety profile, directors need a documented board-level reporting and escalation system.

Shareholder activism adds pressure. In the 2025 proxy season, Russell 3000 companies received 830 shareholder proposals, down from 983 in 2024, and average support for environmental and social proposals declined to 13% and 12%, respectively. Yet activism did not disappear. Anti-ESG proponents submitted 125 proposals in 2025, and a 2026 federal court order in Thomas P. DiNapoli v. BJ's Wholesale Club Holdings, Inc. required BJ's to include a shareholder proposal requesting an assessment of deforestation risks linked to private-label brands.

Case study: In Marchand, the governance failure alleged was not an abstract failure to value ESG. It was the absence of a board-level system for monitoring a core safety risk in an ice cream business. For M&A lawyers, that distinction matters. A buyer should ask whether the target's board has minutes, committee materials, incident logs, supplier reports, and remediation evidence for mission-critical ESG risks. Decision-ready insight: ESG due diligence should be integrated into legal, financial, operational, and insurance diligence, and board oversight should be calibrated to the company's actual risk profile.

3. Litigation and Enforcement Trends: Climate Lawsuits, Shareholder Proposals, and Contractual ESG Disputes

ESG litigation is now a mainstream feature of international law and corporate governance. The 2025 climate litigation snapshot reported at least 226 new climate cases filed in 2024, bringing recorded cases to 2,967. Climate lawsuits increasingly target governments, companies, directors, transition plans, financial institutions, and product or investment claims.

The case law is not one-directional. In Urgenda, the Dutch Supreme Court upheld prior decisions on December 20, 2019 and held that the Dutch government had to reduce emissions in line with human rights obligations. In Milieudefensie v. Shell, the Hague Court of Appeal issued a mixed outcome on November 12, 2024: the claimants stated that the court confirmed Shell's obligation to combat dangerous climate change, while the court did not impose the earlier order requiring Shell to reduce CO2 emissions by 45% by 2030 compared with 2019 levels. In ClientEarth v. Shell, the English High Court refused permission to continue a derivative claim against Shell's directors, illustrating judicial reluctance to replace board discretion with a claimant's preferred climate strategy.

Regulators are also focused on greenwashing. The SEC's 2024 WisdomTree action alleged that ESG-marketed funds invested in companies involved in coal mining and natural gas extraction despite statements that the funds would not invest in fossil fuels or tobacco; WisdomTree agreed to a $4M civil penalty. Also in 2024, the SEC's 2024 Invesco action alleged misleading statements that 70% to 94% of assets were ESG integrated; Invesco agreed to a $17.5M civil penalty.

Contractual ESG disputes are equally important. The Permanent Court of Arbitration administered two arbitrations arising under the Accord on Fire and Building Safety in Bangladesh, a May 2013 agreement between global brands and trade unions created after the Rana Plaza collapse to establish a worker-safety program in Bangladesh's textile industry. The arbitrations were brought in 2016, seated in the Netherlands, conducted under the UNCITRAL Arbitration Rules 2010, and terminated in 2018 after settlements. Decision-ready insight: ESG litigation risk is strongest where public claims, board processes, and contractual undertakings diverge from operational reality.

4. Sectoral Considerations: AI, Biotech, Defense, and Space Industries

Sector-specific ESG legal risk matters because generic ESG policies rarely answer the actual legal question. The relevant duties even differ sharply across AI, biotech, defense, and space.

Sector	Core ESG legal issues	Key legal frameworks	Practical legal risk
AI	Human oversight, safety, discrimination, data governance, transparency, and accountability	Regulation (EU) 2024/1689, the EU Artificial Intelligence Act, adopted June 13, 2024	AI governance should be linked to product approval, vendor contracting, human-rights review, and incident response
Biotech	Access to genetic resources, benefit sharing, biodiversity, indigenous and local community interests, research ethics	Convention on Biological Diversity and Nagoya Protocol access and benefit-sharing framework Nagoya Protocol Article	Biotech diligence should verify prior informed consent, mutually agreed terms, data provenance, and cross-border transfer rights
Defense	Export controls, end-use risk, international humanitarian law, human rights, corruption, and sanctions	Arms Trade Treaty; EU Common Position 2008/944/CFSP on arms export controls	Defense ESG is not a simple exclusion screen; it requires documented end-use, end-user, human-rights, sanctions, and licensing analysis
Space	Space debris, orbital safety, spectrum and launch licensing, dual-use technology, and sustainable use of orbits	UN COPUOS adopted a preamble and 21 guidelines for long-term sustainability of outer space activities in 2019	Space companies need mission-design, collision-avoidance, debris-mitigation, and insurance evidence that can withstand investor and regulator review

Case study: AI governance illustrates the need to connect ESG with product law. A company deploying high-risk AI in the EU cannot treat ethical AI as a voluntary policy slogan. The EU AI Act creates a legal framework for trustworthy AI, and the compliance file must support the company's claims about governance, safety, and oversight. The same logic applies to biotech, where access and benefit-sharing failures can affect intellectual property, licensing, and supply-chain legality; and in defense, where export controls and human-rights risk affect the legality of sales; and in space, where orbital sustainability is becoming a precondition for long-term commercial viability.
Decision-ready insight: sector ESG should be owned by the business line, reviewed by legal counsel, tested by compliance teams, and escalated to the board where it is mission-critical.

5. Practical Guidance for Multinationals: Harmonizing Regimes and Preparing For Disputes

Multinationals should begin with a legal applicability map. The map should identify every entity, listing venue, regulated product, financial instrument, supply chain, and operating jurisdiction, then connect each to applicable ESG compliance obligations. A single corporate sustainability report cannot satisfy all legal regimes unless its underlying controls are designed to support different materiality tests, assurance expectations, and liability standards.

Risk area	Legal mechanism	Defensible control	Evidence to preserve
Conflicting disclosure regimes	SEC investor materiality, CSRD impact and financial materiality, ISSB financial-risk baseline	Maintain a disclosure-control matrix linking each claim to source data, owner, reviewer, and legal test	Data lineage, board papers, assurance files, materiality assessment records
ESG due diligence in transactions	CSDDD, local supply-chain laws, warranties, indemnities, lender covenants	Run ESG due diligence alongside legal, tax, financial, sanctions, and regulatory diligence	Supplier audits, permits, incident logs, remediation plans, covenant compliance certificates
Greenwashing and marketing risk	Securities anti-fraud rules, consumer protection rules, fund disclosure rules	Require legal review of ESG marketing, fund names, investor decks, transition claims, and website statements	Substantiation files, investment criteria, portfolio screens, sign-off records
Board oversight	Fiduciary duties and Caremark-style oversight for mission-critical risks	Put mission-critical ESG risk on board or committee agendas with escalation triggers	Minutes, dashboards, red-flag reports, management certifications

Litigation readiness	Climate lawsuits, shareholder proposal disputes, arbitration, contract claims	Prepare privilege-aware litigation files and dispute response protocols	Chronologies, contract clauses, decision records, expert assumptions, remedial actions

Three practical strategies matter most:

- First, build a modular ESG compliance architecture. Use ISSB or any other internationally recognized framework as a baseline where it is accepted, add CSRD/ESRS fields for EU reporting, and maintain U.S.-style investor materiality analysis for securities filings. This avoids the common failure of forcing every jurisdiction into one disclosure theory.
- Second, make ESG due diligence transactional. In M&A and financing, ESG findings should affect price, covenants, conditions, indemnities, insurance, disclosure schedules, and post-closing integration. Red flags should be ranked by legal consequence: regulatory breach, license risk, civil liability, criminal exposure, contract default, reputational risk, and valuation impact.
- Third, prepare for litigation before a dispute exists. Climate lawsuits, Rule 14a-8 disputes, anti-greenwashing enforcement, and contractual ESG arbitrations all test contemporaneous evidence. A company that can show board oversight, documented assumptions, verified data, and prompt remediation will be better positioned than a company that relies on aspirational statements. Decision-ready insight: defensible ESG compliance is an evidence-based architecture.

6. Conclusion: ESG As a Legal Risk Frontier

ESG now functions as a legal risk frontier because it converts sustainability commitments into legal exposure. Climate disclosures can become securities issues. Supply-chain policies can become contractual obligations. AI ethics can become product-governance compliance. Biodiversity access can become a licensing and IP issue. Shareholder activism can become proxy litigation. And lastly, defense and space activities can raise export-control, human-rights, and sustainability questions.

For corporate clients, the strategic response is not to retreat from ESG language or to overstate ambition. The response is to align words, controls, and evidence. That means clear board oversight, disciplined disclosure controls, transaction-level ESG due diligence, sector-specific legal review, and litigation-ready documentation.

Stabit Advocates supports clients navigating ESG compliance, global standards, international law, sustainability regulation, shareholder activism, ESG litigation, climate lawsuits, and corporate governance. For multinationals, investors, boards, and founders operating across borders, ESG is now a core legal-management discipline. The companies that treat it as such will be better positioned to access capital, close transactions, manage disputes, and maintain trust.

Synthesis

The ESG field is not moving in a single direction; it is moving in several legally significant directions at once. The United States for example illustrates regulatory contestation: the SEC adopted climate rules, stayed them during litigation, and then stopped defending them. The EU on the other hand, illustrates regulatory institutionalization: the CSRD, ESRS, CSDDD, EU AI Act, and EU Taxonomy architecture embed sustainability into reporting, due diligence, product

governance, and finance. Emerging markets also illustrate standard-setting convergence through ESG adoption or alignment, with Rwanda, Brazil, Hong Kong, Singapore, India and other countries each implementing local versions of sustainability disclosure.

The central tension is between aspiration and proof. Climate lawsuits show that courts may recognize duties or obligations while rejecting a claimant's proposed remedy. Shareholder proposal data also shows declining average support for many E&S proposals, while court intervention in the BJ's case shows that process risk remains acute. SEC enforcement shows that even where broad climate-disclosure rules are contested, inaccurate ESG claims remain actionable. Contractual disputes also show that private ESG commitments can be enforced outside public-law systems.

The practical conclusion is clear: ESG legal strategy should compare regimes along four dimensions. Mechanism: disclosure, due diligence, fiduciary oversight, contract, enforcement, or litigation. Scope: entity, group, value chain, product, investor communication, or sector. Trade-off: transparency versus liability, harmonization versus local tailoring, ambition versus substantiation. Time horizon: immediate reporting, transaction execution, board oversight, and long-term dispute resilience. A multinational or any local company that manages all four dimensions will be better prepared than one that treats ESG as a single annual reporting exercise.

Contact Information

Stabit Advocates
Website: www.stabitadvocates.com
Email: info@stabitadvocates.com
Phone: +250 789 366 274

For more information or to discuss your case, please contact us at info@stabitadvocates.com.
This guide is intended to provide general information and does not constitute legal advice. For specific legal advice tailored to your situation, please consult with a qualified attorney at Stabit Advocates.