K&L GATES

Authors:
Elizabeth Crouse, Partner,
Practice Group Coordinator - Power
Seattle, WA

Mark McMillan, Partner,
Practice Area Leader - Corporate
Chicago, IL

Action 1: Ensure Current Compliance

BTSC's operations inherently create legal risk vis-à-vis the increasing number of laws and disclosure requirements related to ESG factors. As an immediate priority, BTSC should undertake a review to ensure that it is currently compliant with ESG-related requirements such as Australia's Modern Slavery law, regulations released under the recently enacted greenhouse gas emissions related targets by several U.S. states, and similar laws, and board diversity laws such as that in California. It should also consider whether any of its activities, e.g., its hazardous waste exposure, currently rise to a level of materiality that should be disclosed in public securities filings with the SEC or the regulator in the country in which BTSC is publicly traded.

In addition to laws currently enacted, we would suggest that BTSC endeavor to learn about additional actions that many governments and government agencies are expected to take in the near future. For example, the SEC and European financial regulators have been notably more active in regard to considering when ESG-related risks must be disclosed to investors.

BTSC should use the opportunity to also consider its suppliers' compliance with the same or similar laws. Since it likely will not have this information to hand, BTSC should create supplier questionnaires and contractual requirements based on its research into laws applicable to itself and in jurisdictions where its suppliers are resident and engage with suppliers to develop supplier best practices that support BTSC's requirements.

Action 2: Consider Operations Beyond Compliance

Mere compliance with the law is insufficient for most stakeholders who are concerned about ESG factors. Therefore, BTSC should strongly consider additional actions.

This process should begin with an evaluation of who in the company is best suited to objectively evaluate the views and interests of the company's stakeholders (including, at minimum, customers, employees, investors, and communities) and make a recommendation for company policy and potential adherence to one or more reporting standards related to ESG and sustainability. The new Chief Sustainability Officer's

first task should be to convene a working group that represents internal stakeholders (e.g., employees from a selection of roles) and personnel who have a robust view on the interests of external stakeholders and can reach them to obtain direct feedback (e.g., sales representatives, community liaison personnel, and investor relations staff).

The ESG working group should first consider internal and extant external resources available to evaluate what ESG-related matters the BTSC stakeholders are most concerned about and which of those concerns have the most impact on the long-term success of BTSC. The working group should then select the most suitable internal and external resources to evaluate these points. When the evaluation is complete, the working group should identify actions that may be taken to address these concerns and consider how BTSC's internal operations, including existing policies, can be adjusted to account for them. When taking this step, the working group should consider using one of the many standards available to guide their process, e.g., any of the Global Reporting Initiative standards.

For example, BTSC's industrial goods line of business likely has significant exposure to steel and minerals, e.g., lithium for the batteries used in its rental business. While there are significant price pressures in respect of these materials, there are also increasing concerns in related industries about the environmental impact of mining and steel production (including inputs such as gray hydrogen) and social, governance, and regulatory compliance aspects of forced labor. Assuming that these matters are identified by BTSC's ESG working group as a concern of its stakeholders, the working group should consider creating a supply chain policy that addresses at least the following: practices for gaining insight into the practices of its suppliers, key ESG-related requirements for suppliers, periodic screening of suppliers for adherence to these requirements, and related contractual terms.

Action 3: Develop a Communication Strategy

The CSO should engage with key personnel to determine how best to communicate BTSC's evaluation of its ESG-related activities and any voluntary steps the company undertakes. As a best practice, this information should be communicated to each of the stakeholder groups and should involve at least the following internal groups:

- The **general counsel's** assistance will be crucial to ensure compliance with securities disclosure (for investor communication), employment (for employee communication), and consumer protection (for customer and public communication) law.
- The **investor relations** group will be crucial for any investor communications.
- The **sales and marketing** team will be a critical ally for public and customer communications.
- The human resources team should be consulted about the most effective methods for communicating BTSC's ESG plan to employees and contractors.
- The **supply chain/procurement** group's input will be important for supplier communication.

The working group should consider whether BTSC should expressly adopt one or more voluntary ESG-related standards and the process for auditing the company's compliance with them. Key factors the working group should consider are: the robustness of the standard, how well key stakeholders think of it, the cost of compliance and auditing thereof, and how BTSC's internal operations would need to be adjusted in order to facilitate compliance with the standard.