

Strengthen ESG Litigation Preparedness



1. Address contractual risk

Companies must look very carefully at the commitments and representations they are making around ESG in contracts. If the contract stipulates compliance with certain standards, violation of duty can trigger a damages claim for breach of contract. The best approach for avoiding action is to confirm in advance that a company can live up to specific duties and obligations before agreeing to them.

It is also advisable to agree on limitations of liability in order to make the remaining risk manageable. This is particularly pertinent in Asia Pacific. As the production center of the world, many supply chains originate in the region, but these markets are not always the best venues for resolving high value commercial disputes.

Examine commercial agreements through this lens – determining dispute resolution processes and preferred jurisdictions in advance.



2. Verify claims

Adopt a clear set of rules for the verification of green claims, including audits of any companies that provide certification. Keep records of claim verification.



3. Assess marketing authorization limitations

Under new proposals, EU authorities will be able to refuse marketing authorization applications for pharmaceutical products on environmental grounds, and suspend, revoke or vary marketing authorizations based on environmental risk.

This is a trend to watch for global pharmaceutical companies and domestic players in Asia Pacific, where legislation often follows Europe's lead.



4. Engage leaders

Poorly managed litigation can have a serious and lasting impact on company brand and stakeholder trust. Therefore, litigation readiness is not just an issue for in-house counsel – it is also relevant for C-Suite and Boards. Share points of opportunity and concern, and include leaders in high-level plans.



5. Coordinate effectively

Establish a trained litigation team to coordinate colleagues across departments and consider centralizing and codifying your approach to litigation in the form of company-wide policies.

But be aware that an effective litigation response often requires multi-jurisdictional consideration of regulation and the legal mechanisms for resolution. Track local litigation trends relevant to your company and create scenario plans to anticipate change.



6. Revisit strategies over time

Create a virtuous circle of understanding and action. Learn from past litigation handling, address failures in response, revisit employee training and update protocols based on new intelligence.

Other Resources

→ [The Year Ahead 2024](#)

Key Contacts



David McCredie
Partner, Australia
david.mccredie@
bakermckenzie.com



Vivian Wu*
Partner, Baker McKenzie
FenXun
vivian.wu@
bakermckenziefenxun.com



Celeste Ang
Principal, Singapore
celeste.ang@
bakermckenzie.com



Elisabeth White
Partner and Chair, Asia Pacific
Healthcare and Life Sciences, Australia
elisabeth.white@bakermckenzie.com

[Read the
Full Report](#)