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HKCGI Guidance Note on Greenwashing: A Corporate Strategy for Sustainability Credibility (Part 1)

This guidance note informs governance professionals on the issue of greenwashing, including the international dimension of greenwashing risk, requisite director oversight and other practical governance issues for managing and mitigating related risks, especially relevant due to the significant ESG and sustainability reporting roles and responsibilities of the governance professional.

Introduction

In recent years, the governance professional will know that sustainability has transformed from a niche commitment into a central pillar of corporate strategy. For corporates, demonstrating credible sustainability credentials is not merely desirable but essential. However, alongside this shift comes the growing risk of greenwashing – whereby companies make misleading or unsubstantiated claims about the environmental benefits or sustainability of their products and services or unrealistic or unverifiable assertions regarding their

decarbonisation efforts and net-zero goals, whether intentionally or inadvertently.

Greenwashing takes many forms and can appear in corporate communications, marketing materials, advertising campaigns, offering documents, and even ESG and sustainability reports. The most obvious and identifiable form of greenwashing is when overly generalised terms are used to describe products and services without clear substantiation, such as 'eco-friendly', 'green', 'carbon-neutral', 'net-zero' or 'sustainable' but selective disclosure or omission of material information to convey a more favourable impression of sustainability performance than reality can also constitute greenwashing.

The repercussions of committing greenwashing are becoming increasingly severe as an international regulatory concern. For example:

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- Keurig Canada Inc. settled a CAD\$3 million penalty with the Canadian Competition Bureau for misleading recycling claims that its products could be widely recycled when only two Canadian provinces accepted them into their recycling programme.
- Innocent Drinks' commercials were banned by the United Kingdom (UK) 's Advertising Standards Authority (ASA) as their environmental messaging contradicted their single-use plastic practices.
- HSBC and Lufthansa have also been caught in the crosshairs with the UK ASA, and for the latter, the German court, both had certain advertisements banned due to greenwashing concerns.

To dwell in more detail on the Keurig case (above), apart from the CAD\$3 million penalty, Keurig Canda agreed to:

- Donate CAD\$800,000 to a Canadian charitable organisation focused on environmental causes.
- Pay an additional CAD\$85,000 for the costs of the Bureau's investigation.
- Change its recyclable claims and the packaging of the K-Cup pods (the product of concern).
- Publish corrective notices about the recyclability of its product on its websites, on social media, in national and local news media, in the packaging of all new brewing machines and via email to its subscribers.
- Enhance its corporate compliance program as necessary to promote compliance with the laws and prevent deceptive marketing issues in the future.

Canada's Competition Commissioner stated, 'Portraying products or services as having more

environmental benefits than they truly have is an illegal practice in Canada. False or misleading claims by businesses to promote "greener" products harm consumers who are unable to make informed purchasing decisions, as well as competition and businesses who actually offer products with a lower environmental impact.'

From this quote, the governance professional must understand that greenwashing risk extends not only to legal liability or regulatory enforcement but is also a trust issue at the heart of corporate reputation. False or misleading environmental claims can erode consumer confidence and loyalty, impacting brand perception and, ultimately, financial performance.

The governance professional needs to know that, as part of their legal and fiduciary duties, directors have an obligation to monitor and manage ESG risks, and greenwashing is part of that oversight. Establishing robust internal controls and governance processes around sustainability communications, including addressing greenwashing concerns, is a critical responsibility for corporate leadership to manage legal and reputational risk and safeguard the company's brand and image.

The governance professional should inform their organisation that as global regulators tighten their grip on greenwashing, it is imperative for businesses, particularly those with a consumer-facing presence and those accessing capital markets, to develop a robust strategy to mitigate greenwashing risk.

The Evolving Regulatory Landscape

Historically, greenwashing was not explicitly regulated. In principle, general consumer and investor protection laws and misrepresentation provide some protection against misleading sustainability claims. As sustainable finance evolved from a trend to a fundamental part of the finance sector, regulators started clamping down on greenwashing in the financial industry, with regulations addressing ESG fund labelling and green taxonomies.

As sustainability became mainstream with the growth of sustainable finance and ESG disclosures proliferating across all sectors, global regulators are increasingly introducing targeted greenwashing regulations specifically designed to ensure the veracity of environmental claims in corporate communications, including the European Union, UK, United States, Canada, Australia and Singapore.

These specific anti-greenwashing regulations impose stricter requirements on the making of environmental claims, with guardrails around language use and the evidentiary standards that corporates must meet. Regulators are increasingly being granted enhanced enforcement powers over greenwashing claims. For instance, the UK's Competition and Markets Authority (CMA) will have the power to impose significant fines of up to 10% of a company's global turnover for misleading environmental claims starting from April 2025. These developments reflect a global trend towards more rigorous scrutiny of sustainability claims.

Meanwhile, Hong Kong has no specific greenwashing legislation targeting corporate communication and although there are general laws relating to misrepresentation and trade descriptions for goods and services, these are not effective in tackling greenwashing. Also, from the compliance perspective, the Securities and Futures Commission and the Stock Exchange of Hong Kong have signalled increased vigilance regarding ESG and sustainability reporting accuracies for listed companies. Hong Kong will need to focus on tackling greenwashing as part of its ambition to be a leading international sustainable financial centre.

From the governance perspective, greenwashing is an ESG and sustainability risk that must be managed. Also, multinationals selling their products or services to jurisdictions with more robust greenwashing regimes must know related laws and regulations. The governance professional must raise awareness of the issue, steer their organisation away from greenwashing practices, and facilitate training for directors, other executives, and front-line staff.