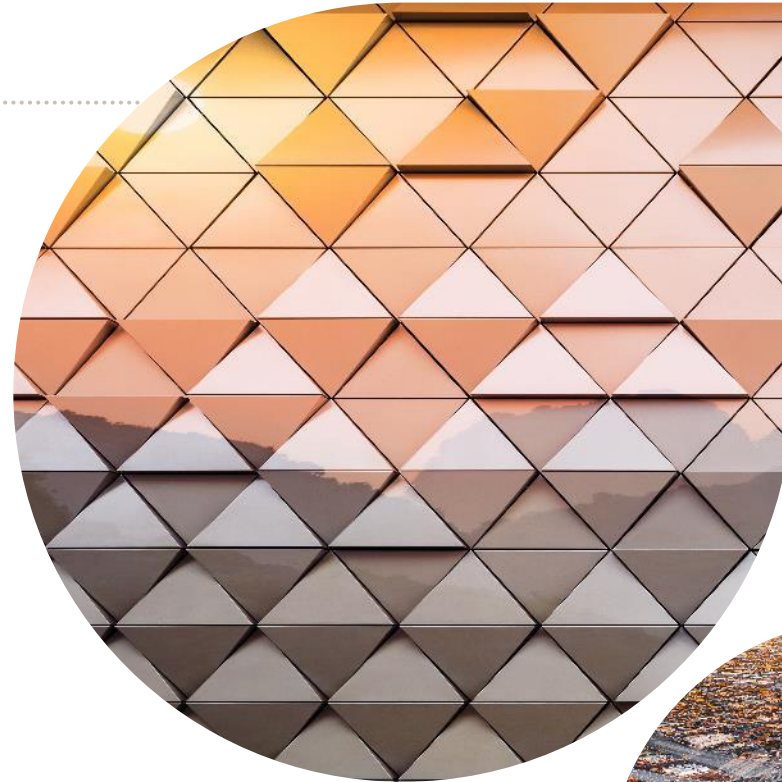

ESG in M&A Transactions

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Why consider ESG?

- > 90 % of deal makers expect ESG awareness to increase in the next three years
- > Relevant for all sectors as topic in regard to public perception and reputation
- > Legislation efforts will fuel the developments, e.g.:
 - > **French Duty of Vigilance Law** introduced the first legally binding human rights due diligence regulation worldwide in 2017, applicable to French companies with > 5,000 employees in France and/or > 10,000 employees worldwide
 - > **German Supply Chain Duty Act**, effective as of 1 January 2023: Introduces due diligence duties regarding global value chains and potential fines to all German companies with > 3,000 employees (as of 1 January 2024 lowered to 1,000 employees)
 - > **EU Directive on corporate sustainability due diligence (CSDDD)**: Among direct suppliers, also users and disposers of products to be considered; possible civil liability for managing directors

ESG through a full Transaction Cycle



- > Examination of ESG criteria in the preliminary phase on the basis of target's ESG rating, sustainability report and documents (if any)
- > Results are relevant for scoping of ESG due diligence

- > Assessing risk of green washing
- > Internal policies for loan origination
- > Potential capital impact
- > Compliance with ESG disclosure
- > Verification of target's supply chain due to impending legislation

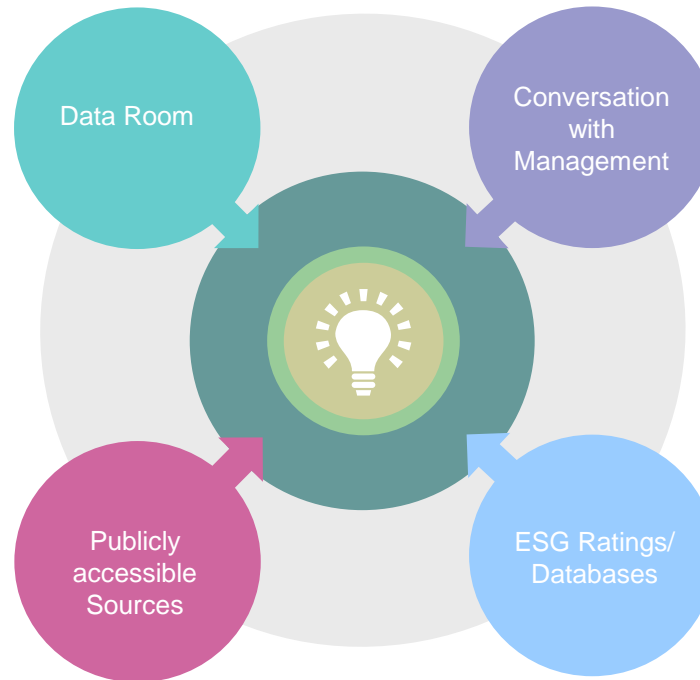
- > Contractual protection in the SPA through guarantees, indemnities, MAC clauses, covenants and earn-out clauses
- > Definition of investor objectives with regard to ESG risks and potentials in Shareholders' Agreement

- > Monitoring and reporting systems for ESG guidelines, supply management and management incentive programs

Due Diligence: Possible Sources for Information

- > Correspondence with regulators, NGOs and other stakeholders
- > Agreements on ESG liability issues
- > Protocols
- > Legal Disputes
- > BUT often ESG information in data room is not very comprehensive and does not give a complete picture

- > Media research
- > Research on legal disputes
- > Industry-specific reports from institutions



- > Often better source for ESG information
- > Ask questions strategically

- > Data from ESG rating agencies and NGOs databases to be checked

Share Purchase Agreement

Unknown risks

Guarantees/Warranties:

- > No comprehensive ESG compliance guarantees or ESG MAC clauses

Voluntary Commitments:

- > Climate Neutrality
- > Compliance with due diligence obligations in the supply/value chain

Known risks

Exemptions/Concrete Obligations to act:

- > E.g. exemption of environmental risks
- > Difficulty in qualifying and quantifying ESG violations for the factual recording and determination of obligations to act must be considered

Period between Signing and Closing

Covenants/Earn-out-Clauses:

- > Certain behavioural obligations are imposed on the seller (e.g. observance of diversity aspects in recruiting)
- > Further incentive effect to initiate ESG-specific measures can be achieved through earn-out clauses

Q&A



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