

Doing Business Responsibly Food & Beverage



Introduction

Doing business responsibly used to be an ethical choice. While doing the right thing still drives many businesses, the landscape of environmental, social and governance (ESG) issues has also evolved significantly and rapidly in recent years.

Businesses must now navigate a complex framework of ESG standards and regulations, face increased scrutiny of their business practices by investors and more informed customers and adapt to emerging ESG risks – physical, regulatory and reputational. Put simply, doing business responsibly – and demonstrating that you do business responsibly – is now key to financial performance, in the short and long term.

A return to growth will naturally be a priority following the COVID-19 pandemic. All indications are, however, that responsible business practice will be more, not less important, in the months and years to come, as:

- governments accelerate efforts to decarbonise economies;
- expectations increase of businesses as social actors – with COVID-19 driving public debate about which businesses are 'essential' and 'contributors' to society;

- investors scrutinise corporate governance – with a focus on preparedness for future systemic crises, including the effects of climate change; and
- businesses look for ways to differentiate themselves from the competition, to rebuild and accelerate growth post-pandemic.

We work with businesses in the Food & Beverage sector – helping them to navigate these rapidly evolving risks, to think sustainably and beyond compliance and to take advantage of the commercial opportunities of responsible business in a changing world.



How we can help you

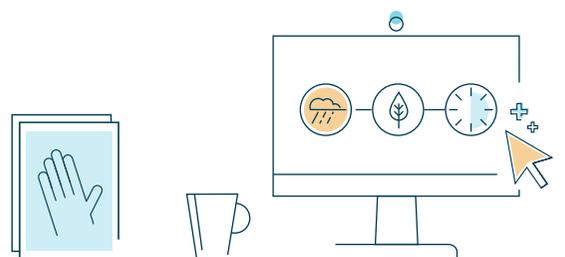
We help Food & Beverage businesses to achieve their responsible business objectives and strengthen their ESG credentials. In this guide, we outline some of the ways your business can do this. For more information on these issues, and to discuss how they are relevant to your business please get in touch with us.



Good governance and culture

Responsible and robust corporate governance has never been more critical to commercial success and sustainability. Business leaders looking for a competitive edge must be mindful of the importance of Board independence and diversity, aligning incentives with ESG impact, transparency and disclosure of data relating to ESG performance and establishing the systems and corporate culture necessary to prevent bribery, corruption, discrimination and the misuse of data.

B Corps - Certified B Corporations or "B Corps" are businesses certified to have met the highest standards of social and environmental performance, transparency, and are legally accountable to balance profit and purpose. Achieving "B Corp" status is one way for your business to mainstream purpose and responsibility into the DNA of your governance and structure.



Social impact and responsibility

The adverse impacts that business operations can have on people and communities – including the risk of human trafficking and modern slavery – is a critical source of reputational risk, not least for F&B businesses with consumer brands. This is also an area in which regulation is evolving, with the UK government committed to enhance the reporting requirements of the Modern Slavery Act 2015 and the EU consultation on mandatory human rights due diligence legislation. Businesses taking a proactive and responsible approach are already adopting best practice in human rights policy development and integration, staff training and due diligence.

Charitable Foundations - Corporate philanthropy is now a significant funding stream into the charity sector and private and public companies are increasingly setting up their own charitable subsidiaries (charitable foundations) to provide them with a clear platform to demonstrate their charitable giving, which in turn enhances their responsible business credentials.



Environmental responsibility

In June 2019, the UK became the first major world economy to make a commitment to achieving net zero greenhouse gas emissions by 2050. Achieving this target will very likely mean increased environmental regulation of businesses – moving from mandatory environmental disclosure requirements to regulations focused on achieving actual reductions in corporate carbon footprint. Businesses preparing for enhanced regulation and seeking to attract capital investment from increasingly sustainability-focused investors of all types are taking steps now to reduce their carbon emissions. In addition to reducing direct emissions, indirect emissions are being addressed by incorporating carbon reduction and other environmental responsibility provisions into the network of commercial contracts that govern their business relationships and supply chains.

Becoming a B Corp

Achieving "B Corp" status is one way for your business to mainstream purpose and responsibility into the DNA of your corporate governance and structure. It demonstrates to your customers, employees and investors that your business meets the highest standards of social and environmental performance and transparency and that you are committed to doing business sustainably - balancing profit and purpose.

B Corp certification from the non-profit B Lab does not just evaluate a product or service; it assesses the overall positive impact of the company behind it. Retailers such as **Waitrose** and **Boots** now have a dedicated B Corp page enabling customers easily to find and purchase products from certified B Corps.

What is involved?

The process to become a B Corp involves a company undergoing a rigorous self-assessment and in many cases companies going through the process require help to:

- amend their governing documents to require their Board of Directors to balance profit and purpose
- change their operations to work in a socially and environmentally responsible and transparent way

- register a corporate charitable foundation to pull together the company's philanthropic activities and help them to demonstrate the impact from charitable grant making, and
- enter into the B Corp Agreement with B Lab.

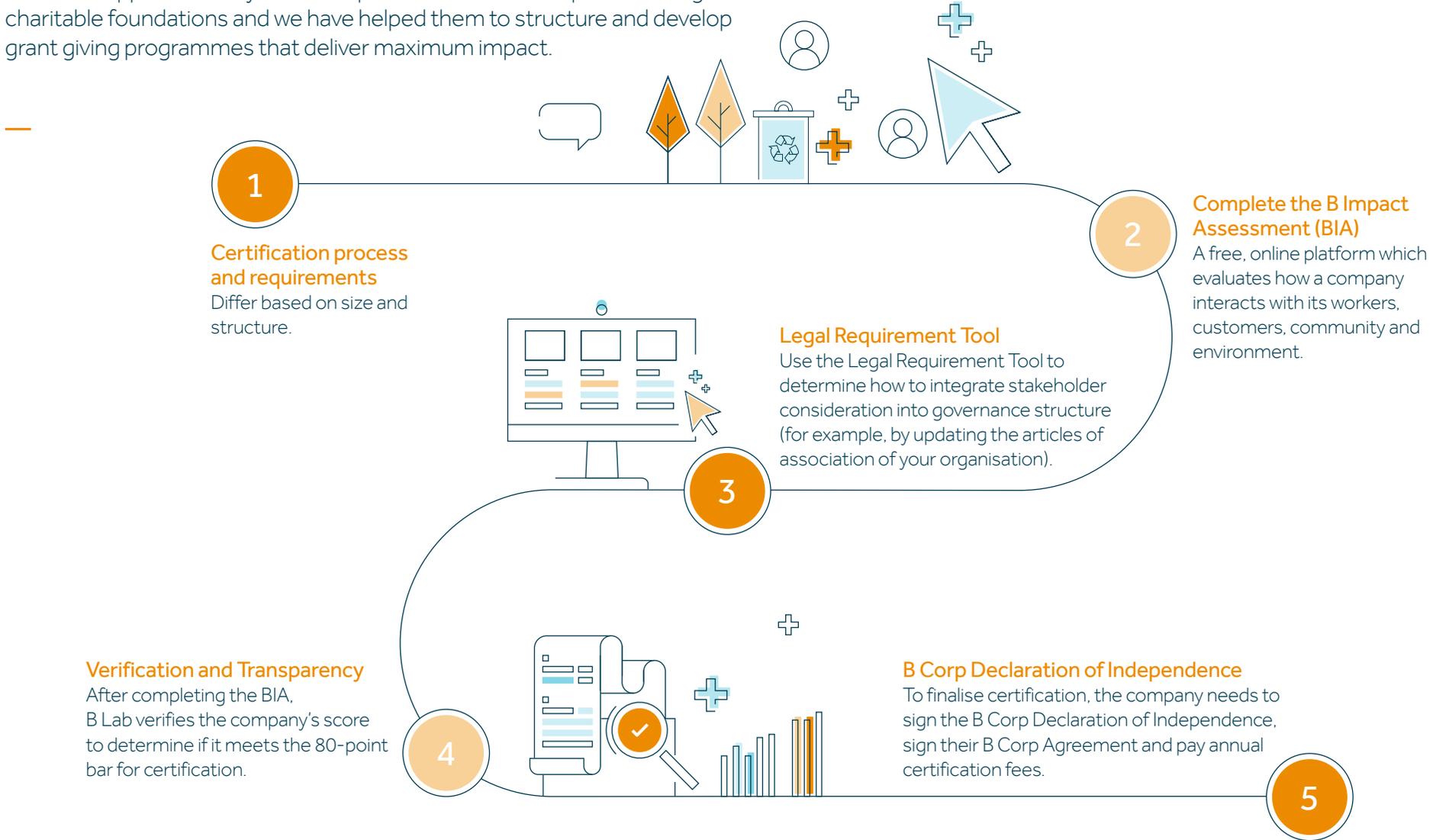
It is possible to balance profit with purpose without damaging the bottom line and the constitutional changes required don't mean that the business ceases to be a profit making business, or that profits available to be distributed to shareholders are reduced. It simply means that the business operates with integrity in a sustainable and socially responsible way. Many businesses are finding that doing business in this way enhances profitability, as customer loyalty and investor capital increasingly flow to companies that can demonstrate their positive impact.

Examples of B Corp businesses include...



5 steps to become a B Corp

We have supported many of our corporate clients to set up, and manage, charitable foundations and we have helped them to structure and develop grant giving programmes that deliver maximum impact.



Modern Slavery

Modern slavery and human trafficking are a continuing global scourge. Around the world, it is estimated that around 46 million people are victims of slavery. This is an issue that businesses can no longer ignore. The reputational damage from any association with human trafficking can be catastrophic.

The F&B industry is unfortunately prone to exposure. In 2018, the UK Gangmaster and Licensing Authority identified agriculture in the UK as a "high risk" industry. The reasons are obvious – agriculture requires labour flexibility, often depending on seasonal demand and frequently producers work to tight margins. This has meant that in the UK there have been a number of prosecutions of small food businesses for abusive labour practices towards agricultural workers.

Arguably, a greater risk lies overseas. Certain industries overseas are known to be afflicted with forced labour practices. Examples of where slavery has been found include the fishing industry in Far East Asia. Multiple cases have been reported of crew members being forced to work at sea for long periods and subjected to gruelling working hours for relatively little pay. Food is increasingly a global business. UK businesses therefore risk falling prey to products which have been delivered through forced labour.

It is not only the reputational aspect that businesses need to be concerned about. Increasingly, laws are being tightened to require businesses to tighten their anti-slavery and trafficking practices. The Modern Slavery Act 2015 requires businesses with revenues in excess of £36 million and a UK business presence to report annually on the steps they take to ensure their organisation and supply chain are free from slavery.

So what can you do?

There are a number of steps that can be taken to mitigate risk:

Policies – have clear policies for your staff and suppliers setting out your organisation's stance on slavery and trafficking. Make it clear to your own people that slavery will not be tolerated and you expect them to play a part in ensuring anti-slavery compliance policies.

Training – train your staff to recognise the red flags indicating where slavery may be present. For example, if a supplier is offering a price that is too good to be true, they should ask further questions. This will increase the chance of catching any problems early.

Due diligence – ensure that you audit suppliers. Due diligence should be conducted in accordance with a risk assessment which highlights those suppliers who are most likely to be in high risk regions or industries. Be prepared to conduct site visits and make sure your contracts with suppliers give you the right to ask for information as and when required.

Act on intelligence – where risks emerge be prepared to act on them. Make sure your contracts give you the right to end relationships with suppliers who have an association with slavery or trafficking practices which can be reasonably proven.

Comply with legal reporting obligations – reputationally, it can be just as damaging not to report as and when required under laws such as the Modern Slavery Act 2015. Make sure that you are also compliant with any reporting (or other slavery law related obligations) in any jurisdiction where you carry out business. Remember that these laws can sometimes have extraterritorial effect, meaning that compliance may be expected even if you are not physically located within the relevant country.

Charitable foundations

We have supported many of our corporate clients to set up, and manage, charitable foundations and we have helped them to structure and develop grant giving programmes that deliver maximum impact.

Businesses we have helped include:

- Global and national brands
- Hedge funds and investment managers
- Family owned businesses.

In many cases these businesses have been founded and owned by philanthropic individuals who have already founded a charitable foundation or a not for profit body in another jurisdiction. Therefore it is possible, as long as the charitable objectives match, for these foundations to collaborate and work together on joint initiatives or even to merge in the future if that is appropriate and desirable.

“Very responsive and very knowledgeable on third-sector law and current best practice.”

CHAMBERS UK 2021, CHARITIES

We can help you by advising on the most desirable charitable structure and to put in place the funding and ongoing management of the foundation to ensure that it is managed in a compliant, practical and tax efficient way.

We can guide you through the requirements of the Charity Commission as the independent regulator of the charity sector and will help you to satisfy the Charity Commission that the foundation exists for charitable purposes for the public benefit and “importantly” has operational independence from your company’s activities.

We are also able to provide ongoing advice, trustee training and an administration service to ensure that your charitable foundation has maximum impact and continues to meet its regulatory requirements.

The benefits of a charitable foundation include:

- providing the platform for your company’s philanthropy in a transparent and accountable way
- providing greater opportunities for staff and customer engagement
- to demonstrate social business credentials and to show customers, employees and investors that the brand is a ‘force for good’ and to enhance your company’s brand and reputation
- to give back to communities in the UK and internationally where your business has a presence; and
- the opportunity to donate funds and other assets in a tax efficient way.

Your environmental impact

In June 2019 the UK became the first major world economy to make a legally binding commitment to achieving net zero greenhouse gas (GHG) emissions by 2050 (Net Zero). With the UK's services-centric economy, the F&B sector will need to demonstrate it is playing its part in moving towards a sustainable low to zero carbon economy.

Many businesses have already taken steps to measure the carbon footprint of their operations and have built reputations based on their sustainability credentials. But any hint of green-washing is likely to be damaging to those reputations in the face of increased regulatory requirements and consumer expectations.

So what can you do?

Whether or not your business is already committed to net zero and on a clear and measurable trajectory to achieving it, reducing your carbon footprint is almost certainly on your Board agenda as a key area of business risk and opportunity.

Along with other lawyers over the last year we've been participating in a collaborative project (**The Chancery Lane Project**) to develop a large range of contract provisions that can be introduced into different aspects of a company's business, but in particular into its supply chain.

In addition to reducing direct emissions from your business operations, any carbon reduction trajectory is likely to include targets for reduction of indirect emissions – the carbon footprint of the products and services that your business sources from third party suppliers (Scope 2 and 3 emissions). Good supply chain management and appropriately crafted contract clauses - including GHG reduction targets for your suppliers - can help you achieve this, together with the ability to switch from one failing supplier to another more cooperative one.

If you'd like more information about how we can help you "rewire" your contracts in the fight against climate change you can [visit our website](#).





What do clients say about us?

"It's vital that firms like Charles Russell Speechlys are engaged. These are complicated issues and the best companies responding take legal advice not only on what they need to do to stay within the law, but also on what good practice looks like."

CHRISTIAN GUY, JUSTICE & CARE



"The continuing benefits of [the firm's] service are evident: It is a cost effective and commercial approach for the short and the long term."

MANAGING DIRECTOR, CAFFÈ NERO

"Having Charles Russell Speechlys to help us with advice at the macro level is extremely helpful."

SIMON GRAINGE, CEO, EMMAUS UK

"They're extremely competent and diligent and, most importantly, they're really proactive. I never have to chase them; they're always on the front foot."

CHAMBERS UK, 2019



Key contacts



Sarah Rowley
Partner, Charities

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Sarah advises a wide range of household name and institutional charities and other not for profit bodies on charity law, and regulation, governance and corporate and commercial matters.

She also enjoys helping corporates to interact with the charity sector, by making strategic grants, offering expertise or products and to collaborate to raise funds and awareness. Sarah has first-hand experience working for a charity, having spent the first two years of her professional life working for an international aid charity.



Freddie Law
Associate

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Freddie is a commercial lawyer, and has particular experience in the F&B sector. He has acted for start-ups, household brands and high street restaurants.

He has advised clients on a range of commercial contracts and assists on digital transformation projects, including on the optimisation of data. He has also completed a secondment at HelloFresh.



Kerry Stares
Director of Responsible Business and Pro Bono

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Kerry leads the efforts we make as a firm to operate responsibly and to ensure that our business has a positive impact for all our stakeholders: our clients, our people, our communities and our natural environment. She also leads the firm's Pro Bono practice, which provides access to free legal advice for those who need it and free legal support to help strengthen small charities and social enterprises.

Kerry is a senior commercial litigator and solicitor advocate. She has extensive knowledge of the non-profit sector and social justice work, having held senior legal and management roles at leading international charities.



Caroline Swain
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Caroline is a commercial contracts specialist who leads the firm's F&B focus team. Caroline advises a range of restaurant chains, pub and bar groups and food-to-go outlets together with various food and product manufacturers. She has expertise in marketing, advertising and PR arrangements together with the corresponding regulation, manufacture and distribution, sponsorship and brand collaboration, consumer law and terms of sale.

Caroline has experience working within the retail and hospitality sector having completed a number of in-house secondments.



Contact

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