Q&A with Latham's Austin Pierce and Roderick Branch about ESG

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Austin Pierce and Roderick Branch

Austin Pierce and Roderick Branch of Latham & Watkins LLP – editors of the **Guide to Environmental, Social and Corporate Governance** – discuss current trends in the sustainability space across the region, including the impact of wider geopolitical shifts in the last 12 months and why keeping sustainability front and centre is key to building resilience.

What has been the most significant regulatory shift affecting ESG compliance in Latin America over the past year, and which jurisdictions are leading versus lagging?

Austin Pierce: From a regulatory standpoint, we've definitely seen the standards issued by the International Sustainability Standards Board start to pick up steam in Latin America. Major economies like Brazil and Mexico have rolled out some form of mandatory disclosure under the standards starting in 2026. This, probably even more than the European Union's double materiality approach to disclosure, is creating a situation that could lead to some paralleling between environmental, social and other traditionally non-financial information alongside traditional financial reporting.

However, I wouldn't say there's necessarily a clear "leader" or "laggard" on these matters, because there's not necessarily a fixed end goal. A lot of what happens in the space is very much driven by the individual needs of jurisdictions. That's something we've also seen with the EU, where there was a significant push to issue a whole host of regulations in the sustainability space. However, when it comes to the practical implications of these laws and how they intersect with other challenges the EU is having to navigate, we're seeing a recalibration of what these regulatory schemes may look like. We've also seen internal friction within the EU, which has caused broader issues in terms of market confidence around some of these topics.

There is now a certain scepticism as to whether the EU's initial approach was really the best one. And sometimes not being out in front can allow policymakers to take the time to tailor their plans more to their jurisdiction. That's probably a running theme in the sustainability space, not just for countries but for companies: taking the time to tailor a plan to your specific circumstances.

And, of course, some of the most important shifts of the year are not strictly regulatory, but geopolitical. We're seeing increasing great power competition, as well as economic tensions, that are creating a wave of both opportunities and challenges for Latin America, including in the sustainability space. National security and sustainability efforts, for example, have both led to increased scrutiny and emphasis on the provenance of products, services and entire value chains. Latin American countries increasingly have to assess the appropriate geopolitical middle point for their own strategies, particularly between the United States and China, and that creates a significant consideration for how the region is approaching some of these topics. All of this then goes on to have ramifications for companies in Latin America, and elsewhere.

Roderick Branch: I fully agree with that. I don't think we'd say that any particular jurisdiction is leading versus lagging. However, we do see a lot of activity in some jurisdictions compared to others. And the jurisdictions that have been most active in our experience are Brazil, Chile, Colombia and Mexico.

In addition, geopolitics has had a huge impact on ESG developments. We had a fascinating conversation with several Mexican clients the other day who were worried about supply-chain issues and other items because of the geopolitics of the current US posture vis-à-vis the region – for example, designating cartels as foreign terrorist organisations and what effect that might have on supply chains and diligence efforts by companies.

It’s widely recognised that the ESG space is going through something of an inflection point right now. How are you seeing that reflected in your clients’ concerns? Have these changed significantly over the last 12 months?

Branch: From my perspective as someone who counsels global public companies and foreign private issuers on regulatory compliance, one of the biggest developments is the tension between home country and US requirements. Clients are saying: Our home country rule requires addressing various ESG-related topics – emissions, diversity, etc. These clients are also concerned about how those disclosures will land in the US, and the liability and political risks they could incur when they make those disclosures to US investors in SEC filings. So it’s critical to strike a balance between potentially conflicting cross-border regimes, investor communication and relations, and potential liability, especially where different regulators may be taking opposing views on these topics.

Pierce: And Roderick, just to build on that, people are asking: Is ESG dead? That’s not proven to be the case. Of course, some of the terminology is shifting, but clients are continuing to deal with an array of environmental, social and related concerns in what has turned out to be a relatively fragmented landscape – some of these regulations that are coming out in other jurisdictions are a perfect example of that. So it’s more a matter of shifting tactical priority, both in terms of the immediate needs the companies must work through and the lens through which they’re approaching topics that fall into the broader bucket of sustainability.

Over the past few years, there’s been a lot of hyper-reactivity in the ESG space. More standards, more regulations, more and more distinct expectations being placed onto organisations. The pace of change had been so quick that many organisations were drinking from a firehose just to keep up, with much of the response plan being driven by exogenous factors.

That manic rush has come to an end. Of course, we still have standards and regulations and new obligations coming out: 2026 is going to be a particularly interesting year for that with some of the first mandatory requirements in a few key jurisdictions. But we generally have a bit more breathing space, and it can serve as a good opportunity for companies to be able to pause, reflect and strategically consider their approach to these matters. To realign on what topics are really important to them and make sure they have the right approach to handling them – whether that’s governance processes, controls or otherwise.

Branch: Tying that back to the tension I was talking about earlier, the home country investor base and home country regulator both increasingly are pushing for ESG-related information. The question becomes: How do companies address those considerations in a manner that keeps it focused and useful?

As ESG continues to evolve in the region, how are your clients balancing momentum on sustainability commitments with a sharper focus on the business case?

Pierce: The first thing to remember is that speed is not the only factor to be optimising for. Similar to what I just mentioned, folks need to recognise that not every issue is going to be equally important to every organisation.

Making sure to focus on the most salient topics is foundational. And, of course, some of that is going to be compliance with mandatory regulations or other quasi-mandatory requirements. Responding to those expectations from investors, policymakers or customers where these may be impacted by some of these things and need to leverage their own supply chain to get the information. Those are all important factors in determining what is most salient, but there's a lot of fertile ground in determining how sustainability intersects with business demands. As an example, one of sustainability's strongest benefits across sectors, can be to improve operational resilience and that can be from the energy perspective. Right now, we've got increasing grid demand from a variety of digital infrastructure, from data centres and whatnot. A mission benefits from having onsite alternative energy. It can frankly become a secondary consideration to insulating operations against the shocks in the cost or availability of electricity. That's the question that's been coming up with some of my clients and it makes you ask: Okay, how are we actually selling this? Is it really that emission reductions is the primary focus or is this a matter of operational resiliency? Similar for efficiency gains for other resources – water efficiency is a huge consideration for folks with operations in more water-stressed regions.

Similar to what we were talking about earlier, you've got the value-chain perspective, supply-chain mapping, diligence exercises – these give vital insight, particularly as we see emerging national security considerations for some sectors or to overcome what I call 'non-tariff trade barriers'. This is frankly a space where folks can get tripped up on you know what is common when we're discussing ESG versus what is appropriate. So at its core ESG is an acknowledgement that environmental, social or other traditionally, non-financial topics can in fact have a meaningful financial impact on companies. But different topics are going to be more or less salient for different businesses and prioritising items you know are more tied to the functioning of the business is how you make that meaningful progress, build buy-in within the company and make the sustainability function more central to overall business strategy. In some ways – and Roderick, I'd be curious about your take on this – it's similar to the discussion around legal counsel. It can be seen as a compliance function and a cost centre being more reactive, but it can also be a really important strategic player to advance business goals, reduce risk and unlock channels to additional value, when you look at it proactively and from that business specific context.

Branch: I agree with that and it's also something that a lot of customers of these companies are focused on – particularly the younger generations. They want to have information about problems, about emissions and about sustainability. So not only will this get you good suppliers, it's also good business.

Complexity and fragmentation continue to permeate ESG concerns. What are your key tips for legal counsel trying to create sophisticated advice for their clients that takes account of the full contextual range?

Branch: Without sounding self-serving: Call us! There are so many different and sometimes conflicting regimes that can apply to these multinational companies, and it's highly fragmented. You really need a global view to feel comfortable that you're addressing everything that matters while not going overboard, striking a balance across jurisdictions and requirements. It's not enough to just talk to your local counsel and focus on the local requirements. It's about remaining informed and ensuring that they're considering the entire world.

Being in touch early and often with your experts is a good idea, and then from the counsel's perspective, remaining in close contact with people in other jurisdictions who can supplement your own expertise locally is just as key.

Pierce: I'm going to piggyback on that, because talking about this globally is essential – both from a jurisdictional perspective, knowing what is going on in the US versus the EU versus Mexico versus Brazil, and in the particular context of an individual client or matter.

From the counsel position, getting the answer to a specific question is often the immediate need. But an area where we can unlock value – and one of the things I really enjoy about working on this team – is looking at how the matter at hand impacts the broader picture of a client's business. An example is knock-on disclosure considerations: when disclosing something for one regulator or stakeholder has additional implications under disclosure requirements, tort laws, etc in other jurisdictions where a company operates. And then we can aim to get ahead of that with appropriate framing, communication or other strategies.

These knock-on disclosure questions are something I'm working on with several clients heading into 2026, which is the first year for mandatory reporting under several of these new sustainability regimes. So, that's definitely a key consideration of the value-add from my perspective.

Another example of having this holistic viewpoint is assessing operational concerns, particularly as we see continued fragmentation not only on matters related to sustainability, but also as a trend of increasing geopolitical and geoeconomic tension. These tensions are another form of emerging risk and opportunity. Helping clients to understand those matters and identify opportunities to manage them with tools that have been leveraged for other ESG matters – such as climate, human rights and responsible sourcing – can be a real value-add as we see the risk environment continue to evolve. And helping to see around the corner and execute on these strategies allows you to graduate from being a technical advisor to a strategic partner.

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