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When ESG Becomes Legal Risk

What happens when good intentions meet hard consequences

A company signs a contract. At the time, the ESG wording looks harmless.

> *Use this money only for green projects.*
>
> *Prove your supply chain is clean.*
>
> *Consult the affected community.*
>
> *Keep proper records for your carbon credits.*

Everyone signs. The project begins. The money is spent. The goods are exported. The land is cleared. The carbon credits are sold.

Then one day, someone asks a simple question: **can you prove that you did what you promised?**

That is where the risk begins.

1 Finance: the money was meant for green projects

In finance, the clause is usually simple. The borrower or issuer promises that the money raised will be used only for agreed green or social projects. It may be called a **use-of-proceeds clause**, a **reporting obligation**, or a **sustainability target**.

The story is easy to understand. A company raises money from investors and says: this money will go into solar, clean energy, green buildings, affordable housing or another approved project. Investors agree because they believe the money has a clear sustainability purpose.

But if the company uses that money for something else, the problem is no longer public relations. It is no longer just embarrassment. It is a breach of the promise made to the people who provided the money.

The consequence can be serious: investor claims, regulatory questions, loss of credibility, higher borrowing costs, or even default under the financing documents. The clause looked soft when it was signed. It becomes very hard when the money cannot be traced.

This is not hypothetical. In June 2026, the TRIFIC Green USD I-REIT, a dollar-denominated real estate investment trust promoted within the Centum group, closed oversubscribed. The fund is anchored by TRIFIC

North Tower, an IFC EDGE-certified office asset within the TRIFIC Special Economic Zone in the Two Rivers/Gigiri area of Nairobi. Investor appetite appears to have been supported by the USD income profile, the quality of the underlying asset, the green certification, the minimum rental income support during the lease-up period, and the liquidity arrangements put in place around the listing. That success shows the opportunity side of ESG: when a sustainability story is credible, well-structured and backed by a strong sponsor, it can help unlock capital. But it also shows why the story must remain true. Once a green label forms part of the investment case, the certification, income assumptions and sustainability disclosures must be capable of standing up long after the offer closes.

2 Agriculture and trade: the buyer asks for proof

In agriculture and trade, the key clause is usually found in the supply contract. It may say that the supplier must comply with **labour laws**, **human rights standards**, **environmental requirements**, **traceability rules** and **audit obligations**.

The story here is not complicated. A farmer, processor or exporter has a good product. The coffee is good. The flowers are good. The avocados are good. But the international buyer asks: where did this come from? Who worked on it? Were they treated properly? Was any forest cleared? Can we see the records?

If the supplier cannot answer, the goods become risky.

This is already happening in global trade. The United States has proposed additional tariffs of up to 12.5% on imports from certain countries over forced labour concerns, showing how labour standards can quickly become a market access issue. The EU Deforestation Regulation requires businesses dealing with commodities such as coffee, cocoa, cattle, palm oil, rubber, soy and wood — and certain products made from them — to show that those products are deforestation-free, legally produced, and supported by due diligence information. So the breach may not be that the supplier deliberately did something wrong. The breach may be that the supplier cannot prove compliance. The consequence is still real: rejected goods, suspended orders, termination of the supply contract, tariffs, or exclusion from an important market.

3 Infrastructure and energy: the community says it was not heard

In infrastructure and energy, the likely provision is usually a **compliance with law clause**, an **environmental and social safeguards clause**, a **public participation obligation**, or a condition requiring the necessary permits and approvals.

The story often begins with excitement. A major project is announced. It promises energy, jobs, roads, investment or national development. On paper, it looks impressive.

But then the community asks: who spoke to us? Who explained the risks? What happens to our land, water, fishing, homes, health or livelihoods?

That is why public participation is not a small administrative step. It is part of the project's legal and social foundation. Kenya’s nuclear power debate shows this clearly. In Siaya County, residents around Sakwa in Bondo publicly protested against the proposed nuclear power project near Lake Victoria, raising concerns about consultation, safety, livelihoods and community consent. The Nuclear Power and Energy Agency later responded by saying the project would not proceed without broad informed community consent and that further engagement would be undertaken.

The consequence is not only a court case, although litigation is possible. The consequence can also be delay, political pressure, increased costs, reputational damage and loss of the project's social licence to operate.

A project may have engineers. It may have financiers. It may even have government support. But if the people most affected feel ignored, the project can still stall.

4 Carbon markets: the numbers must survive scrutiny

In carbon markets, the key clause is usually about verification. It may require the project developer to keep **proper records**, follow approved **carbon accounting methods**, allow **audits**, and deliver **valid carbon credits**.

This is where the KOKO Networks story becomes important.

KOKO built a clean cooking business in Kenya with a model that depended heavily on carbon credit revenue. The idea was attractive: cleaner cooking, lower emissions, less pressure on forests, and cheaper fuel for households. But when questions arose around carbon accounting, approvals and the ability to sell credits into international markets, the business model came under pressure. Reuters has reported that KOKO's collapse has become a wider warning for clean cooking carbon credit projects, especially where buyers demand stronger proof that the carbon maths add up. Other reports have linked the shutdown to the failure to obtain the necessary Kenyan authorisation for international carbon credit sales.

The lesson is simple. In carbon markets, credibility is the product.

If the credit cannot be verified, it cannot be trusted. If it cannot be trusted, buyers walk away. If buyers walk away, the revenue disappears. And if the revenue was holding up the business, the whole structure can collapse.

Conclusion: the question is proof

The lesson is not that ESG is dangerous. The lesson is that ESG promises must be treated like real obligations.

A company should know what it has promised in its contracts, financing documents, permits, supply chains and public reports. It should also know where the evidence is kept.

Because when things go wrong, the question will not be whether the company had good intentions.

The question will be much simpler:

Can you prove that you did what you said you would do?

And if the answer is no, the consequence may already have begun.