



THE TOP 3 DISPUTE RISK AREAS FOR ORGANIZATIONS IN 2022

14 October 2022

At Moalem Weitemeyer, we have taken a closer look at risk areas in litigation, and our assessment is that cybersecurity, data protection, and ESG will become some of the biggest risk areas in litigation that companies in Denmark and globally will be faced with going forward.

Cybersecurity, data protection, and ESG disputes will all pose significant risks to businesses: the risk of reputational damage, the risk of regulatory conflict, and the risk of global impact.

As the 3 areas become more complex, greater demands are placed on individual companies to prevent and manage these risks. Thus, in an increasingly globalized world, the same global dispute trends and risks apply to organizations and companies in Denmark.

Cybersecurity

Cyber-attacks are a threat to businesses navigating the electronic world, so it is important for companies to be at the forefront of any incidents that might pose a risk.

New methods of communication, such as remote working, cloud storage, etc., generally make it more difficult for companies to document adequate compliance with, e.g., regulations and contractual obligations, thus increasing the risk of becoming involved in disputes.

It is important to formulate a strong strategy on how to handle cybersecurity incidents and identify who in the company has the authority to make critical, including time-critical, decisions. In the effort to prevent cyber-attacks, companies should at minimum ensure that the most valuable data in the company is protected by multiple layers of protection, and prevention mechanisms should be defined according to the specific need, as well as relevant regulation, to, inter alia, minimize the risk of criticism and, in the extreme, the risk of consequential liability.

Data Protection

Given the increased risk of cyber-attacks and data leakage, it will be necessary to put increased focus on data protection. Data protection is, however, not only relevant when talking about cyber-attacks. As many processes become technologized, the huge amount of data stored by many companies must be protected, among other things to avoid disputes over data leaks. For example, personal data must only be stored for as long as is necessary for the purpose for which the personal data was collected. In Denmark, all companies must comply with the GDPR rules, but while the increasing technological activity makes the rules more and more relevant and, at the same time, compliance with the rules becomes more complex.

ESG

ESG is short for 'Environmental, Social and Governance' and covers essential information about any company's environmental and climate performance, its social impact and its overall governance. ESG data is non-financial data that investors and analysts increasingly seek when assessing a company's ability to create value and long-term growth opportunities.

ESG addresses the question of whether organizations are "doing the right thing", and the assessment of what is the "right thing to do" is left less to the individual company. And so, the concept of "greenwashing" is introduced, a term used to describe when companies claim to be doing the right thing without actually doing it – and this is not without consequences. Attention to regulatory pronouncements plays a crucial role here, as one sees more standardized documents, regulations etc. with which an organization is expected to comply.

It is therefore important that companies look beyond the inter partes contract in ESG-related risks and develops a sustainability policy to be communicated externally. Supervision, accountability, transparency, and compliance are key elements of safe ESG management.

What are the Types of Disputes to which Companies should be particularly attentive?

The 3 risk areas will lead to some types of disputes becoming more frequent than others.

We have, for instance, seen an increase in activity related to the types of commercial claims associated with data, artificial intelligence, and cyber security, creating an increase in mass tort and shareholder litigation.

ESG-related litigation is also increasingly occurring due to society challenging company obligations, e.g., by pointing out what a company has or has not advertised and whether such company is actually complying as advertised. Particularly disputes over fair marketing may arise.

Our Comments

Cybersecurity, data protection, and ESG are areas in constant development, and there is nothing suggesting that the trends of 2022 should not continue into 2023. With the rapid developments in ESG, it is inevitable that there will be litigation, as has already been seen with the Ombudsman's decision of 23 September 2022 regarding the greenwashing of 3 companies, which we have previously written about [here](#).

At Moalem Weitemeyer, we are staying up to date with the latest developments in the fields of cybersecurity, data protection, and ESG, and we are therefore ready to assist in disputes in these areas, regardless of the nature of the dispute.

If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:



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