

ESG IN APAC

Jurisdictional overview on ESG reporting,
transition planning and greenwashing

This is an interactive publication

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INTRODUCTION

This publication will help businesses unpack the current ESG regulatory landscape in 16 APAC jurisdictions (including separating what is mandatory and what is not) and get a sense of the commonalities and direction of travel within APAC in relation to three key themes: ESG reporting, transition planning and greenwashing.

This publication is a collaboration between Slaughter and May and leading independent law firms in APAC. As the first British law firm to open an office in Hong Kong in 1974, Slaughter and May has a long-standing presence in APAC. For nearly half a century, we have acted for our local and international clients on all elements of their APAC matters. We have developed close working relationships with leading independent law firms throughout APAC in order to deliver seamless first class legal services in many cross-border matters.

Please keep scrolling down to explore overall trends and observations across APAC for each key theme, along with further detailed information on the 16 APAC jurisdictions covered in this publication.

Lisa Chung, Partner
Slaughter and May

KEY THEMES AND OBSERVATIONS ACROSS APAC



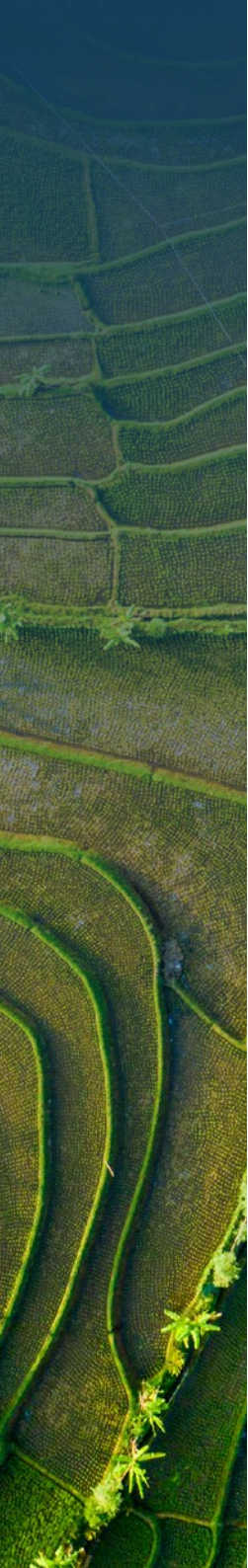
ESG REPORTING REQUIREMENTS

Investors, asset managers and financiers have been demanding better quality and comparable ESG-related disclosures from corporates as such disclosures may impact on their capital allocation and risk assessment, as well as their own reporting obligations. This has been a key driver for some jurisdictions to move towards making ESG corporate reporting mandatory and more decision-useful. We explore below the extent to which APAC jurisdictions are following suit and the extent of any convergence around the sustainability and climate-related reporting standards¹ of the International Sustainability Standards Board (ISSB), which were issued on 26 June 2023.

Observations across APAC

- A substantial majority of the covered jurisdictions have legal or regulatory requirements in place for companies to make comprehensive ESG-related disclosures on a mandatory or comply-or-explain basis, with most jurisdictions applying these requirements to listed companies and, in some cases, financial institutions.
- Singapore is potentially going further by proposing to apply ISSB-aligned climate-related disclosures to larger non-listed companies, while Australia applies modern slavery reporting requirements to larger non-listed companies. This trend is in line with the EU approach of applying corporate sustainability reporting requirements to larger entities whether listed or not.
- A small minority of jurisdictions apply ESG-related reporting obligations only to specified entities or projects with larger ESG impact (for example, Cambodia and Myanmar). South Korea has announced it will move from a voluntary disclosure regime for listed entities to a mandatory regime.
- We observe a range of reporting frameworks and standards. Most jurisdictions' reporting standards have taken elements of international standards, such as TCFD, GRI and SASB. Jurisdictions with more bespoke reporting requirements (which are not heavily drawn from international standards) currently include Cambodia, Indonesia, Myanmar and Mainland China (although in practice, many companies listed in Shanghai and Shenzhen prepare their disclosures with reference to international standards and frameworks).
- Climate-related issues are a key focus in multiple jurisdictions, with jurisdictions including Hong Kong, Japan, Malaysia, New Zealand, Taiwan and Singapore having incorporated or taken the TCFD recommendations into account in their local reporting requirements or having announced plans to do so.

¹ IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 Climate-related Disclosures.



- Importantly, we can see the potential of convergence around the ISSB standards, with over half of the profiled jurisdictions having indicated they will incorporate or consider the incorporation of one or both of the ISSB standards into local reporting rules. They are Australia, Hong Kong, Japan, Malaysia, New Zealand, Philippines, Singapore, Taiwan and South Korea. However, the precise extent of ISSB alignment in these jurisdictions remains to be seen as the rules are still being developed. A degree of fragmentation within the region will likely remain, at least in the short term, as other jurisdictions have not given similar indications.
- A minority of jurisdictions (New Zealand and Taiwan) have assurance requirements in relation to aspects of ESG disclosures, with Singapore and India planning to introduce assurance requirements. We can expect further jurisdictions to consider moving towards requiring external assurance of certain ESG disclosures (particularly on GHG emissions).



TRANSITION PLANS

Corporate transition plans set out how businesses plan to transition to a low carbon economy. The EU is starting to require certain large and listed entities to disclose their transition plans under its Corporate Sustainability Reporting Directive. The UK currently requires listed companies to disclose such plans on a ‘comply-or-explain’ basis and is expected to introduce similar requirements for large private companies. The UK has also set up a Transition Plan Taskforce to develop a ‘gold standard’ for corporate transition plans. While such developments are not yet in place throughout APAC, it would be helpful to understand whether and how these concepts are developing in the region.

Observations across APAC

- Governments in all the covered jurisdictions have announced net zero or decarbonisation commitments.
- Outside of specific sectors or heavy emitters, none of the jurisdictions have introduced mandatory requirements to adopt or implement transition plans or independently set climate-related targets. However, many have disclosure requirements touching on aspects of such plans or targets. For jurisdictions that are proposing

to implement the ISSB climate standard, the mandatory disclosure of corporate transition plans will be a key aspect of ISSB-aligned reporting.

- Australia, Indonesia, Mainland China, New Zealand and South Korea have compliance-based carbon markets whereby certain higher-emitting entities / sectors are subject to emission caps / allowances, with India and Japan also expected to implement such markets soon. Vietnam requires specified entities from high-emitting sectors to adopt and implement GHG reduction plans.
- A number of jurisdictions (Australia, Cambodia, Hong Kong, Mainland China, Malaysia, Japan, Singapore and Thailand) already have voluntary carbon markets in place and more are expected to be launched.
- Going forward, as more jurisdictions adopt the ISSB climate-related standard and as expectations harden, there will be more detailed disclosure requirements on how a reporting entity plans to address climate-related risks, which will have a knock-on pressure for entities to put in place credible transition plans and targets in order to demonstrate to stakeholders that they have developed a robust strategy.



GREENWASHING

As requirements on ESG reporting and transition planning generally harden, the risks of greenwashing claims are likely to increase.¹ We will explore in this publication the extent to which this has translated into any material litigation or regulatory action in APAC and the grounds for such action.

Observations across APAC

- With the exceptions of Australia, and to a lesser degree, New Zealand and Singapore, there are no known examples of significant legal claims or regulatory enforcement against greenwashing across the covered jurisdictions.
- Australia has been the most active in this regard – it has seen its securities regulator instigate legal proceedings, as well as regulatory interventions, against alleged greenwashing conduct (including claims about emissions intensity of products), and there is a Senate inquiry underway on whether further regulation is required. Australia has also seen the first court proceeding globally to challenge a net zero target – this was instigated by a shareholder advocacy NGO against a gas company.
- In Singapore, a complaint was made to the Singapore Stock Exchange by an Australian climate activist group against a power generator on misleading disclosures related to a bond issue on the Singapore Stock Exchange.
- New Zealand's consumer regulator and financial markets regulator have taken some enforcement action, primarily in relation to unsubstantiated environmental claims of certain products. Some minor regulatory actions have also been taken in South Korea and the mainland of China in relation to product-related environmental claims (including a claim of carbon neutrality based on the use of carbon credits).
- All jurisdictions have grounds on which greenwashing proceedings or action can potentially be launched, with many answers noting that greater scrutiny against greenwashing conduct is expected as disclosure requirements are enhanced.

¹ Click [here](#) to see our latest thinking on how to ensure your sustainability strategy is resilient to the risk of greenwashing claims.

JURISDICTIONAL Q&A

Please click on the map
to navigate the Q&A.



AUSTRALIA

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Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of Australia.



ESG in APAC – Australia
By Gilbert + Tobin



A. ESG REPORTING

1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes.


2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

ESG disclosure requirements are primarily aimed at large companies and listed companies:

(a) The **National Greenhouse and Energy Reporting Act 2007** (Cth) (NGER Act) requires companies that meet certain thresholds relating to GHG emissions and production and consumption of energy to provide yearly reports relating to the GHG emissions from particular sources, energy production and energy consumption.

(b) The **Modern Slavery Act 2018** (Cth) requires entities based, or operating, in Australia, which have an annual consolidated revenue of more than \$100 million, to report annually on the risks of modern slavery in their operations and supply chains, and actions to address those risks.

(c) For listed entities on the Australian Securities Exchange (ASX), the **ASX Listing Rules** require all listed entities to publish annually a corporate governance statement disclosing the extent to which the entity has followed the recommendations set by the ASX Corporate Governance Council during the reporting period. Recommendation 7.4 of the **ASX Corporate Governance Council's Principles and Recommendations** states that “a listed entity should disclose whether it has any material exposure to economic, environmental and social sustainability risks and, if it does, how it manages or intends to manage those risks”.

A vertical photograph of Uluru, a large sandstone rock formation in Australia, under a clear blue sky. The foreground shows some dry grass and shrubs.

In addition, Australian regulators have released guidance that incorporate ESG-related disclosures:

- (a) Australian Securities and Investments Commission (ASIC) has published the [Regulatory Guide 228 Prospectuses: Effective disclosure for retail investors](#) and [Regulatory Guide 247: Effective disclosure in an operating and financial review](#). This ASIC guidance incorporates physical and transitional climate-related risks, as identified by the TCFD, into the list of examples of common risks that may need to be disclosed in a prospectus, and highlighted climate change as a systemic risk that could impact an entity's financial prospects for future years and that may need to be disclosed in an operating and financial review.
- (b) The Australian Prudential Regulation Authority (APRA) has released the [Prudential Practice Guide: CPG 229 Climate Change Financial Risks](#), which outlines prudent practices in relation to climate change financial risk management. Specifically, the guide provides guidance, sets out examples of better practice and aims to assist institutions in managing climate-related risks and opportunities.

3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

The NGER Act contains mandatory disclosures in relation to GHG emissions and energy consumption.

The disclosures required by the Modern Slavery Act are also mandatory.

If a listed entity does not follow a particular recommendation of the ASX Corporate Governance Council, they are required to disclose that fact and provide the reasons why.

4 Which aspects of ESG do the requirements focus upon?

For listed companies, environmental, social and governance aspects are all covered.

For companies covered by the NGER Act, the focus is on climate.

For companies covered by the Modern Slavery Act, the focus is on social risks.

The regulatory guidance that has been released primarily focuses on the environment, and in particular climate change.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

The reporting requirements under the NGER Act have been developed to be consistent with Intergovernmental Panel on Climate Change 2006 Inventory Guidelines.

The ASX Corporate Governance Council's Principles and Recommendations encourages entities to disclose any material exposure to environmental risks by reference to the TCFD Recommendations.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

No, the NGER Act only covers Scope 1 and Scope 2 GHG emissions.

The [second consultation paper](#) regarding the introduction of mandatory climate-related financial risk disclosure in Australia (as outlined in [Q&A A.10](#) below) proposes to require Scope 3 GHG emissions reporting for covered entities from their second reporting year onwards.

However, approximately 80% of the top 50 ASX listed entities are already reporting on their Scope 3 GHG emissions with varying degrees of detail.

7 Are there assurance requirements?

No.

8 Are voluntary ESG disclosures customary?

Many companies make ESG disclosures in their annual reports and are made against the TCFD Recommendations or other international standards (such as the SASB standards or the GRI standards).

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

No, but the Federal Government has provided funding to the Australian Sustainable Finance Institute (ASFI) to support its development of an Australian sustainable finance taxonomy.

ASFI will begin developing the sustainable finance taxonomy in July this year. Its scope of application and whether it will be mandatory are not yet clear. However, ASFI has recommended that reporting on taxonomy alignment should be mandatory where users are seeking to make claims regarding the sustainability objectives covered by the taxonomy.

10 Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

Yes, in 2022, the Australian Government released for consultation [exposure draft legislation](#) to amend the Australian Securities and Investment Commission Act 2001 (Cth) to empower the Australian Accounting Standards Board to develop and formulate sustainability standards that will, as far as is practicable, align with significant international developments, specifically the ISSB standards.

The Australian Government has also released two rounds of consultation on the introduction of mandatory climate-related financial risk disclosure. Among other things, the [first consultation paper](#), released in December 2022, sought views on whether Australia should align climate disclosure requirements with the ISSB standards. Many of the submissions to the first consultation paper favoured alignment with the ISSB standards. In its second consultation paper, released

in June 2023, the Australian Government outlined its proposed position on the design and implementation of the mandatory climate-related disclosure framework which draws on the draft version of the ISSB's "IFRS S2 Climate-related Disclosures". The first phase of reporting is proposed to commence in 2024-2025.

II Other upcoming developments / direction of travel

Climate vulnerability assessments (CVA) could also play an increasing role in Australia's ESG reporting landscape, particularly for businesses in the financial sector. In 2021, APRA launched a CVA of Australia's five largest banks to assess the nature and possible impact of climate-related financial risks on banks' lending. The CVA focused on transition and physical climate risks arising in Australia which could directly impact Australian lending. APRA also

announced that it will consider extending the CVA to include insurance and superannuation sectors in the future.

In addition to climate-related disclosures, we expect to see an increasing focus on nature-related disclosures. The Taskforce on Nature-related Financial Disclosures (TNFD) fourth iteration of its nature-related risk management and disclosure framework was released in March 2023. The TNFD aims to publish its final recommendations in September 2023. The Australian Department on Climate Change, Energy, the Environment and Water has expressly announced its support of the TNFD framework and has engaged accounting firm, EY, to pilot case studies to test the draft TNFD framework.



B. TRANSITION PLANNING AND NET ZERO


1 Has your jurisdiction set decarbonisation targets and strategies?

Yes, Australia has a **legislated** target to reduce its GHG emissions to 43% below 2005 levels by 2030 as well as to reach net zero by 2050.

The Australian Government has also set a renewable energy target of 82% by 2030.

2 Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

Yes, Australia's **Carbon Credit Unit Scheme** (formerly the Emissions Reduction Fund) enables landholders, communities and businesses to voluntarily run projects that avoid, reduce or remove GHG emissions from the atmosphere. Such projects can generate tradeable Australian carbon credit units (ACCU) which represent one tonne of carbon dioxide equivalent emissions stored or avoided by a project.

A vertical photograph of Uluru, a large sandstone rock formation in Australia, under a clear blue sky. The foreground shows some dry grass and shrubs.

Australia has also recently made amendments to the [Safeguard Mechanism](#), with effect from 1 July 2023. The Safeguard Mechanism requires large facilities to keep their Scope 1 GHG emissions at or below their set baseline. Under the reforms to the Safeguard Mechanism, Safeguard Mechanism Credits (SMCs) will be issued to a facility whose GHG emissions are below its baseline. Each SMC is also equal to one tonne of carbon dioxide equivalent and may be traded with other large facilities to reduce their net emissions in order to meet their baseline.

3 Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

It is not mandatory to have a transition plan. However, in its [second consultation paper](#) regarding the introduction of mandatory climate-related financial risk disclosure, the Australian Government proposes that disclosure of transition plans will be mandatory for covered entities where they have a transition plan.

4 Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

Companies are not required to set, meet or disclose climate-related targets. However, under the Safeguard Mechanism, covered facilities have an obligation to keep their Scope 1 GHG emissions at or below their set baseline (as mentioned at [Q&A B.2](#) above). The reforms to the Safeguard Mechanism have introduced “baseline decline rates” which will be set at 4.9% per year for most covered facilities.

If the proposed mandatory climate-related financial risk disclosure framework is introduced to align with the ISSB standards, it would require information on how climate-related targets are set and met to be disclosed.

5 Other upcoming developments / direction of travel

Although transition plans are not currently mandatory, we expect there to be an increasing focus on transition plans. Multiple submissions to the Australian Government’s first consultation paper regarding the introduction of mandatory climate-related disclosure, recommended that Australian businesses and financial institutions be required to publish transition plans. In addition, in its submission, ASFI recommended the Australian Government develop separate guidance on transition plans as a priority. In light of feedback on the Australian Government’s first consultation paper, the Australian Government will consider arrangements that could strengthen the development and disclosure of company transition plans.



C. GREENWASHING RISKS

1 Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

Yes.

In April 2023, ASIC commenced civil penalty proceedings in the Federal Court for alleged greenwashing conduct by Mercer Superannuation (Australia) Limited, in relation to statements on Mercer's website about its "Sustainable Plus" investment options. This is the first time ASIC has taken a company to court for greenwashing.

In addition to this, ASIC has made 35 interventions in respect of greenwashing since 1 July 2022 and has reported to have issued over \$140,000 in infringement notices (across 11 actions) in response to greenwashing issues so far, a number of which relate to claims about the emissions intensity of products offered by energy companies or superannuation firms.

In October 2022, the Australian Competition and Consumer Commission (ACCC) launched an "internet sweep" to identify misleading environmental and sustainability marketing claims. The ACCC reviewed 247 company websites across a range of targeted sectors including energy, vehicles, household products and appliances, food and drink packaging, cosmetics, clothing and footwear. Of the businesses reviewed, 57% were identified as having made concerning claims about their environmental credentials. The ACCC has stated that it will take enforcement action where appropriate as it is critical that consumer trust in green claims is not undermined.

In 2021, the Australasian Centre for Corporate Responsibility commenced court proceedings against gas company, Santos Limited, alleging greenwashing in relation to Santos' strategy for achieving "net zero" for Scope 1 and 2 greenhouse gas emissions by 2040. This was the first court proceeding globally to challenge a net zero target. In a case management hearing in February 2023, the court held that the trial should focus on the "characterisation issue" of the greenwashing claim, which will include the interpretation of the word "clean" in Santos' marketing.

Complaints have also been made to the ACCC to investigate green claims made by companies. For example, Flight Free Australia recently lodged a complaint with the ACCC against Etihad Airways for greenwashing over its advertisements with messages such as "flying shouldn't cost the earth".

2 Are there any laws or regulations specifically dealing with greenwashing?

In Australia, there are laws prohibiting the making of false and misleading statements which may include greenwashing:

- (a) The **Corporations Act 2001** (Cth) prohibits making statements (or disseminating information) that are false or misleading, or engaging in dishonest, misleading or deceptive conduct in relation to a financial product or financial service.
- (b) The **Australian Consumer Law** prohibits engaging in misleading or deceptive conduct in trade or commerce and also prohibits a person from making false or misleading representations about goods or services.

- (c) The **Australian Securities and Investments Commission Act 2001** (Cth) (ASIC Act) also prohibits engaging in misleading or deceptive conduct in trade or commerce in relation to financial services.

In addition, Australian regulators have published guidance on how to avoid greenwashing. ASIC has published **guidance** for responsible entities of managed funds, corporate directors of corporate collective investment vehicles, and trustees of registrable superannuation entities, outlining key factors to consider when promoting a financial product or investment strategy as environmentally friendly, sustainable or ethical. The ACCC recently published **draft guidance** which identifies eight principles to improve the integrity of sustainability-related claims made by businesses. The ACCC's draft guidance is open for public consultation until 15 September 2023.

3 What are the likely grounds on which such proceedings, action or investigations can be instigated?

Likely grounds include:

- (a) Misleading or deceptive conduct under the Corporations Act, the Australian Consumer Law or the ASIC Act.
- (b) Breaches of directors' duties.

4 Other upcoming developments / direction of travel

Both the ACCC and ASIC have announced that greenwashing is one of their priorities for 2022/2023. In light of this, we expect to see an increasing number of legal proceedings and regulatory actions or investigations against companies operating in Australia which allege greenwashing.

There is also a Senate Inquiry underway into greenwashing which is due to report in December 2023. One of the terms of reference includes whether further regulation is required.

CAMBODIA

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Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of Cambodia.

 **ESG in APAC – Cambodia**
By Bun & Associates



A. ESG REPORTING

1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

To the best of our knowledge, there is presently no specific mandatory legislation or regulation focusing on ESG/sustainability disclosures. Legislative requirements on ESG disclosure in Cambodia are limited and the understanding of ESG and its focus is varied, but there are various voluntary initiatives and upcoming developments.

Note, however, that there are some regulatory frameworks that appear to support or can be deemed as supporting ESG practices as described in [Q&A A.2](#) below for enterprises generally and for the securities and banking sectors.

2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

From a corporate governance perspective

(a) For all enterprises regardless of sector:

All commercial enterprises incorporated in Cambodia are required to file Annual Declarations of Commercial Enterprise (ADCE) pursuant to the [Prakas No.107 on ADCE](#) to inform the Ministry of Commerce, among other things, about any changes to directors and shareholding of the company.

(b) For the securities sector:

Disclosure requirements in respect of corporate governance are primarily aimed at public limited companies or permitted entities (being a legal entity, other than a public limited company, incorporated in Cambodia that is permitted in accordance with the provision of the [Law on the Issuance and Trading of Non-Government Securities](#) and other regulation to offer and issue securities to members of the public in Cambodia) which are or have been approved as an issuer or a listed company.



Issuers and listed companies must disclose information on corporate governance and its corporate structure in public disclosure documents prior to issuing debt and equity securities. Listed companies are also required to notify investors of any change to the directors or key management of the company and publish an annual report which must include, amongst other things, information on corporate governance.

The Securities Exchange Regulator of Cambodia (SERC, formerly the Security and Exchange Commission of Cambodia) has issued the Detailed Guidance for Issuing Green Bonds in Cambodia and Guidance on the Issuance of Green Bonds, Social Bonds, and Sustainability Bonds, under which the issuer of green bonds is expected to report and provide updates regarding the use of proceeds and the performance and implementation of the green assets and projects. However, the mentioned guidance are of a non-legally binding nature and are pending implementing regulations. It is worth noting that issuing green bonds is on a voluntary basis of the issuer.

(c) For the banking sector:

The corporate governance for banks and financial institutions is set forth in the Prakas on Governance in Banks and Financial Institutions, [Prakas on Fit and Proper Regulatory Requirements for Applying Entities and Licensed Banks and Financial Institutions](#), and [Prakas on the Internal Control of Bank and Financial Institutions](#).

Any change to the corporate governance (including but not limited to shareholders, directors and senior management) of a bank or financial institution is subject to approval from or notification to the National Bank of Cambodia (which is not a disclosure to the public unless they are listed companies as discussed in item (b) above).

The Association of Banks in Cambodia, which is recognized by the Royal Government of Cambodia as the official organization to represent the country's private banking sector, has developed the Cambodian Sustainable Finance Initiative (CSFI) with support from the

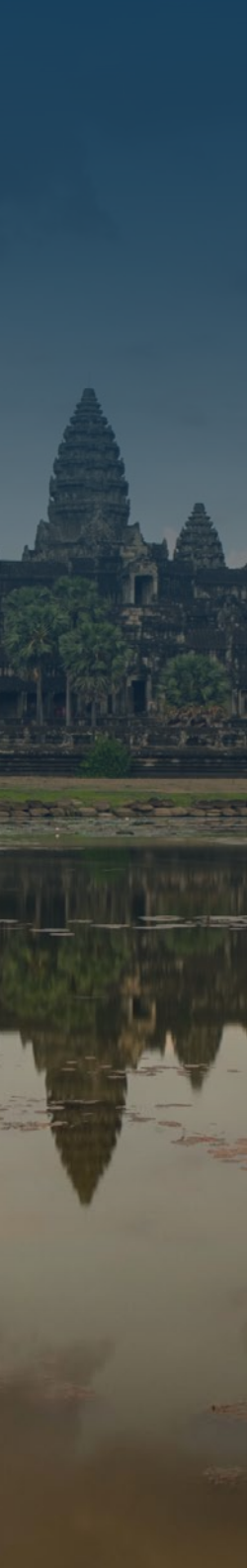
National Bank of Cambodia and the United States Agency for International Development. Currently, there are 47 private banks and financial institutions who have voluntarily adopted the CSFI and pledged to abide by CFSI Implementation Guidelines, which covers environmental and social (E&S) reporting (internal and external) that may include reporting on E&S performance of business activities and operations (including climate reporting), the implementation of relevant standards, and fulfilling other E&S objectives/ commitments as stated in the member's E&S policies.

From a social perspective

(d) For all enterprises regardless of sector:

Under the Prakas on Labor Self Inspection¹, enterprises registered with the Ministry of Labor and Vocational Training have to make a self-declaration twice a year to inform the ministry of, among other things, the following:

¹ Prakas No. 358/21 on the Launching of the Labour Self Inspection Regime and Labour Inspection Via Automated System, issued by the Ministry of Labor and Vocational Training on 30 December 2021 (Prakas on Labor Self Inspection).



- (i) working conditions and benefits provided to employees;
- (ii) occupational safety and health framework in place; and
- (iii) social security registration of the employees.

From an environmental perspective

- (e) For development projects, regardless of sector, that are a source of pollution, operate in an industrial zone or are concerned with use of natural resources (e.g. mining, petroleum treatment, fuel storage, cement production, battery manufacturing, and landfills):
 - (i) There are environmental and social impact reporting requirements for the project owners. They must submit reports consisting of (amongst other matters) technical aspects of the project and the management of

environmental standards, soil, water and waste. There will also be periodic update reports to the Ministry of Environment.

- (ii) An initial or full environmental and social impact assessment also has to be conducted and submitted as a report to the Ministry of Environment for projects falling under certain categories and thresholds², e.g. project developed in a tourism area of more than fifty hectares.

- (f) Anticipated requirements under the Code of Environment and Natural Resources³:

Certain reporting and disclosure requirements in respect of a full or initial environmental impact assessment report:

- (i) The Ministry in charge of environment and natural resources must ensure that information in such reports is

made public and that stakeholders and local communities affected by the project can obtain sufficient and clear information.

- (ii) The project owners shall publish the full or initial environmental impact assessment report as well as mitigation measures for the project.
- (iii) There will be procedures for public participation and right to access information.
- (g) Climate change reporting requirements for development projects of (presumably to-be-determined) sector(s):
 - (i) Under the Code of Environment and Natural Resources, there will be regulation on how data and information on climate change may be produced and managed, one of which could be data/information on GHG emission reduction by project owners although the code does not expressly provide so.

2 Sub-Decree No. 72 on Environmental Impact Assessment, issued by of the Royal Government of Cambodia on 11 August 1999 and MOE's Prakas No. 021 on Classification of Environmental Impact Assessment for Development Project, issued by the Ministry of Environment on 3 February 2020.

3 The Code of Environment and Natural Resources was promulgated by Royal Kram No. 0623/007 on 29 June 2023, to be implemented within 1 year from the date on which this code entered into force (Code of Environment and Natural Resources).

- (ii) Project owners will be required to report on “financing used for activities related to climate change” upon request by the Ministry in charge of environment and natural resources.
- (iii) The code does not define “project owner” nor specify any sector, category and/or threshold for the project.

3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

All requirements described in **Q&A A.2** above are mandatory, except the disclosure requirements under the CSF Implementation Guidelines and the SERC guidance related to green bonds, which are non-binding in nature.

Varied by subject matter of the requirement, governing laws/regulations, regulator/ministerial body in charge of the matter, and actual practice, a rectification period may be permitted in some cases before an act may be deemed non-compliant.

4 Which aspects of ESG do the requirements focus upon?

In light of **Q&A A.2** above:

- (a) In general for any sector — the focus is primarily on corporate governance and social aspects as a declaration/reporting to regulatory or ministerial body.
- (b) For the securities sector — the focus is on corporate governance as a disclosure to the public.
- (c) For the banking sector — the focus is on corporate governance. For banks and financial institutions who are part of the CSFI, the focus is also on environmental and social aspects.
- (d) For infrastructure projects and businesses with operations that may adversely affect the environment and natural resources — the focus is on environmental and social impact as a declaration/reporting to regulatory or ministerial body. It is also anticipated that the focus will expand to climate change.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

There is no information available to the public to confirm whether any of the requirements mentioned in **Q&A A.2** above are based on any international standards.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

Current laws/regulations do not provide mandatory requirements for the disclosure of Scope 3 GHG emissions. Note, however, the following in respect of GHG under the Code of Environment and Natural Resources:

- (a) There will be regulation on the management of GHG reduction.
- (b) A definition of GHG is provided but the different categories of GHG emissions are not.
- (c) Aligned with Cambodia’s commitment for GHG reduction, a long-term strategy on carbon neutrality will be prepared.
- (d) As mentioned above, there will be regulation on how data on climate change may be produced and managed.

7 Are there assurance requirements?

Current laws/regulations do not impose ESG assurance requirements. Note, however, that for fulfilling certain requirements described in [Q&A A.2\(e\)](#) above an accredited service provider has to be retained, e.g. to conduct “a full environmental and social impact assessment” and preparing the report on such for submission to the Ministry of Environment.

8 Are voluntary ESG disclosures customary?

It is common practice for a number of multinational companies which have subsidiaries in Cambodia to report their ESG commitments. Corporates such as Heineken Cambodia and Smart Axiata are at the forefront of implementing a reporting structure based on the GRI sustainability standards.

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

ASEAN Taxonomy on Sustainable Finance is a legally non-binding guide developed by the ASEAN Taxonomy Board (ATB), with Cambodia, being an ASEAN member state (AMS), represented in the ATB.

The two core elements of the taxonomy are:

- (a) the foundation framework (applicable to all AMS) that provides for a qualitative assessment of activities and the Plus Standard with metrics and thresholds to further qualify and benchmark eligible green activities and investments; and
- (b) the environmental objectives (applicable to all AMS) that are to be implemented in alignment with national environmental laws and to include climate change and adaptation, protection of healthy ecosystem and biodiversity, and promotion of resource resilience and transition to circular economy.

The adopted criteria essential for economic activities are aimed at achieving those objectives in the most transparent manner with observation of the important criteria “do no significant harm”.

Each AMS is expected to develop their own taxonomy based on the ASEAN Taxonomy on Sustainable Finance, as the aim is to develop a harmonized system and practice of sustainable finance across ASEAN.

10 Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

To the best of our knowledge, we are not aware of any upcoming plans to adopt the ISSB sustainability or climate-related disclosure standards.

11 Other upcoming developments / direction of travel

To the best of our knowledge, we are not aware of any upcoming developments other than as noted above.



B. TRANSITION PLANNING AND NET ZERO

1 Has your jurisdiction set decarbonisation targets and strategies?

Yes. Cambodia's "Long-Term Strategy for Carbon Neutrality by 2050: A Bold Move Towards Climate Paris Agreement and Sustainable Development" (LTS4CN) primarily serves as a roadmap to accomplish the country's objective of being a carbon-neutral economy by 2050 with the Forestry and Other Land Use sector providing a total carbon sink of 50 Megatons of Carbon Dioxide Equivalent (MtCO₂e). This leads to a lower estimate of total GHG emissions, at around 35 MtCO₂e less in 2020 compared to the Nationally Determined Contribution.

The collection of baseline emissions information in LTS4CN is based on the following 5 key sectors (with key mitigation actions for each sector):

- (a) Agriculture;
- (b) Forestry and Other Land Use;
- (c) Energy;
- (d) Transportation; and
- (e) Waste.

2 Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

Yes. Cambodia has a voluntary carbon market where the Ministry of Environment acts as a seller on behalf of the Royal Government of Cambodia. This market welcomes all sectors to purchase carbon credits from programs for Reducing Emissions from Deforestation and Forest Degradation, fostering conservation and sustainable management of forests, and enhancing forest carbon stocks (REDD+ programs) that Cambodia is offering.

As a side note, among other carbon credit projects, Cambodia is **implementing** three REDD+ projects below with USD 11.6 million sale proceeds of carbon credit:

- (a) Keo Seima;
- (b) Southern Cardamom; and
- (c) Prey Lang.

3 Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

Presently, there are no mandatory requirements for transition plans and/or disclosure about them.

Please see [Q&A A.2\(f\)](#) and [A.6](#) above for a discussion relating to the Code of Environment and Natural Resources which is yet to be implemented. It is possible that mandatory requirements for transition plans and/or their disclosure may be set forth in future regulations of the code.

4 Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

Presently, there are no mandatory requirements to set, meet and/or disclose climate-related targets.

It is, however, possible that mandatory requirements to set, meet and/or disclose climate-related targets may be set forth in future regulations of the Code of Environment and Natural Resources as noted in [Q&A A.2\(f\)](#) and [A.6](#) above.

5 Other upcoming developments / direction of travel

To the best of our knowledge, we are not aware of any upcoming developments other than as noted above.



C. GREENWASHING RISKS

1 Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

To the best of our knowledge, we are not aware of any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in Cambodia.

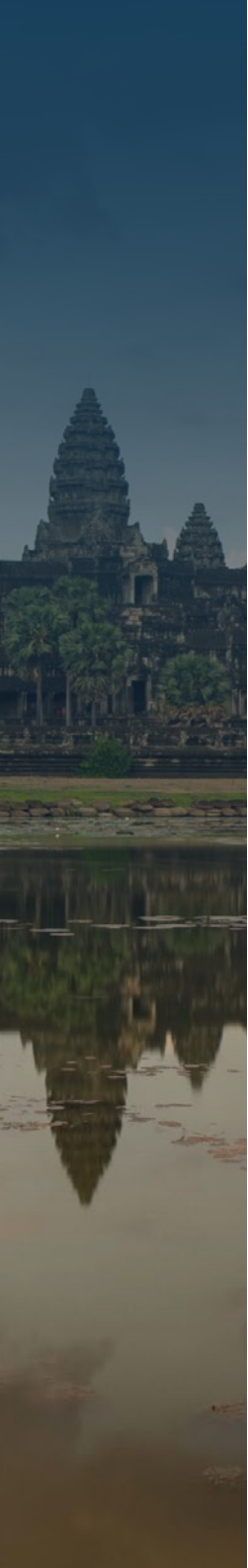
2 Are there any laws or regulations specifically dealing with greenwashing?

There is no law or regulation specifically dealing with greenwashing. As the notion of greenwashing involves false, misleading or deceiving action, there are laws and regulations dealing with this issue such as:

- (a) the [Law on Consumer Protection](#);
- (b) the Criminal Code;
- (c) the Civil Code; and
- (d) [Sub-Decree No. 232 on the Management of the Advertisement of Goods and Services](#).

The following is prohibited for securities traded on a securities market conducted in Cambodia:

- (a) Knowingly or recklessly conducting acts that create a false or misleading appearance of active trading in securities, or engaging in fictitious or artificial transactions that result in maintaining, inflating, or depressing the price of securities.
- (b) Making false or materially misleading statements or disseminating information that is false or materially misleading in relation to securities trading in Cambodia including statements or information that could induce people to subscribe to, buy, or sell securities or affect the price of securities trading.



3 What are the likely grounds on which such proceedings, action or investigations can be instigated?

Greenwashing may be claimed under the following grounds:

- (a) Misrepresentation under the Civil Code.
- (b) Fraud under the Criminal Code.
- (c) Dishonest act under the Law on Consumer Protection.
- (d) Misleading representation under the Law on Consumer Protection.
- (e) Advertisements which are misleading, deceptive, fraudulent or likely to create confusion about the quality and safety of goods and services under Sub-Decree No. 232 on the Management of the Advertisement of Goods and Services.
- (f) For securities trading – likely grounds are false trading, market manipulation and false or misleading statements as mentioned in [Q&A C.2.](#)

4 Other upcoming developments / direction of travel

To the best of our knowledge, we are not aware of any upcoming developments other than as noted above.

HONG KONG

Contributing law firm:
Slaughter and May

Contact:
Lisa Chung, Partner

Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of Hong Kong.



ESG in APAC – Hong Kong
By Slaughter and May



A. ESG REPORTING

1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes.

2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

ESG disclosure requirements are primarily aimed at listed companies and financial institutions:

(a) The **ESG Reporting Guide** in Appendix 27 to the Hong Kong Listing Rules (ESG Reporting Guide) issued by the Hong Kong Stock Exchange (HKEX) sets out ESG disclosure requirements to be reported on an annual basis by Hong Kong primary-listed companies.

- (b) The Hong Kong Monetary Authority's Supervisory Policy Manual contains a **Climate-Risk Management module** (the HKMA Climate Module), which includes best practices on climate disclosures by "authorized institutions" (primarily banks).
- (c) Asset managers (licensed by the Securities and Futures Commission (SFC)) of certain collective investment schemes are required to make **climate-related disclosures**. SFC-authorized (i.e. retail) green or ESG funds must include certain **disclosures** in the offering documents and disclose, at least annually, how the fund has attained its ESG focus.
- (d) Hong Kong incorporated companies (unless exempted) are required under the **Companies Ordinance** to prepare an annual directors' report covering (amongst other matters) its environmental policies, performance and compliance with relevant laws and regulations. These requirements are relatively high-level.



3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

The ESG Reporting Guide contains mandatory disclosures in relation to ESG governance. The environmental and social aspects are on a “comply-or-explain” basis.

While the HKMA Climate Module is not a mandatory guideline, an authorized institution’s failure to comply can potentially be taken into account when assessing whether the authorized institution continues to be fit and proper to hold the relevant licence. The HKMA Climate Module expects authorized institutions to make TCFD-aligned disclosures by no later than 2025. However, depending on factors such as significance of the authorized institution’s Hong Kong operations, a comply-or-explain approach may be taken, coupled with explanations and plans for future enhancements.

4 Which aspects of ESG do the requirements focus upon?

For listed companies, environmental, social and governance aspects are all covered.

For financial institutions, the focus is on climate.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

The ESG Reporting Guide incorporates elements of the TCFD recommendations in respect of climate disclosures, but is otherwise primarily bespoke to Hong Kong. Listed companies are encouraged (but not required) to align with the TCFD recommendations on their climate disclosures.

Authorized institutions are expected to report climate disclosures in line with the TCFD recommendations (at a minimum). The HKMA will be “pragmatic” in monitoring disclosures initially, with a view that authorized institutions should become TCFD-aligned by 2025.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

Encouraged but not mandatory.

If adopted, the HKEX Climate Disclosure Proposal (as outlined in [Q&A A.10](#) below) will require disclosure of Scope 3 GHG emissions by listed companies.

7 Are there assurance requirements?

Encouraged but not mandatory.

8 Are voluntary ESG disclosures customary?

Many listed companies reference international standards (such as the TCFD and SASB) in their ESG reports even though it is not mandatory.

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

There is no mandatory taxonomy, but regulators have issued a prototype local taxonomy (based on the EU-Mainland Common Ground Taxonomy) for discussion. The prototype is limited to certain activities in the energy, transport, buildings, waste and water sectors¹ (with the intention to add further activities / sectors in future iterations).

The scope of application of this prototype and whether it will be mandatory are not yet clear.

10 Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

Yes in relation to the ISSB's climate disclosure standards. The HKEX has issued a **consultation** on mandatory climate-related disclosure requirements for listed companies, which are heavily based on the ISSB climate standard (the HKEX Climate Disclosure Proposal). If adopted, the requirements are proposed to become effective on 1 January 2024 and apply to ESG reports published in 2025. The HKEX has proposed a two-year period of transitional relief for certain of the more challenging disclosures (such as Scope 3 GHG emissions).

11 Other upcoming developments / direction of travel

As outlined in Q&A A.10 above, climate disclosures (based primarily on the ISSB climate-related disclosures standard) are proposed to become mandatory for listed companies.

Hong Kong's financial regulators have **announced** they will develop a roadmap on adopting the ISSB standards (in a manner which reflects local circumstances) – which signals potential application to financial institutions in due course.

Financial regulators have been **encouraging** the use of a reporting template for SMEs (aligned with the TCFD framework), which can be used by financial institutions to collect environmental-related data from SMEs. It is voluntary at this stage, but can be seen as a first step on the journey towards standardising climate disclosures by SMEs.

¹ The activities and sectors are: (A) electricity, gas, steam and air conditioning supply - (i) electric power generation, transmission and distribution; (ii) electricity generation using concentrated solar power technology; (iii) electricity generation using solar photovoltaic technology; and (iv) electricity generation from wind power; (B) transportation and storage - (i) land transport including railways; (ii) construction and operation of public transportation systems in urban and rural areas; (iii) construction and operation of personal mobility devices and cycle logistics; (iv) water transport; and (v) transportation of freight by sea

transportation or passengers by sea; (C) water supply, sewerage, waste management and remediation activities - (i) sewage sludge treatment; (ii) sewage sludge treatment – anaerobic digestion; (iii) waste collection, treatment and recycling; (iv) collection and transport of non-hazardous waste in source segregated fractions; and (v) utilisation/ treatment of domestic waste – anaerobic digestion; and (D) construction - (i) construction and renovation of buildings; (ii) construction of new buildings; and (iii) renovation of existing buildings.



B. TRANSITION PLANNING AND NET ZERO

1 Has your jurisdiction set decarbonisation targets and strategies?

Yes, to reduce Hong Kong's carbon emissions by 50% before 2035 and a carbon intensity target of 65% to 70% by 2030 with 2005 as the baseline for both targets.

The Hong Kong government has also outlined four major decarbonisation strategies: "net-zero electricity generation", "energy saving and green buildings", "green transport" and "waste reduction".

2 Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

Yes, a voluntary carbon trading market, Core Climate, has been established by the HKEX for eligible participants from any sector.

3 Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

There is currently no mandatory requirement for a transition plan.

The ESG Reporting Guide contains requirements for listed companies to disclose (on a comply-or-explain basis) steps taken to achieve certain environmental targets (including emission targets). Under the HKMA Climate Module, authorized institutions are expected to disclose any transition plans (which could include GHG emissions targets).

If the HKEX Climate Disclosure Proposal is adopted as proposed, the disclosure of transition plans and progress made towards such plans by listed companies will become mandatory. The proposal does not specifically require consideration of the social impact of transition.

4 Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

Companies are not required to set or meet climate-related targets.

The ESG Reporting Guide contains requirements for listed companies to disclose (on a comply-or-explain basis) certain environmental targets (including emission targets) that are set. If adopted as proposed, the HKEX Climate Disclosure Proposal will require listed companies either (i) to disclose any climate-related targets set and any GHG emissions targets it is required to meet by local laws; or (ii) if no such target have been set, to disclose its work plan, progress and timetable for setting them.

5 Other upcoming developments / direction of travel

Development of Core Climate - it is expected that more market structure and products will be launched for the further development of Hong Kong as a premier carbon trading hub.

The HKEX has indicated its plan to leverage Hong Kong's position to connect international investors with carbon markets in the mainland of China.



C. GREENWASHING RISKS

- 1 Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

No.

- 2 Are there any laws or regulations specifically dealing with greenwashing?

No, but some guidance does exist. For example, HKMA's [note](#) on good practices for Due Diligence Processes for Green and Sustainable Products deals with how authorized institutions offering such products should minimise greenwashing risks.

The SFC has tightened up requirements on retail green and ESG funds, including on the fund's name and marketing materials.

- 3 What are the likely grounds on which such proceedings, action or investigations can be instigated?

Likely grounds include:

- (a) Disclosure liabilities under securities laws and regulations – for example, for providing materially false or misleading information in listing documents or other corporate disclosure documents such as ESG reports.
- (b) Breaches of directors' duties.
- (c) Claims in tort for misrepresentation.
- (d) Breaches of the Trade Descriptions Ordinance.

There are also risks of regulatory enforcement pursuant to, for example, codes / guidance issued by financial regulators on the marketing of financial products and the Hong Kong Listing Rules' requirements on ESG disclosures.

- 4 Other upcoming developments / direction of travel

Although there have been no major greenwashing claims in Hong Kong to date, the risks of claims against companies (in particular, listed companies and financial institutions) are expected to increase as reporting requirements become more robust and the sense of urgency on sustainability continues to grow.

INDIA

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Khaitan & Co

Contact:
Rabindra Jhunjunwala, Senior Partner
Pavi Jain, Counsel

Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of India.

 **ESG in APAC – India**
By Khaitan & Co



A. ESG REPORTING

1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes.

2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

ESG disclosure requirements are aimed at the top 1,000 public listed companies by market capitalisation.

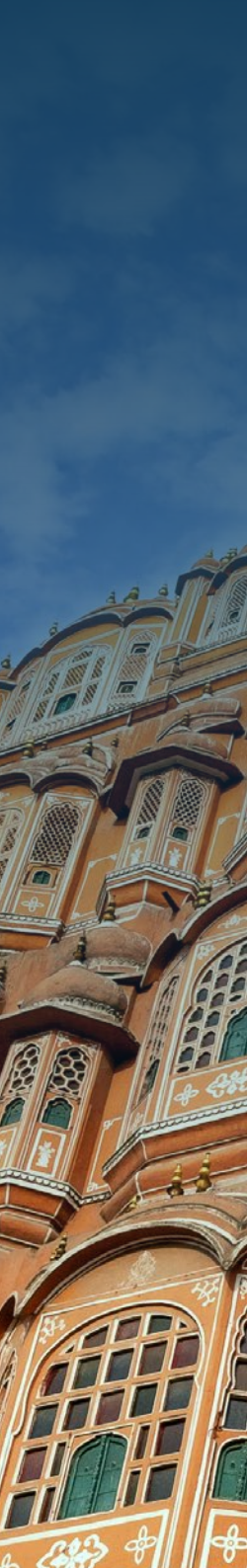
The Indian market regulator – the Securities and Exchange Board of India (SEBI) has, pursuant to an amendment to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, mandated the top 1,000 listed companies (by market capitalisation) to make mandatory ESG disclosures under the framework of Business Responsibility and Sustainability Report (BRSR), which is required to be reported on an annual basis. The structure of the BRSR format is segregated under essential (mandatory) and leadership (voluntary) indicators. The leadership

indicators in the BRSR format also include disclosures related to the value chain of the listed entities.

The issuance and listing of green bonds is governed by the SEBI (Issue and Listing of Non-Convertible Securities) Regulations 2021, read with [SEBI's Operational Circular for Issue and Listing of Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper](#), dated 10 August 2021, pursuant to which the SEBI has mandated issuers of green bonds to: (a) disclose environmental objectives of the issue under the offer documents; (b) indulge in continual disclosure of performance; and (c) verify utilisation of proceeds.

SEBI has mandated mutual funds to disclose their ESG policies and practices under offer documents.

For private companies, public unlisted companies, limited liability partnerships, partnership firms and other types of entities, ESG disclosures have not yet been mandated by law in India.



3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

The disclosure requirements under the BRSR framework (save for the voluntary leadership indicators) are mandatory for the top 1,000 listed companies by market capitalisation.

Per the SEBI's recent framework "**BRSR Core – Framework for Assurance and ESG Disclosures for Value Chain**" dated 12 July 2023 (BRSR Core Circular), SEBI has introduced BRSR core, which is a subset of BRSR and provides 9 key performance indicators (BRSR Core). Per the BRSR Core Circular, the top 250 listed companies by market capitalisation are required to: (a) disclose Scope 3 GHG emissions on a comply-or-explain basis from financial year 2024-2025; and (b) meet assurance requirements for Scope 3 GHG emissions on a comply-or-explain basis from 2025-26, each in relation to the BRSR Core indicators.

For financial institutions issuing green bonds, there is a requirement of appointing a third-party reviewer / certifier to certify project evaluation and selection criteria, which is applicable on a comply-or-explain basis for a period of 2 years.

4 Which aspects of ESG do the requirements focus upon?

For the top 1,000 listed companies by market capitalisation, environmental, social and governance aspects are all covered. For example, the BRSR mandates disclosures relating to energy and water consumption, Scope 1 and Scope 2 GHG emissions, waste management, extended producer responsibility, environmental impact assessments undertaken by the reporting companies and general disclosures relating to the environmental impact of the respective companies' operations.

For institutions issuing green bonds, the focus is on the environment and climate aspects.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

The BRSR framework has adopted the United Nations Sustainable Development Goals and draws inputs from several international sustainability reporting frameworks such as the GRI, SASB and TCFD.

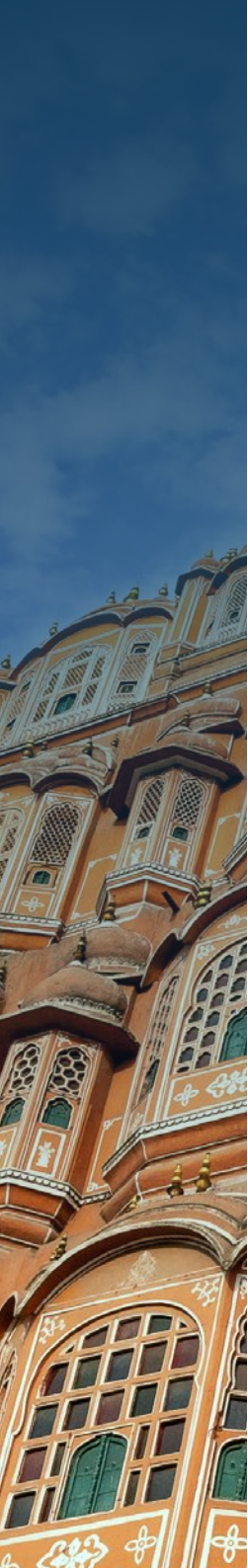
6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

For BRSR Core indicators, the top 250 listed companies by market capitalisation are required to disclose (from financial year 2024-25) Scope 3 GHG emissions on a comply-or-explain basis, and obtain assurances (from financial year 2025-26) on a comply-or-explain basis.

The Scope 3 GHG emissions disclosure and assurance requirements have been introduced very recently by the SEBI (under the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations 2023, dated 14 June 2023) and the **BRSR Core Circular**.

7 Are there assurance requirements?

Assurance requirements have been prescribed in relation to the BRSR Core elements: (a) for the top 150 listed companies by market capitalisation from financial year 2023-2024, which shall be gradually extended to the top 1,000 listed companies by market capitalisation by financial year 2026-27; and (b) in relation to value chain / Scope 3 GHG emissions disclosures for the top 250 listed companies by market capitalisation.



8 Are voluntary ESG disclosures customary?

Yes. In our experience, we see companies aligning their disclosures under international reporting frameworks and making voluntary ESG disclosures.

Several listed companies that are not mandatorily required to make ESG disclosures are opting to voluntarily make such disclosures. Similarly, many unlisted companies and multinational companies also make such disclosures on a voluntary basis given investor sentiment and stakeholder expectations.

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

No, but regulators have indicated development of a green taxonomy.

10 Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

SEBI has clarified that while undertaking BRSR disclosures, entities already preparing and disclosing sustainability reports based on internationally accepted reporting frameworks (e.g. GRI, Integrated Reporting Framework and TCFD) may refer to disclosures made under these frameworks. For instance, many entities in India follow the Carbon Disclosure Project (CDP) disclosure system on a voluntary basis, and CDP questionnaires are, to some extent, aligned with the environment-based questions in the BRSR.

In our experience, we see companies aligning their disclosures under international reporting frameworks (including CDP and TCFD) and therefore, they report on climate change-related aspects accordingly.

To date, there has been no indications from regulators that the ISSB standards will be specifically incorporated into local disclosure requirements, though there may be alignment in the future.

11 Other upcoming developments / direction of travel

Regulators may adopt a truncated form of the BRSR called BRSR Lite, which may be used by unlisted companies or large public companies on a voluntary basis to begin reporting on sustainability-related issues. We also expect to see an increase in voluntary disclosures as investor interest increases in their portfolio companies. Further, we expect more alignment with global climate-related disclosures in the future, including that of ISSB.

We expect SEBI to issue guidelines to: (a) govern core ESG ratings carried out by ESG Rating Providers (ERPs) and have a broader regulatory framework for ERPs; and (b) regulate ESG investment schemes and compliances by asset management companies.



B. TRANSITION PLANNING AND NET ZERO

1 Has your jurisdiction set decarbonisation targets and strategies?

Yes, as announced at COP26 in Glasgow, India has announced its commitment to **net zero emissions by 2070**. The Indian government also plans to become a net exporter of energy in the coming years.

The Indian government has also outlined its new 2030 decarbonisation targets and strategies to: (a) achieve non-fossil energy capacity to 500 GW by 2030; (b) meet 50% of its energy requirements from renewable energy by 2030; (c) reduce total projected carbon emissions by one billion tonnes by 2030; and (d) reduce the carbon intensity of its economy by less than 45%.

2 Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

Not yet, although there is an energy-savings based trading mechanism as mentioned in **Q&A B.4** below.

However, the (Indian) Energy Conservation Act, 2001, **as amended in 2022** introduces the concept of a carbon credit trading scheme (CCTS) pursuant to which the central government may issue carbon credit certificates to entities registered under the CCTS, which can thereafter, trade in carbon credit certificates.

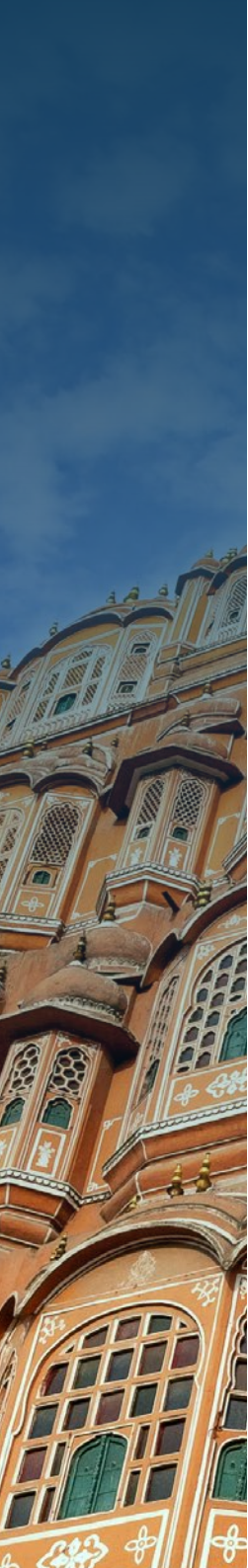
The CCTS has not yet been implemented. The **draft CCTS** envisages the setting up of an Indian carbon trade credit market and provides for classification of entities as registered and obligated entities. The CCTS envisions a voluntary mechanism, as well as a compliance mechanism – and is mandatory for obligated entities. Obligated entities are registered entities who are notified under the compliance mechanism of the CCTS, and which shall have to reduce their GHG emission intensity as notified by the Central Government. Export of carbon trade credit certificates is presently prohibited. The Indian Carbon Market Governing Board to be set up under the CCTS shall be the administrator for the Indian Carbon Market and shall issue carbon credit certificates, and the Central Electricity Regulatory Commission shall regulate matters relating to trading of carbon credit certificates.

3 Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

It is not mandatory to have a transition plan.

However, **Section 134(m) of the (Indian) Companies Act, 2013** requires that reports issued by the board of directors of a company provide details such as conservation of energy and corporate social responsibility initiatives undertaken by a company during the year.

Further, as set out in Q&A A.2 above, the SEBI has mandated the top 1,000 listed companies by market capitalisation to make mandatory ESG disclosures under the **BRSR**, which includes reporting parameters such as greenhouse gas emissions as well as break-downs of energy consumed from renewable and non-renewable sources.



4 Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

Presently, companies are not required to set or meet climate-related targets.

The draft CCTS (yet to be implemented) sets targets for reduction of GHG emissions and the Indian Energy Conservation Act, 2001, as **amended in 2022** designates different shares of consumption for various types of non-fossil sources.

Mandatory renewable energy obligations have been prescribed under the (Indian) Electricity Act, 2003, which require specific consumers (e.g. power distribution companies and captive consumers) to procure a percentage of electricity from renewable sources.

The mandatory “Perform, Achieve and Trade” (PAT) scheme issued under the **(Indian) Energy Conservation Act, 2001**, also places obligations on designated consumers in specific energy intensive industries whose annual

energy consumption is equal to or greater than the threshold limit specified by Central Government notifications, to meet energy saving targets through issued or purchased tradeable energy savings certificates. Under the Indian Energy Conservation Act, 2001, **as amended in 2022**, a proviso has been introduced to Section 14A of the principal Act to provide that any other person (other than designated consumers) may also purchase energy savings certificates on a voluntary basis.

5 Other upcoming developments / direction of travel

As set out above, the CCTS is proposed to be implemented soon and will involve the development of methodologies for estimation of carbon emissions reductions. Separately, guidelines to monitor, report and verify emissions are also proposed to be formulated.



C. GREENWASHING RISKS

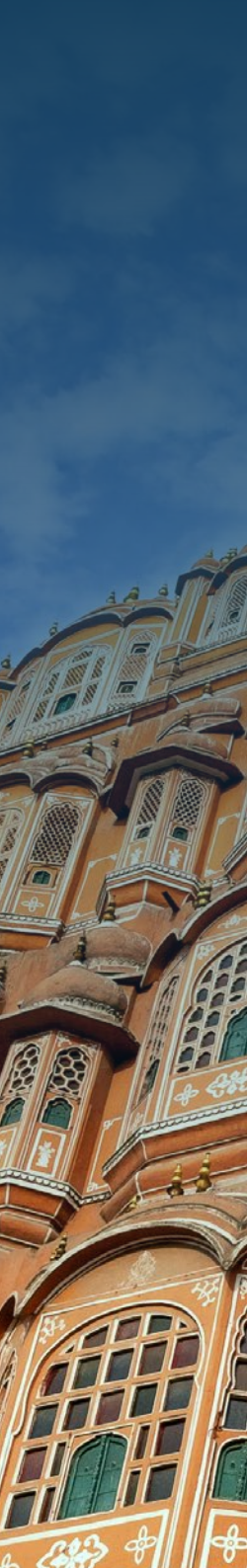
1 Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

No.

2 Are there any laws or regulations specifically dealing with greenwashing?

No, but some guidance does exist.

For instance, the SEBI has introduced stringent disclosure requirements (under its Circular dated 3 February 2023, “Dos and Dons Related to Green Debt Securities to Avoid Occurrences of Greenwashing”) for issuers of green debt securities, such as continuous monitoring, prohibition of utilisation of funds for non-green purposes, prohibition of misleading labels and highlighting green practices while hiding unfavourable information.



3 What are the likely grounds on which such proceedings, action or investigations can be instigated?

Likely grounds include:

- (a) Failure to meet disclosure requirements under securities laws and regulations – e.g. providing materially false or misleading information in listing documents or other corporate and ESG disclosure documents such as the BRSR.
- (b) Breaches of directors’ duties – e.g. Section 166 of the (Indian) Companies Act, 2013 requiring a director to act in the best interests of the company and towards protection of the environment.
- (c) Claims for misrepresentation, misleading or false advertisement.

There are also risks of regulatory enforcement, for example, under codes / guidance issued by financial regulators on green debt securities and requirements on ESG disclosures.

4 Other upcoming developments / direction of travel

Presently, there have been no noteworthy greenwashing claims in India, however, this is expected to increase as reporting requirements become more robust and the sense of urgency on sustainability continues to grow.

INDONESIA

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Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of Indonesia.

 **ESG in APAC – Indonesia**
By SSEK Law Firm



A. ESG REPORTING

1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes, but only for publicly listed companies and financial institutions that are subject to the supervision and regulatory authority of the Indonesian Financial Services Authority (Otoritas Jasa Keuangan or OJK). No similar obligations currently exist for non-publicly listed companies.

2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

ESG disclosure requirements are primarily aimed at listed companies and financial institutions, under the regulations below.

OJK Regulation No. 51/POJK.03/2017 TAHUN 2017 regarding the Implementation of Sustainable Finance for Financial Service Institutions, Issuers (Emiten), and Public Companies (dated 27 July 2017) (OJK Reg. 51/2017)

This regulation generally imposes the obligation for financial institutions and public companies to implement sustainable finance and make relevant disclosures to the OJK and the general public. The sustainable finance obligation requires submission of a Sustainability Report, either as part of the annual report or as a stand-alone report, to the OJK annually.

OJK Circular Letter No. 16/SEOJK.04/2021 regarding the Form and Substance of the Annual Report of Issuers (Emiten) and Public Companies (dated 29 June 2021) (OJK CL 16/2021)

This regulation governs the forms and content of ESG disclosures in the annual reports of publicly listed companies. For example:

- (a) The annual report shall include in the company profile section a list of industry associations (national or international) related to the implementation of sustainable finance.

- (b) The annual report shall disclose, among other things, the actions taken by the company as part of its social and environmental responsibility. This disclosure shall be the Sustainability Report as per OJK Reg. 51/2017. The relevant explanations must at least include:
- (i) Sustainable strategy;
 - (ii) Summary of the company's sustainability efforts (economic, social, and environmental);
 - (iii) Brief profile of the publicly listed company;
 - (iv) Board of Directors' remarks;
 - (v) Sustainable governance;
 - (vi) Sustainable performance;
 - (vii) Written verification from independent party(ies), if any;
 - (viii) Feedback from readers, if any; and
 - (ix) Response to the feedback from the previous year's report.

In addition to the above requirements, companies that utilize natural resources are required to prepare a corporate social and environmental plan. This requirement is governed by Government Regulation No. 47 of 2012 regarding Corporate Social and Environmental Liability (GR 47/2012). GR 47/2012 is very general and only governs the requirement to submit a corporate social and environmental plan without elaborating on the standard and format of the plan or what information the plan must at a minimum contain.

3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

The disclosure requirement is mandatory for publicly listed companies and financial institutions. Failure to comply with this requirement is subject to administrative sanctions in the form of a reprimand or written warning from the OJK.

4 Which aspects of ESG do the requirements focus upon?

For listed companies and financial institutions, the requirements cover economic, environmental, social and governance aspects.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

No, the requirements under OJK Reg. 51/2017 and OJK CL 16/2021 are not based on international standards.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

The disclosure of Scope 3 GHG emissions is encouraged but not mandatory. The OJK regulations do not distinguish between different types and scope of GHG emissions. Publicly listed companies nonetheless are required to disclose, as a minimum requirement in their Sustainability Report, their emission reduction efforts.

7 Are there assurance requirements?

Assurance is encouraged but not mandatory. One of the minimum requirements in a Sustainability Report includes written verification from independent parties, with the qualifier "if any".

8 Are voluntary ESG disclosures customary?

A few notable listed companies in various sectors (banking, mining, consumer goods) have made reference to international standards (such as the TCFD) in their ESG reports even though doing so is not mandatory.

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

No.

10 Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

OJK CL 16/2021 only mentions that aside from the minimum disclosure required under the circular letter, companies can also refer to international standards as necessary and desirable. We are not aware of any plans to implement any identifiable international standards.

11 Other upcoming developments / direction of travel

None other than the above.



B. TRANSITION PLANNING AND NET ZERO

1 Has your jurisdiction set decarbonisation targets and strategies?

Yes, to reduce Indonesia's carbon emissions by 31.89% (unconditionally) or by 43.2% (conditionally) compared to 'business-as-usual' CO2 emissions. This target was included in Indonesia's enhanced Nationally Determined Contributions (NDC), which is the transition toward Indonesia's Second NDC, which will be aligned with the Long-Term Low Carbon and Climate Resilience Strategy (LTS-LCCR) 2050 with a vision to achieve net-zero emissions by 2060 or sooner.

2 Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

There are expected to be carbon trading markets in Indonesia, but they are still in the planning stages as of this publication. Both compliance and voluntary carbon markets are contemplated, with the compliance carbon market initially limited to coal-fired power plants and later to expand to other types of power plants from 2025.


The carbon exchange (bursa karbon) to be created will be licensed by OJK, which is mandated to prepare the necessary regulations to implement carbon trading through the carbon exchange.

In summary, as currently contemplated, the carbon exchange will be a system that:

- (a) regulates carbon trading;
- (b) records ownership of carbon units;
- (c) develops carbon trading infrastructure;
- (d) regulates state revenue deriving from carbon trading; and
- (e) administers and oversees carbon trading transactions.

3 Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

There is no mandatory requirement to have a transition plan. However, information on the sustainability-oriented strategy/planning of a company must be included in the Sustainability



Report submitted to the OJK, though the standard format/content is not strictly regulated. It is not mandatory to include any consideration of the social impact of the sustainability-oriented strategy/planning.

4 Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

No, there is no mandatory requirement to independently set and meet climate-related targets such as emission reduction or energy transition. Nonetheless, a company must disclose any sustainability-oriented strategy in its Sustainability Report.

Aside from independently set targets, certain companies in identified industries are required to meet and comply with a government-determined emissions ceiling, which relates to the cap-and-trade and/or cap-and-tax mechanism for Indonesia's carbon trading schemes. For instance, in the coal-fired power plant sector, the Ministry of Energy and Mineral Resources will issue an emissions ceiling technical approval. Companies subject

to this emissions ceiling must ensure their GHG emissions comply with the determined ceiling. Companies that do not comply will be subject to a carbon tax (which is yet to be implemented) or they will need to purchase emissions reduction credits from other companies to offset their excess emissions.

Other than companies subject to an emissions ceiling, there is no mandatory requirement for companies to set, meet and/or disclose climate-related targets.

5 Other upcoming developments / direction of travel

The OJK is developing the logistics and legal infrastructure to implement a carbon exchange.

The imposition of a carbon tax for coal-fired power plants, which was originally set to take effect by 1 April 2022, is now planned to be introduced in 2025. Other emission sectors will also be subject to a carbon tax, but the government has yet to determine the exact industries that will be subject to this carbon tax.

We also note that the mutual recognition agreement/mechanism between the Indonesian Ministry of Environment and Forestry and non-domestic carbon credit certification bodies is still being finalized, pending which, international carbon trading with carbon credits issued by non-national certification bodies is, for all intents and purposes, barred.



C. GREENWASHING RISKS

- 1** Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

No.

- 2** Are there any laws or regulations specifically dealing with greenwashing?

No.

- 3** What are the likely grounds on which such proceedings, action or investigations can be instigated?

Likely grounds include:

- (a) Breaches of directors' fiduciary duties.
- (b) Tort claims for misrepresentation.
- (c) Criminal provisions on fraud, whether provisions on capital market-related fraud under the Capital Markets Law or general fraud provisions under the Criminal Code.

- 4** Other upcoming developments / direction of travel

Although there have been no major greenwashing claims in Indonesia to date, the risk of claims against companies, in particular, listed companies and financial institutions, is expected to increase as reporting requirements become more robust and the sense of urgency on sustainability continues to grow, subjecting companies to greater public scrutiny.

JAPAN

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Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of Japan.



ESG in APAC – Japan
By Mori Hamada & Matsumoto



A. ESG REPORTING

1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes.

2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

The amended Cabinet Office Order on Disclosure of Corporate Affairs under the Financial Instruments and Exchange Act of Japan (Disclosure Order), which became effective in January 2023, sets out “sustainability” disclosure requirements to be reported in a securities registration statement filed by both Japanese and overseas companies that conduct an offering of securities in Japan, or an annual securities report filed by both Japanese and overseas companies that are obligated to make such a filing (i.e., companies which are listed in Japan or have filed a

securities registration statement without listing in Japan before). According to the Financial Services Agency of Japan, information related to the environment, society, employees, human rights, anti-corruption, anti-bribery, governance, cybersecurity and data security may be within the scope of “sustainability” mandatory disclosure.

The Corporate Governance Code by the Tokyo Stock Exchange (Corporate Governance Code) also sets out general sustainability disclosure requirements for all listed companies of the Tokyo Stock Exchange. In particular, companies listed on the Prime Market are expected to collect and analyse the necessary data on the impact of climate change-related risks and earning opportunities on their business activities and profits and enhance the quality and quantity of disclosure.

3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

The Disclosure Order contains mandatory disclosures in relation to sustainability including environmental, social and governance aspects.

ESG disclosures under the Corporate Governance Code are on a “comply-or-explain” basis.

4 Which aspects of ESG do the requirements focus upon?

In an annual securities report, all sustainability issues including environmental, social and governance aspects are covered.

In a corporate governance report, the focus is mostly on environment.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

While the Disclosure Order does not specify any framework for the purpose of disclosure in an annual securities report, it stipulates that sustainability information needs to be described from the viewpoint of the four core elements of the TCFD recommendations: governance, strategy, risk management, and metrics and targets.

Environment-related disclosure in a corporate governance report is expected to be in line with the TCFD recommendations or an equivalent framework.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

Not mandatory.

7 Are there assurance requirements?

Not mandatory.

8 Are voluntary ESG disclosures customary?

Many listed companies have voluntarily made ESG disclosures under international standards (such as the TCFD and SASB) in their annual reports or sustainability reports even though it was not mandatory before the amended Disclosure Order became effective in January 2023.

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

No, and regulators have not indicated any plans to develop a local taxonomy.

10 Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

Yes, in relation to both the ISSB sustainability standards and the climate disclosure standards. The Sustainability Standards Board of Japan (SSBJ) announced its plan to release new standards, which will be based on the ISSB standards, by March 2025, after which such new standards are expected to be applied to annual securities reports for the fiscal year ending 31 March 2026 or later.

11 Other upcoming developments / direction of travel

The drafts of the SSBJ's new sustainability disclosure standards are planned to be made public by March 2024 and a public consultation process will follow.



B. TRANSITION PLANNING AND NET ZERO

1 Has your jurisdiction set decarbonisation targets and strategies?

Yes, to reduce Japan's carbon emissions by 46% (and 50% as an intensity target) before 2030 compared to 2013.

2 Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

At this moment, there is no carbon trading market in Japan.

In June 2023, the Tokyo Stock Exchange **announced** its plan to set up a voluntary market by October 2023 mainly dealing with J-Credits, which are public-sector credits certified by the Japanese government.

Also, it is **reported** that SBI Holdings, one of the major financial groups in Japan, will open a voluntary market for trading carbon credits. This market will handle J-Credits as well as credits certified and managed by private organizations and non-fossil certificates.

In April 2023, the "GX League" started operating in Japan. This is a government-led scheme for reducing participants' emission of GHG (GX-ETS), with voluntary participation by a large group of companies in Japan. Under GX-ETS, (i) each participant sets out its GHG reduction goal, and (ii) failure to meet the goal would lead to the participant's explanation of the reason or "filling the gap" by purchasing other participants' emission allowances created in the scheme or certain kinds of carbon credits.

In connection with emissions trading, new legislation to push the green transition was passed in May 2023 to implement the paid allocation of emission allowances to the electricity business sector from 2033, which is expected to be linked to GX-ETS. Details of the scheme are to be further discussed, but this will be a mandatory emissions trading scheme in the sector.

- 3** Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

There is no mandatory requirement to have a transition plan, and any plans for such requirements have not been announced. However, if the SSBJ's new disclosure standards reflect the ISSB climate standard, in-scope entities may potentially be required to disclose how they are responding to identified climate-related risks.

- 4** Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

Companies are not generally required to set or meet climate-related targets.

The Disclosure Order requires that, if (and only if) companies regard climate change as a material risk to themselves, such companies shall set climate-related targets such as GHG emissions targets and state them in their annual securities reports. Once implemented, participants of the GX-ETS and the mandatory ETS mentioned above will be subject to GHG reduction targets or emissions allowances.

- 5** Other upcoming developments / direction of travel

From 2028, a fossil fuel levy will be imposed on suppliers of fossil fuel.

Further, the government aims to fund as much as JPY 20 trillion in the coming 10 years to support private investment into the green transition.



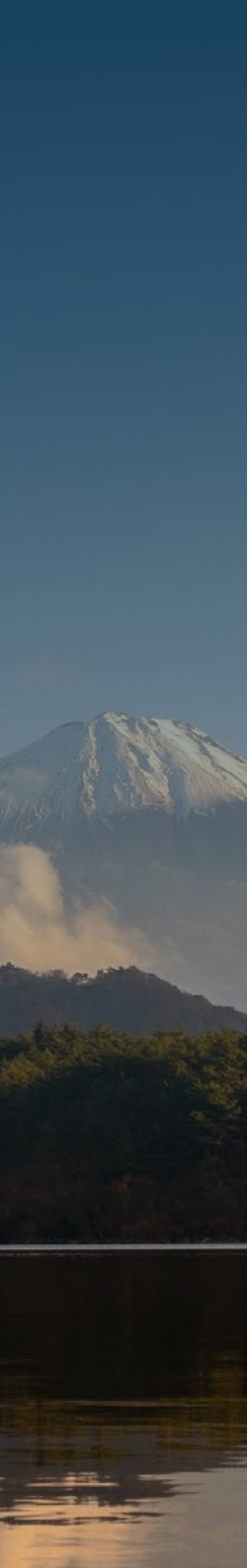
C. GREENWASHING RISKS

- 1** Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

No.

- 2** Are there any laws or regulations specifically dealing with greenwashing?

No, but in the “Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc.” issued by the Financial Services Agency of Japan (FSA), there exists a section titled “Appropriateness of Business Operations related to the Investment Trust Management Business.” Under this section, a sub-section titled “Points of Attention with respect to Consideration of ESG” refers to several points including the fact that, where an investment trust does not fall under the category of ESG investment trust, the FSA will monitor to make sure that the name or nickname of the investment trust excludes ESG-related terms such as ESG, SDGs (Sustainable Development Goals), green, decarbonisation, impact, sustainable, and other similar words in order to avoid misleading investors.



3 What are the likely grounds on which such proceedings, action or investigations can be instigated?

Likely grounds include:

- (a) Disclosure liabilities under securities laws and regulations – e.g., providing materially false or misleading information in listing documents or other corporate disclosure documents such as annual securities reports or securities registration statements.
- (b) Breaches of directors' duties.
- (c) Claims in tort for misrepresentation.

There are also risks of regulatory enforcement pursuant to, for example, codes/guidance issued by financial regulators on the marketing of financial products and Listing Rules' requirements on ESG disclosures.

4 Other upcoming developments / direction of travel

Although there have been no major greenwashing claims in Japan to date, the risks of claims against companies (in particular, listed companies and financial institutions) are expected to increase as reporting requirements become more robust and the sense of urgency on sustainability continues to grow.

MAINLAND CHINA

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Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of Mainland China.



ESG in APAC – Mainland China
By JunHe LLP



A. ESG REPORTING

- 1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes.

- 2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

In the mainland of China, general ESG disclosure requirements are primarily aimed at listed companies:

- (a) **Self-regulatory Guidelines of Shenzhen Stock Exchange for Listed Companies No.1 - Standardized Operation of Main Board Listed Companies**, which stipulates (i) that the listed companies included in the “Shenzhen Stock Exchange 100 Index” should disclose their Social Responsibility (SR) reports separately in accordance with the relevant provisions of the Guidelines for Standardized Operation of Listed Companies of the Exchange, and in accordance with Annex I - Disclosure Requirements for Social Responsibility Reports of Listed Companies, and (ii)

encourages that other companies listed on the Shenzhen Stock Exchange disclose their SR reports.

- (b) **Self-regulatory Guidelines of Shanghai Stock Exchange for Listed Companies No.1 - Standardized Operation**, which stipulates that the representative companies listed on the “Shanghai Stock Exchange Corporate Governance Sector”, companies listed on both Shanghai Stock Exchange and other jurisdiction outside the mainland of China, and financial companies shall disclose their SR reports at the same time as their annual reports. The Shanghai Stock Exchange also encourages other listed companies listed on the Shanghai Stock Exchange to disclose their SR reports at the same time as their annual reports.
- (c) Notice on Conducting Disclosure of 2021 Annual Reports of Listed Companies on the Shanghai Stock Exchange’s Sci-tech Innovation Board (SSE STAR Market), which stipulates that SSE STAR Market listed companies should disclose ESG related information in their annual reports, and separately prepare and disclose ESG reports, SR reports, sustainable development reports, environmental



responsibility reports, and other documents as appropriate. The companies included in the SSE STAR Market 50 Index should disclose their SR report at the same time as the disclosure of their annual reports; those who have already disclosed ESG reports are exempted from separate disclosure of SR reports. Shanghai Stock Exchange also encourages other companies listed on the SSE STAR Market to disclose ESG reports or SR reports at the same time as their annual report. When preparing their ESG reports or SR reports, the companies should disclose their actions to support the “carbon peak and carbon neutrality” goals and promote sustainable development as a key focus.

In addition, based on the **Measures for Administration of Law-based Disclosure of Environmental Information by Enterprises** (the Measures) issued by the Ministry of Ecology and Environment (MEE) of China, certain enterprises are subject to mandatory environmental disclosure requirements, which include:

- (a) Key pollutant-discharging entities;
- (b) Enterprises subject to compulsory cleaner production audit;
- (c) Listed companies and their subsidiaries at all levels (to the extent consolidated) that are subject to the provisions of Article 8¹ of the Measures (e.g. those that have breached environmental laws);

- (d) Enterprises issuing enterprise bonds, corporate bonds, and debt financing instruments of non-financial enterprises that are subject to the provisions of Article 8 of the Measures; and
- (e) Other enterprises that shall disclose environmental information as prescribed by laws and regulations.

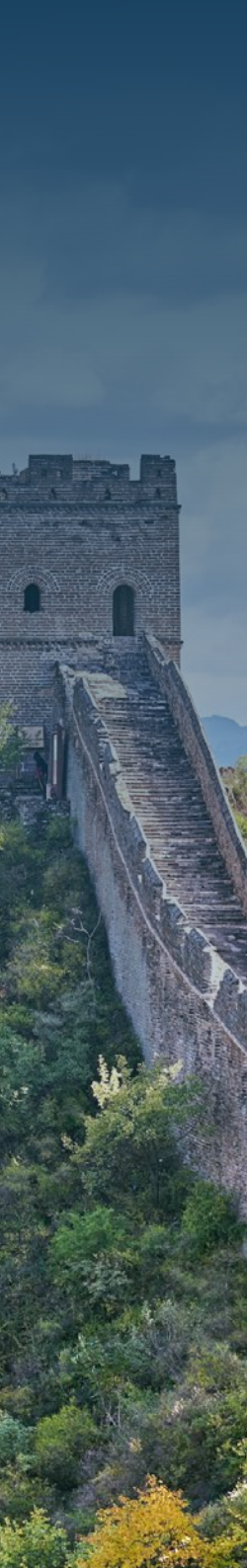
3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

The disclosure requirements of Shenzhen Stock Exchange and Shanghai Stock Exchange are mandatory for (a) the listed companies included in the “Shenzhen Stock Exchange 100 Index”, (b) the representative companies listed on the “Shanghai Stock Exchange Corporate Governance Sector”, (c) the Shanghai Stock

¹ Article 8: Listed or bond issuing enterprises that fall in one of the following circumstances in the previous year shall disclose environmental information in accordance with the provisions of the Measures:

- (1) Those who are held criminally responsible due to illegal activities in violation of ecological and environmental laws;
- (2) Those who have been fined at least RMB 100,000 due to illegal activities in violation of ecological and environmental laws;
- (3) Those who have been punished continuously on a daily basis due to illegal activities in violation of ecological and environmental laws;

- (4) Those who have been restricted or suspended from production due to illegal activities in violation of ecological and environmental laws;
- (5) Those whose ecological and environmental permits have been revoked due to illegal activities in violation of ecological and environmental laws; and
- (6) Those whose legal representative, main responsible personnel, directly responsible personnel in charge, or other directly responsible personnel are subject to administrative detention due to illegal activities in violation of ecological and environmental laws.



Exchange listed financial companies, (d) the companies listed on both Shanghai Stock Exchange and other jurisdiction outside the mainland of China, and (e) SSE STAR Market listed companies, as discussed in [Q&A A.2](#), otherwise voluntary for other listed companies on Shenzhen Stock Exchange or Shanghai Stock Exchange in China.

The requirements of MEE on environmental disclosure are mandatory for certain enterprises as discussed in [Q&A A.2](#).

4 Which aspects of ESG do the requirements focus upon?

Based on the requirements of Shenzhen Stock Exchange and Shanghai Stock Exchange, various environmental, social and governance aspects are covered. Specifically for the companies listed on the SSE STAR Market, the key focus is on their actions to support the “carbon peak and carbon neutrality” goals and promote sustainable development.

For the companies subject to the Measures of MEE, the key environmental disclosure aspects include:

- (a) Basic information of the enterprise (production and environmental protection information);
- (b) Information of the environmental management of the enterprise;
- (c) Information of the generation, control and discharge of pollutants;
- (d) Carbon emission information;
- (e) Ecological and environmental emergency response information;
- (f) Information on violation of ecological and environmental laws;
- (g) Law-based disclosure of temporary environmental information this year; and
- (h) Other environmental information as prescribed by laws and regulations.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

No. The regulatory disclosure requirements do not specify any reference to international standards. However, in practice, many companies listed in Shanghai Stock Exchange or Shenzhen Stock Exchange prepared their ESG/

SR reports with reference to the international standards/frameworks such as the GRI Standards, ISO26000 and TCFD.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

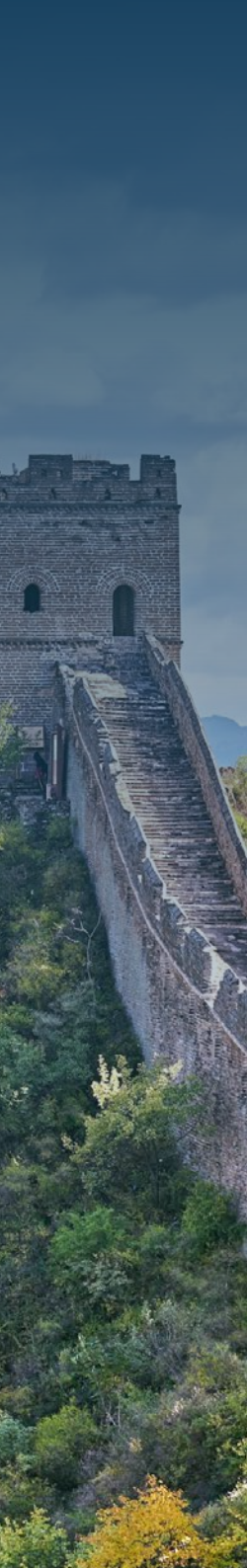
No.

7 Are there assurance requirements?

No.

8 Are voluntary ESG disclosures customary?

Many listed companies make reference to international standards (such as the GRI Standards and ISO26000) and/or local group standards (such as the Guidelines on Corporate Social Responsibility Reporting for Chinese Enterprises (CASS-ESG 5.0, as the latest version) and Guidance for Enterprise ESG Disclosure (T/CERDS 2-2022)) in their ESG reports even though they are not mandatory.



9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

The International Platform on Sustainable Finance, which was jointly launched by economies including China and the EU, has released the Common Ground Taxonomy (CGT). The CGT has been adopted by some financial institutions in China and the EU as reference for determining whether projects satisfy the purpose of sustainable finance when issuing financial products, but it is not mandatory.

10 Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

The China Securities Regulatory Commission (CSRC) has provided formal comments on the exposure drafts of the ISSB sustainability and/or climate-related disclosure standards. The senior management of CSRC indicated that these standards issued by ISSB would probably be adopted globally, and would have huge impact on China's enterprises.

However, currently there is no specific plan or timeline for the mainland of China to adopt the ISSB sustainability and/or climate-related disclosure standards.

11 Other upcoming developments / direction of travel

The listed companies controlled by the central government-owned enterprises in China have been encouraged by the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) to disclose their ESG reports by 2023, based on the Work Plan for Improving the Quality of Listed Companies Controlled by Central Government-owned Enterprises issued by SASAC in 2022. The ESG Reporting Guideline for Listed Companies Controlled by Central Government-owned Enterprises is currently under preparation, and it is expected to be released in 2023.



B. TRANSITION PLANNING AND NET ZERO

1 Has your jurisdiction set decarbonisation targets and strategies?

Yes, to reach carbon emission peak by 2030 and carbon neutrality by 2060.

In October 2021, the Working Guidance for Carbon Dioxide Peaking and Carbon Neutrality in Full and Faithful Implementation of the New Development Philosophy and the Action Plan for Carbon Dioxide Peaking Before 2030 were issued by the State Council of China.

In October 2022, the National Energy Administration issued the Action Plan for Carbon Peak and Carbon Neutrality Standardization (Action Plan). The goals mentioned in the Action Plan include, by 2025, the initial establishment of a relatively complete energy standard system that can effectively support and lead green and low-carbon energy transformation. Specific goals include the establishment and improvement of renewable energy standard system based on photovoltaic and wind power, the formulation of a number of carbon emission reduction related technical



standards of emerging technologies and supply chain, the revision of a number of standards related to the energy efficiency of conventional energy production, conversion, transmission and utilization. By 2030, an advanced and reasonable energy standards system with an optimized structure will be established, energy standards will be developed closely with technological innovation and industrial transformation, and energy standardization will strongly support and guarantee carbon peak and carbon neutrality in the energy industry sector.

2 Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

Yes, there are carbon trading markets in the mainland of China.

The first pilot carbon trading schemes were launched in 2013 in seven provinces and cities, and these were subsequently expanded to cover a total of 11 provinces and cities by 2017.

In 2021, the national carbon trading market was launched, which covers China's power sector.

The above carbon trading markets contain both voluntary and compliance markets.

3 Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

It is not mandatory for companies to have a transition plan. However, for companies listed on the SSE STAR Market, their ESG disclosures are required to be focused on actions that support the mainland of China's "carbon peak and carbon neutrality" goals.

4 Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

Companies are not legally required to independently set or meet climate-related targets, however, the national government has introduced some policies to encourage and guide enterprises to achieve low-carbon transition, and some local governments have started pilot schemes to take into account

carbon quotas in the environmental impact assessment process and cleaner production review for individual projects within certain industries.

Companies in the power sector are subject to emissions allowances as part of the national trading scheme mentioned in Q&A B.2 above.

5 Other upcoming developments / direction of travel

The government is introducing policies to encourage and guide enterprises in low-carbon transition, including carbon reduction target responsibility system, low-carbon city construction plan, etc.

The government is increasingly developing and releasing regulations on carbon emission, including launching a carbon trading market and promoting a carbon emission verification and reporting system. Further detailed disclosure requirements on carbon emission may be considered in the future.

The government is encouraging and supporting enterprises to develop internal low-carbon transition plans.



C. GREENWASHING RISKS

1 Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

No significant examples, but some enterprises were held to have misused “green” information in their advertisement which were considered as violations of relevant laws and regulations. For example, in September 2020, a printing company in Pingdingshan City, Henan Province, marked the “China Environmental Labelling” pattern and the text information of “Green Printing Products” on the back of its product. This information indicated to the public that the product had obtained the green printing environmental label product certification. The government market supervision and management department confirmed the printing company’s China Environmental Labelling Product Certification Certificate had expired on 18 January 2020. The actions of the printing company constituted false or misleading commercial advertising as stipulated in Article 8 of the Anti-Unfair Competition Law of the People’s Republic of China and the printing company was fined RMB 200,000.

2 Are there any laws or regulations specifically dealing with greenwashing?

No, but some guidance for “green investment” does exist in the finance industry, for example, (a) the Green Investment Guidelines (For Trial Implementation) issued by the Asset Management Association of China deals with how to make green investments and defines the scope of green investments, which should include but are not limited to enhancement of energy efficiency, emission reduction, clean and renewable energies, environmental protection and restoration, and recycle economy, with a focus on environmental protection, low carbon development and recycling, etc.; and (b) the Green Bond Endorsed Projects Catalogue (2021 Edition) jointly announced by the People’s Bank of China, the National Development and Reform Commission and the CSRC deals with which kind of projects can be funded by green bonds.

3 What are the likely grounds on which such proceedings, action or investigations can be instigated?

Likely grounds include:

- (a) Disclosure liabilities under securities laws and regulations, e.g. providing materially false or misleading information in listing documents or other corporate disclosure documents such as ESG reports or SR Report;
- (b) Claims in tort/contract breach for misrepresentation; and
- (c) Violation of the Advertising Law, the Anti-Unfair Competition Law and/or the Law on the Protection of Consumer Rights and Interests, e.g., deceiving consumers that the products are carbon neutral through misleading commercial advertisements.



4 Other upcoming developments / direction of travel

Although there have been no major greenwashing claims in the mainland of China to date, the risks of claims against companies (in particular, listed companies and financial institutions) are expected to increase as reporting requirements become more robust and the sense of urgency on sustainability continues to grow.

In addition, the Supreme People's Court on the Complete, Accurate and Comprehensive Implementation of the New Development Concept Opinions on Providing Judicial Services for Actively and Steadily Promoting Carbon Neutrality stresses that the courts shall address cases involving disputes over reporting of GHG emissions in accordance with the law. Where key GHG emitting

entities refuse to fulfill their GHG emission reporting obligations, or fabricate, conceal, or omit GHG emissions data, the courts shall support administrative authorities in making administrative punishment decisions in accordance with the laws. If the technical service agencies and key GHG emitting entities maliciously collude to fabricate, conceal, or omit greenhouse gas emission data and cause damage to others, any victims may claim compensation for infringement damages. It may also constitute a criminal offence.

MALAYSIA

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Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of Malaysia.

 **ESG in APAC – Malaysia**
By Rahmat Lim & Partners



A. ESG REPORTING

1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes.

2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

ESG disclosure requirements are primarily aimed at listed companies and financial institutions:

(a) The **Task Force on Climate-Related Financial Disclosures (TCFD) Application Guide** for Malaysian Financial Institutions (TCFD Application Guide) issued by the Joint Committee on Climate Change (JC3) sets out Basic and Stretch recommendations for financial institutions (e.g. banks, insurers/takaful operators, asset managers/owners) in respect of disclosures on Governance, Strategy, Risk Management, Metrics and Targets.

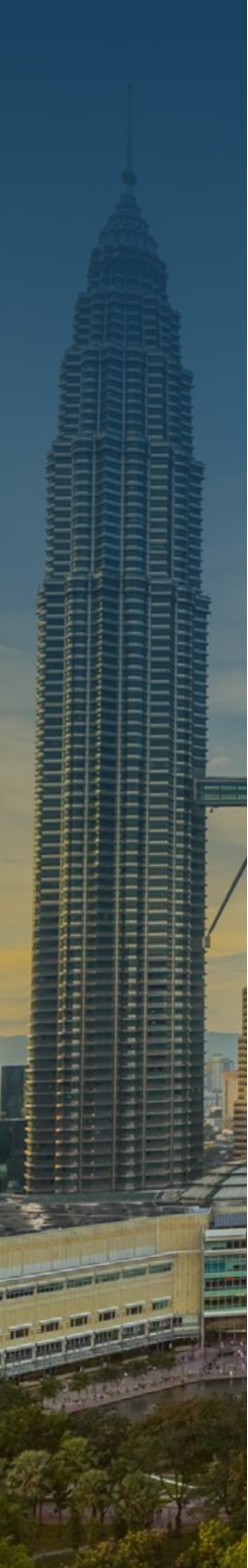
(b) The **Main Market Listing Requirements, ACE Market Listing Requirements and Sustainability Reporting Guide** (collectively the Sustainability Reporting Framework) issued by Bursa Malaysia Securities Berhad (Bursa Malaysia)¹ sets out the sustainability reporting requirements to be disclosed in the Sustainability Statement (as defined below) of listed companies. The sustainability statement is a narrative statement disclosing the management of material economic, environmental and social risks and opportunities (EES) (Sustainability Statement) of listed companies in their annual reports.

3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

The TCFD Application Guide provides that Basic recommendations must be adopted by 29 June 2024, and Stretch recommendations are expected to be adopted by 31 December 2024.

The Sustainability Reporting Framework contains mandatory sustainability disclosures in relation to the EES of listed companies.

¹ Bursa Malaysia is an exchange holding company and one of the largest bourses in ASEAN.



4 Which aspects of ESG do the requirements focus upon?

The TCFD Application Guide focuses on climate-related matters.

The Sustainability Reporting Framework focuses on economic, environmental and social aspects.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

The climate-related disclosures under the TCFD Application Guide are aligned with the TCFD Recommendations developed by the Financial Stability Board.

Pursuant to the Sustainability Reporting Guide, listed companies are encouraged to report in alignment with or, with adherence to the GRI Standards, SASB Standards, the FTSE Russell FTSE4Good Criteria, and standards issued by ISSB, European Union's European Financial Reporting Advisory Group and Recommendations of the Taskforce on Nature-related Financial Disclosures (TCFD Recommendations). However, the Sustainability Reporting Framework is not based on any specific international standards.

Main Market listed issuers will be required (in Sustainability Statements issued for the financial years ending on or after 31 December 2025) to make climate-related disclosures in line with the TCFD Recommendations.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

Limited Scope 3 GHG emissions disclosures are required pursuant to the Basic recommendations under the TCFD Application Guide (i.e. business travel and employee commuting), while Stretch recommendations include disclosures for all Scope 3 GHG emissions.

Limited Scope 3 GHG emissions disclosures (i.e. business travel and employee commuting) are mandatory for all listed companies.

7 Are there assurance requirements?

There are no requirements under the TCFD Application Guide for climate-related disclosures of financial institutions to be subjected to an assurance process.

There are currently no requirements for the Sustainability Statements of listed companies to be subjected to an assurance process, but such practice is encouraged pursuant to the Sustainability Reporting Guide.

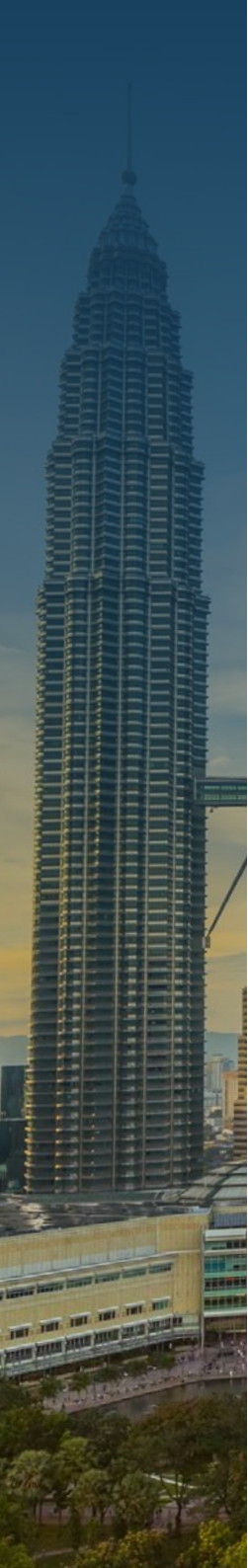
8 Are voluntary ESG disclosures customary?

Based on our limited checks, some listed companies do reference international standards and frameworks, such as the GRI Standards, in their Sustainability Statements even though such alignment or adherence is not mandatory.

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

The **Climate Change and Principle-based Taxonomy** (CCPT) issued by the Central Bank of Malaysia (BNM) provides a taxonomy for the classification of economic activities against climate objectives and reporting of lending and investment activities in line with the CCPT by financial institutions. Although CCPT reporting is not currently mandatory, financial institutions have submitted the first report on the application of the CCPT to the BNM in August 2022.

The **Principles-Based Sustainable and Responsible Investment Taxonomy** (SRI Taxonomy) issued by the Securities Commission Malaysia (SC) provides universal guiding principles for the classification of economic activities by all capital market users. The SRI Taxonomy is currently not mandatory.



10 Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

In anticipation of the upcoming release of climate-related disclosure standards by ISSB (ISSB Standards), the TCFD Application Guide applicable to financial institutions will be reviewed by JC3 to take into account the requirements under the new ISSB standards.

Bursa Malaysia has enhanced its Sustainability Reporting Framework in respect of climate change-related disclosures to prepare listed companies to adopt international reporting frameworks and standards, such as the ISSB Standards, in due course.

An Advisory Committee on Sustainability Reporting (chaired by the SC and including representatives from Bursa Malaysia) has been established to consider the implementation of the ISSB Standards in Malaysia.

11 Other upcoming developments / direction of travel

JC3 aims to further align practices in the implementation of the CCPT by the end of 2023, which may include mandatory CCPT reporting by financial institutions. If reporting under the CCPT becomes mandatory, financial institutions may require borrowers to implement ESG reporting/disclosures in order to facilitate standardised classification and reporting of climate-related exposures.

The Capital Markets Malaysia, in collaboration with the Department of Natural Resources, Environment and Climate Change (NRECC), is developing an ESG Disclosure Guide tailored to Malaysian SMEs which will provide practical guidance and baseline exposures expected of SMEs in relation to ESG disclosure. The adoption of such guide is expected to pave the way for alignment with international disclosure frameworks, including the ISSB standards.



B. TRANSITION PLANNING AND NET ZERO

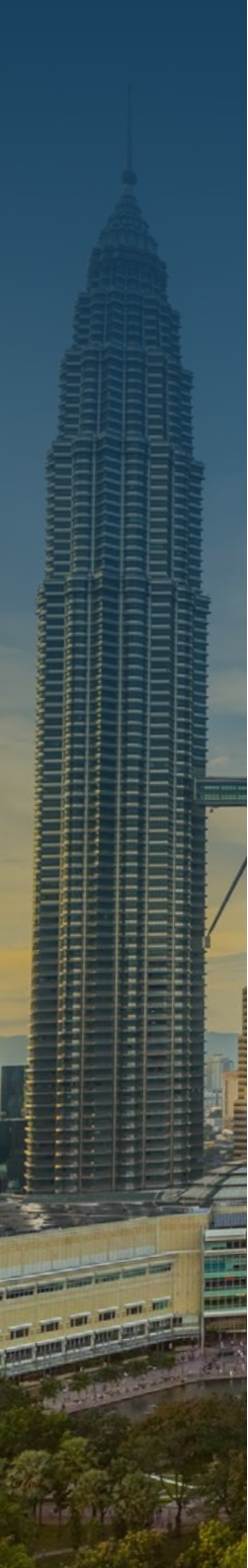
1 Has your jurisdiction set decarbonisation targets and strategies?

Yes, to reduce GHG emissions intensity to Gross Domestic Product up to 45% by 2030 based on emissions intensity in 2005.

The Malaysian government has further **announced** its Low Carbon Nation Aspiration 2040 with the aim of reducing carbon emissions. The Malaysian government aims to achieve net-zero GHG emissions in 2050.

2 Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

Yes, a voluntary carbon market, the **Bursa Carbon Exchange** (the BCX) was recently established by Bursa Malaysia and is backed by the Malaysian government, under the purview of the Ministry of Finance and the NRECC. The inaugural auction for the BCX was held on 16 March 2023.



3 Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

It is not mandatory to have a transition plan or to disclose any transition plans.

However, Bursa Malaysia has recently **announced** that they are including enhanced sustainability reporting requirements in their Main Market Listing Requirements and ACE Market Listing Requirements. Main Market listed issuers will be required to disclose their common sustainability matters and indicators for their emissions in their Sustainability Statements¹. ACE Market listed corporations will be required to disclose a basic plan to transition towards a low carbon economy².

4 Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

There are no mandatory requirements set by the Malaysian Government.

However, Bursa Malaysia has imposed the requirement on Main Market listed issuers to include climate change-related disclosures that are aligned with the TCFD Recommendations in their Sustainability Statements³. Under the TCFD Recommendations, the metrics and targets used to assess and manage relevant climate-related risks and opportunities are to be disclosed where such information is material. It remains to be seen how the climate change-related disclosures are to be aligned with the TCFD Recommendations.

Further, the JC3 has released the TCFD Application Guide which outlines the key recommendations and provides guidance within the context of the Malaysian economy and financial system to assist financial institutions in preparing for climate-related disclosures⁴. The TCFD Application Guide sets out several recommended metrics and targets which financial institutions should use to disclose the climate-related commitments made to its investors and others.

Recently, the IFRS Foundation through ISSB announced the issuance of its first two IFRS Sustainability Disclosure Standards, IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 Climate-related Disclosures⁵. These standards which fully incorporate the recommendations of the TCFD, are aimed at providing a global baseline for sustainability

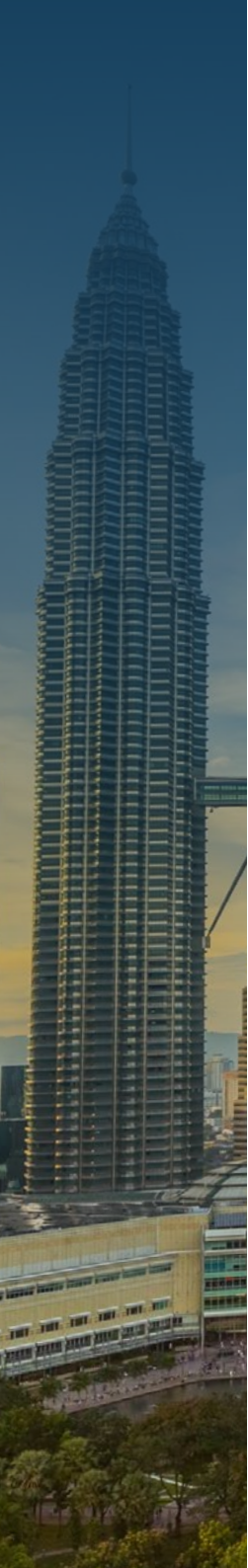
1 Such requirement is applicable to Main Market listed issuers for its Sustainability Statements in annual reports issued for financial year end on or after 31 December 2024.

2 Such requirement is applicable to ACE Market listed corporations for its Sustainability Statements in annual reports issued for financial year end on or after 31 December 2026.

3 Such requirement is applicable to Main Market listed issuers for its Sustainability Statements in annual reports issued for financial year end on or after 31 December 2025.

4 Joint Committee on Climate Change (JC3) members consists of BNM, SC, Bursa Malaysia and 21 financial industry members.

5 Like the TCFD Recommendations, both the IFRS S1 and IFRS S2 requires companies to disclose metrics and targets for climate-related risks and opportunities.



related disclosures and are seen as a culmination of the work of the TCFD. The JC3 has **announced** that the TCFD Application Guide will be reviewed in light of the release of IFRS S1 and IFRS S2.

5 Other upcoming developments / direction of travel

The recently announced **Malaysia's Budget 2023** (issued by the Ministry of Finance Malaysia) aims to encourage green practices in business operations through various approaches, which include, amongst others, the following:

- (a) BNM will provide up to RM2 billion financing facility to SMEs to implement low carbon practices;
- (b) Khazanah Nasional Berhad will provide RM150 million to develop environmentally friendly projects including supporting the carbon market and reforestation;
- (c) The Green Technology Financing Scheme will be enhanced with the guarantee value being increased to RM3 billion until 2025;

- (d) Tax Deduction on Issuance Cost of Sustainable and Responsible Investment Linked Sukuk;
- (e) Tax Incentive for Company Renting Non-Commercial Electric Vehicle, and Carbon Capture and Storage; and
- (f) Extension of Tax Incentives to Support the Development of the Electric Vehicle Industry.

The NRECC Minister has also **announced** that the NRECC is developing an Energy Efficiency and Conservation Act with the aim of regulating energy efficiency and conservation practices, as well as working on a Climate Change Act which will establish a legal framework on climate change mitigation and compliance mechanisms. From a **previous statement** made by the NRECC Minister in Parliament, the development of the Climate Change Act is expected to take 2 to 3 years.



C. GREENWASHING RISKS

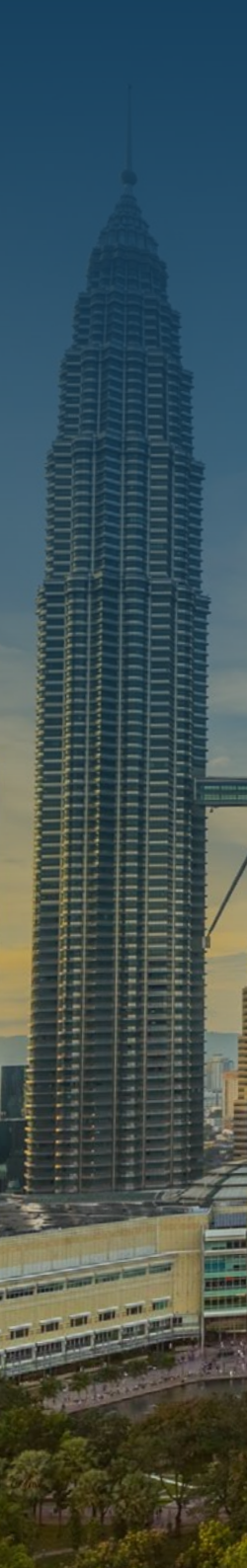
- 1 Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

No.

- 2 Are there any laws or regulations specifically dealing with greenwashing?

No, however there is some guidance relevant to mitigating greenwashing risks (e.g. the SRI Taxonomy issued by SC and the CCPT issued by BNM) applicable to capital markets players and financial institutions.

The **Lodge and Launch Framework** issued by the SC sets out clear requirements pertaining to the issuance of Sustainable and Responsible Investment (SRI) sukuk, ASEAN green/ social/ sustainability bonds, SRI-linked sukuk and ASEAN sustainability-linked bonds. Risks of greenwashing are therefore mitigated as the issuances of such bonds and sukuk are regulated by the SC.



3 What are the likely grounds on which such proceedings, action or investigations can be instigated?

The likely grounds include:

- (a) liability for false or misleading disclosures pursuant to securities laws and regulations (e.g. sustainability reporting requirements applicable to listed issuers);
- (b) misrepresentation claims; and
- (c) breaches of consumer protection, trade description and advertising laws.

4 Other upcoming developments / direction of travel

The **Policy Document on Climate Risk Management and Scenario Analysis** (Policy Document) issued by BNM (that will come into effect in stages at the end of 2023 and 2024) requires financial institutions to use established standards and taxonomies, as well as leveraging certifications and third-party assurance, to

mitigate the risks associated with greenwashing of their portfolios. Financial institutions must also establish a board-approved policy on climate-related disclosures that promote credible as well as high-quality disclosures to mitigate the risks of greenwashing.

In March 2023, the ASEAN Taxonomy Board, representing ASEAN finance sectoral bodies released the **ASEAN Taxonomy for Sustainable Finance (Version 2)**. Whilst the first version laid out the broad framework of the ASEAN Taxonomy, version 2 sets out, amongst other things, detailed methodologies for assessing economic activities and technical screening criteria for the first focus sector, the energy sector. It is expected that technical screening criteria for five remaining focus sectors will be released in phases, to be finalised by 2025.

MYANMAR

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Aye Chan Aung, Associate

Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of Myanmar.



ESG in APAC – Myanmar
By Allen & Gledhill (Myanmar) Co., Ltd.



A. ESG REPORTING

1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes.

2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

ESG disclosure requirements primarily apply to companies (i) which possess investment permits/endorsements issued by the Myanmar Investment Commission and are considered to have “a large potential impact on the environment and the local community”; and/or (ii) whose business activities are subject to environmental impact assessments/initial environmental examinations (together, the In-Scope Companies). The requirements include:

- (a) The **Myanmar Investment Law** and the Myanmar Investment Rules (Investment Laws), which require companies subject to environmental and social impact assessments to submit their compliance status on a regular basis. Furthermore, such companies are required to submit a compliance report within 3 months after the end of each financial year in the prescribed form to the Myanmar Investment Commission to report on the impact of the approved investments on the environment and local community.
- (b) The **Environmental Conservation Law** and its subordinate legislation, being, the **Environmental Conservation Rules** and the **Environment Impact Assessment Procedures** (Environmental Conservation Laws), which prescribe types of business activities subject to prior environmental assessments and set out disclosure requirements for such businesses, including, the disclosure of the initial environmental reports and continuous reporting obligations.

Companies listed on the Yangon Stock Exchange and public companies having more than 100 shareholders are **required** to submit a directors' report annually to the Securities and Exchange Commission (SEC) and the Directorate of Investment and Company Administration (DICA). The directors' report shall disclose all risks and uncertainties faced by the company, although no specific references to environmental related matters are mentioned under the law for making such disclosures. Furthermore, such companies are subject to continuous disclosure requirements to report to the SEC and DICA on any material changes in a timely manner.

As part of Myanmar's response to the Extractive Industries Transparency Initiative, all companies incorporated in Myanmar have been required to disclose beneficial owners and whether they are related to any politically exposed person since October 2019.

3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

The disclosure requirements specified in Q&A A.2 above are mandatory.

4 Which aspects of ESG do the requirements focus upon?

For In-scope Companies, the focus is on environmental and social aspects.

For financial institutions, the additional focus is on anti-money laundering and anti-bribery.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

The disclosure requirements for In-Scope Companies are not generally based on international standards.

The disclosure requirements relating to beneficial ownership and politically exposed person replicate the corresponding concepts in the Extractive Industries Transparency Initiative Standard 2019.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

No.

7 Are there assurance requirements?

No. Although on a related point, where the Ministry of Natural Resources and Environmental Conservation identifies non-compliance with environmental rules by an investor, it has authority to engage a third party expert to assess the investor's compliance status.

8 Are voluntary ESG disclosures customary?

No. We have not seen any companies listed on the Yangon Stock Exchange making such disclosure.

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

No.

- 10** Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

No.

- 11** Other upcoming developments / direction of travel

We are not aware of any recent development in ESG reporting requirements.



B. TRANSITION PLANNING AND NET ZERO

- 1** Has your jurisdiction set decarbonisation targets and strategies?

Yes. The Myanmar Climate Change Policy formulated by the former government in 2019 mandates the implementation of the Myanmar Climate Strategy 2018 to 2030, which contains strategies relating to achieving climate resilient and low-carbon energy, transport and industrial systems that support inclusive and sustainable development and economic growth.

- 2** Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

No.

- 3** Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

No.

- 4** Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

No.

- 5** Other upcoming developments / direction of travel

We are not aware of any recent development in this regard.



C. GREENWASHING RISKS

- 1** Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

No. We are not aware of any such legal action taken by the relevant regulators or other stakeholders such as investors within the past five years, based on publicly available information.

- 2** Are there any laws or regulations specifically dealing with greenwashing?

No. However, the applicable laws (as mentioned in Q&A A.2 above) carry penalties for non-compliance, including fines, regulatory penalties (e.g. revocation of licences) and criminal liabilities.

- 3** What are the likely grounds on which such proceedings, action or investigations can be instigated?

Likely grounds include:

- (a) Disclosure liabilities under investment laws, securities laws and regulations – e.g. providing materially false or misleading information in listing documents or other corporate disclosure documents such as ESG compliance reports/information.
- (b) Breaches of directors' duties.
- (c) Claims in tort for misrepresentation.

- 4** Other upcoming developments / direction of travel

We are not aware of any recent developments in this regard.

NEW ZEALAND

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Bell Gully

Contact:
Toby Sharpe, Partner

Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of New Zealand.



ESG in APAC – New Zealand
By Bell Gully



A. ESG REPORTING

1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes, there are mandatory climate related disclosures based on the disclosure regime recommended by the TCFD. New Zealand was the first country to commit to making TCFD reporting mandatory and legislation establishing the climate reporting regime was passed in 2021.

NZX Limited (NZX) has a “comply or explain” regime for ESG disclosure, which applies to NZX listed issuers of equity securities.

The Financial Markets Authority (FMA) has published guidance that sets out its expectations from issuers of financial products that incorporate non-financial elements (with terms like “ethical”, “responsible”, “sustainable”, “green” and “ESG”).

2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

Mandatory Climate Reporting

The **Financial Markets Conduct Act 2013** (FMCA) requires certain entities to make prescribed climate-related disclosures.

The regime applies to “Climate Reporting Entities” (CREs), comprising: large listed companies (with a market capitalisation of more than \$60 million), large registered banks, large licensed insurers, large credit unions, large building societies, and fund managers with significant assets under management (more than \$1 billion).

CREs are required to prepare “climate statements” relating to their accounting periods. The climate statements must comply with the “climate-related disclosure framework”, which is made up of a series of “climate standards”.

The climate related disclosures regime takes effect for accounting periods that start on or after 1 January 2023. This means (for example) that entities with a 30 June balance date would be required to prepare their first climate statement in relation to the accounting period ending 30 June 2024.

The External Reporting Board (XRB) is responsible for developing the climate standards and the FMA is responsible for enforcing compliance.

NZX Corporate Governance Code & Guidance

The **NZX Corporate Governance Code** (Code) provides recommendations in relation to corporate governance principles for NZX listed issuers to report under the NZX Listing Rules. It operates on a “comply or explain” basis.

One of the key aims of the Code is to promote issuer disclosure of ESG factors. In particular, one of the recommendations is that: “An issuer should provide non-financial disclosure at least annually, including considering environmental, social sustainability and governance factors and practices. It should explain how operational or non-financial targets are measured. Non-financial reporting should be informative, include forward looking assessments, and align with key strategies and metrics monitored by the board.” Issuers may include other non-financial information, such as a description of the performance of an issuer’s business against strategic goals.

The NZX has published a **guidance note** for issuers that are considering the disclosure of ESG factors under the NZX Code.

FMA Disclosure Framework

The FMA has published a **disclosure framework** (Disclosure Framework) for issuers of financial products that incorporate non-financial features (which the FMA refers to as “integrated financial products”).

3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

The requirement to prepare climate statements is mandatory for CREs.

The NZX recommendation applies on a comply-or-explain basis.

The FMA Disclosure Framework applies to issuers of integrated financial products. It is not expressed as being mandatory in a strict sense, but is guidance from the FMA as to how it intends to interpret the relevant provisions of the FMCA, so is treated as effectively mandatory.

4 Which aspects of ESG do the requirements focus upon?

Mandatory Climate Reporting

As noted above, CREs are required to prepare “climate statements” relating to their accounting periods. The climate statements must comply with the “climate-related disclosure framework”, which is made up of a series of “climate standards”. The standards issued by the XRB which have been developed in line with the recommendations of the TCFD are as follows:

- (a) **NZ CS 1** is the main disclosure standard. It specifies the mandatory disclosures that must be made in climate statements and covers four key categories:
 - (i) governance;
 - (ii) strategy;
 - (iii) risk management; and
 - (iv) metrics and targets.
- (b) **NZ CS 2** provides a limited number of exemptions from the disclosure requirements that are intended to assist CREs with the transition to climate-related reporting during their first three reporting periods.

- (c) **NZ CS 3** sets out general principles and requirements for the climate related disclosures, including in relation to the concept of materiality. There is also record keeping legislation under FMCA.

NZX Corporate Governance Code & Guidance

The NZX guidance outlines what NZX considers to be good ESG practices and accepted frameworks for issuers to consider adopting when making ESG disclosures. It is not intended to be exhaustive, but aims to help issuers better understand the benefits of ESG reporting and the global reporting regimes available.

In addition, the NZX guidance outlines ESG-related content that issuers might consider reporting, including:

- (a) The relevance of ESG factors to their business models and strategy.
- (b) How ESG issues may affect their business.
- (c) How they intend to access the new opportunities and revenue streams generated by environmentally and socially beneficial products and services.

- (d) The material ESG risks faced by their business, how they intend to manage ESG risks, and the risk management framework that they use to identify, monitor and manage those risks.

- (e) The parts of the business that manufacture or provide goods, products and services delivering environmental solutions and supporting the transition to a low carbon economy; and break down and quantify the associated revenues.

- (f) Data that is accurate, timely, aligned with their fiscal year and business ownership model, and based on consistent global standards to facilitate comparability.

- (g) Recognition that reporting is just one part of the wider dialogue they have with their investors.

FMA Disclosure Framework

The FMA Disclosure Framework outlines the type of disclosure the FMA would expect from issuers of integrated financial products. It focuses on the relevant legislation, being the “fair dealing” provisions in the FMCA that prohibit:

- (a) misleading or deceptive conduct, including conduct that is likely to mislead or deceive; and
- (b) false, misleading or unsubstantiated representations.

The FMA Disclosure Framework notes that the fair dealing provisions apply broadly and the FMA will consider whether conduct or disclosure is likely to mislead or confuse as perceived by the investor. In addition to the conventional disclosure content for financial products, the FMA Disclosure Framework focuses on:

- (a) outlining what the integrated financial product purports to offer beyond a standard financial product;
- (b) how performance against non-financial factors is measured and evidenced;
- (c) the monitoring and governance framework relevant to non-financial factors;
- (d) internal audit or external assurance provided;
- (e) risks associated with the integrated financial products; and
- (f) outlining the consequences of not achieving the non-financial objective stated.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

The climate related disclosure reporting has been developed in line with the **recommendations** of the TCFD.

The NZX Guidance and FMA Disclosure Framework each refer to relevant international frameworks, but are not based on them.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

Yes. Climate reporting entities will need to include scope 3 GHG emissions in their climate statements. However, there is an exemption from this requirement for the first year – although disclosure of scope 3 GHG emissions is encouraged, it is not required until the climate statements for the accounting period commencing during calendar 2024.

7 Are there assurance requirements?

Mandatory climate reporting

Yes.

GHG disclosure included in climate statements must be subject to an assurance engagement. However, there is no external assurance

requirement for the first climate related disclosure statements. CREs will only be required to obtain external assurance from the second climate statement (i.e., for the accounting period starting in 2024).

The scope of the assurance engagement is currently under consultation. The minimum level of assurance for GHG emissions proposed is set at limited assurance, however this will be revisited once the assurance regime has commenced.

The assurance practitioner must comply with applicable standards when carrying out the assurance engagement. The assurance engagement can cover other parts of the climate related disclosure as well, or the whole statement.

The assurance report will need to be filed with the climate statements.

NZX Guidance / FMA Disclosure Framework

No assurance required.

8 Are voluntary ESG disclosures customary?

Yes. A number of non-CRE New Zealand entities voluntarily adopted TCFD-based climate related disclosures into their annual reporting. This has increased since 2019 when the New Zealand Government endorsed the TCFD recommendations.

In respect of the NZX Guidance, it is also relatively common for NZX-listed issuers to include ESG disclosures in their annual reports. This disclosure is increasingly requested by investors.

It is also common in New Zealand for integrated financial products to be issued with ESG related disclosure.

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

The three standards (listed above in **Q&A A.4**) provide a taxonomy. In particular, NZ CS 3 establishes a glossary of defined terms as a taxonomy. The taxonomy exists within the mandatory reporting regime. It is described as an integral part of NZ CS 3. It includes definitions of key terms like “greenhouse gas”; “scope 1 emissions”; “scope 2 emissions”; “scope 3 emissions”.

- 10** Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

The XRB has stated that it is committed to paying close attention to the ISSB's work including the exposure drafts of the ISSB's climate standard and general sustainability standard published in March 2022. The XRB has acknowledged the need to enable New Zealand entities to report in a globally consistent manner. To that end, they will continue to engage with the ISSB and monitor their work.

- 11** Other upcoming developments / direction of travel

CREs are focussing on their first mandatory climate statements, which will be due in 2024. The FMA and XRB are focussing on supporting CREs in preparing their statements.



B. TRANSITION PLANNING AND NET ZERO

- 1** Has your jurisdiction set decarbonisation targets and strategies?

Yes. At the end of 2019, the New Zealand Government set a target for net-zero greenhouse gas emissions by 2050 (other than for biogenic methane, to be 24-27% below 2017 levels).

The **Climate Change Response Act 2002** requires the Government to set "emissions budgets" (the total quantity of emissions allowed during an emissions budget period). This aims to keep the Government on track to meet the long-term reduction target. Each emission budget covers a time period.

At the time of this advice, the Government has set the first 3 emission budgets and published an Emissions Reduction Plan.

The Emissions Reduction Plan includes actions relating to system settings for reducing emissions, including approaches for empowering Maori, ensuring an equitable transition plan and working with nature. It also includes plans for reducing emissions in key emitting sectors, including the energy and industry sectors.

- 2** Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

Yes. The New Zealand Emissions Trading Scheme (NZETS) is a mandatory carbon-trading market that applies to emitters in specified industries (and voluntary for emitters outside the regime).

The NZETS helps reduce emissions by doing three main things:

- requires emitters to measure and report on their greenhouse gas emissions;
- requires emitters to surrender one "emissions unit" (known as an NZU) to the Government for each one tonne of emissions they emit; and
- limits the number of NZUs available to emitters (i.e., that are supplied into the scheme).

The Government sets and reduces the number of units supplied into the scheme over time. This limits the quantity that emitters can emit, in line with New Zealand's emission reduction targets.

Businesses who participate in the NZETS can buy and sell units from each other. The price for units reflects supply and demand in the scheme.

- 3** Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

There is no mandatory requirement to have a transition plan. However, in its climate statement, each climate reporting entity is required to include the transition plan aspects of its strategy, including:

- (a) how its business model and strategy might change to address its climate-related risks and opportunities; and
- (b) the extent to which transition plan aspects of its strategy are aligned with its internal capital deployment.

The XRB has prepared [guidance](#) on NZ CSI.

There is currently no requirement to consider social impacts as part of the transition plan disclosure. We are not aware of any plans to implement this requirement.

- 4** Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

There is no mandatory requirement to set targets. However, in its climate statement, a climate reporting entity is required to include information on the metrics and targets used to measure and manage climate-related risks and opportunities. The XRB has prepared relevant [guidance](#).

Information on targets must include:

- (a) the relevant time-frame;
- (b) any associated interim targets;
- (c) the base year from which progress is measured;
- (d) a description of performance against the targets; and
- (e) specific information for each GHG emissions target.

- 5** [Other upcoming developments / direction of travel](#)

The Government is currently consulting on the NZETS to assess whether changes are required to provide stronger incentives to meet emissions targets.



C. GREENWASHING RISKS

- 1** Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

While the consumer and financial markets regulators (the Commerce Commission and the FMA) have each issued regulatory guidance regarding greenwashing, there have been relatively few examples of legal proceedings or regulatory actions regarding greenwashing in New Zealand. However, recent examples include:

- (a) Vanguard was issued a warning letter by the FMA for failing to disclose details within the required time over infringement notices filed against it in Australia for alleged greenwashing (March 2023).
- (b) Kiwipure was fined \$162,000 under the Fair Trading Act 1986 (FTA) for using unsubstantiated claims relating to its water filtration system (the claims were based on anecdotal evidence and assumptions rather than reliable scientific methods) (February 2020).

(c) Fujitsu were fined \$310,000 under the FTA for making unsubstantiated claims about the energy efficiency and performance of some of its heat pumps (September 2017).

In addition, the Advertising Standards Authority (ASA), a self-regulatory body funded by the advertising and media industries, has issued a number of decisions including findings of “greenwashing”. For example, Kathmandu was ordered to remove an advertisement following a complaint made to the ASA regarding a misleading claim about its “biodegradable” puffer jackets (August 2023).

2 Are there any laws or regulations specifically dealing with greenwashing?

No, but the general prohibitions under the FMCA and [Fair Trading Act 1986](#) (FTA) will apply (see our comments under Q&A C.3 below).

The Commerce Commission has issued general [guidance](#) on environmental claims.

3 What are the likely grounds on which such proceedings, action or investigations can be instigated?

There are no specific prohibitions against “greenwashing.” However, New Zealand’s consumer protection and financial services legislation (the FTA and the FMCA) each contain restrictions on “unsubstantiated representations” (being representations that are not supported by reasonable grounds at the time they are made) which are likely to be the primary basis for any allegations of greenwashing.

4 Other upcoming developments / direction of travel

The regulators currently have an active focus on greenwashing in both consumer and financial markets contexts.

Although there have been no major greenwashing claims in New Zealand to date, the risks of claims against companies are expected to increase (in particular, as the climate related disclosure regime takes effect).

More generally, New Zealand is likely to introduce a new statutory class actions regime (following recommendations by the Law Commission in 2022), which is likely to increase the risk of any greenwashing claims where large numbers of consumers are affected.

PHILIPPINES

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SyCip Salazar Hernandez & Gatmaitan

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Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of Philippines.



ESG in APAC – Philippines
By SyCip Salazar Hernandez & Gatmaitan



A. ESG REPORTING

1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes.

2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

In the Philippines, ESG disclosure/reporting requirements or recommendations are provided in the following:

- (a) **Securities and Exchange Commission (SEC) Memorandum Circular No. 4, series of 2019** (Sustainability Reporting Guidelines for Publicly-Listed Companies) (Sustainability Reporting Guidelines), which applies to publicly-listed companies.
- (b) **SEC Memorandum Circular No. 24, Series of 2019** (Code of Corporate Governance for Public Companies and Registered Issuers) (CG Code for PCs & RIs), which applies to public companies and registered issuers.


(c) **Insurance Commission (IC) Circular Letter No. 2020-71** (Revised Code of Corporate Governance for Insurance Commission Regulated Companies) (CG Code for ICRCs), which applies to IC regulated companies.

(d) **Bangko Sentral ng Pilipinas (BSP; the Philippine Central Bank) Circular No. 1085** (Sustainable Finance Framework), which applies to banks.

(e) SEC regulations governing the issuance of **green, social, sustainability, and sustainability-linked bonds**, and the establishment of **Sustainable and Responsible Investment (SRI) funds**.

3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

The SEC's Sustainability Reporting Guidelines adopted the comply or explain approach for the first three years of its implementation. While the SEC has stated in various public fora that the reporting requirement shall be upgraded to mandatory after the first three years of implementation, the SEC has yet to issue a regulation to formalize this.



The reporting requirements under the CG Code for PCs & RIs and the CG Code for ICRCs apply on a comply or explain basis.

The requirements under the BSP's Sustainable Finance Framework are mandatory, and banks were given three years from April 2020 to fully comply.

The reporting requirement under SEC regulations concerning green, social, sustainability, and sustainability-linked bonds, and SRI funds are mandatory.

4 Which aspects of ESG do the requirements focus upon?

The SEC's Sustainability Reporting Guidelines focus on economic, environmental (including climate) and social issues.

The CG Code for PCs & RIs and the CG Code for ICRCs focus on economic, environmental, social and governance issues.

The BSP's Sustainable Finance Framework focuses on environmental and social risks.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

The SEC's Sustainability Reporting Guidelines draws from the GRI's Sustainability Reporting Standards, the SASB's Sustainability Accounting Standards, the recommendations of the TCFD, and the UN Sustainable Development Goals.

The CG Code for PCs & RIs and the CG for ICRCs recommends that companies adopt a globally-recognized standard or framework in reporting sustainability and non-financial issues, but does not recommend a specific standard or framework.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

No. The reporting template under the SEC's Sustainability Reporting Guidelines includes disclosures of "Direct (Scope 1) GHG Emissions", "Energy indirect (Scope 2) GHG Emissions)" and "Emissions of ozone-depleting substances (ODS)."

7 Are there assurance requirements?

External review is recommended under SEC rules governing the following:

- (a) Issuance of green bonds;
- (b) Issuance of social bonds; and
- (c) Issuance of sustainability bonds.

External review is required under SEC rules governing the issuance of sustainability-linked bonds.

There are no mandatory assurance requirements in relation to disclosures under the SEC's Sustainability Reporting Guidelines.

8 Are voluntary ESG disclosures customary?

No, voluntary ESG disclosures are not customary in the Philippines. However, some listed companies were already preparing sustainability reports even prior to the adoption of the SEC's Sustainability Reporting Guidelines.

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

The Inter-Agency Technical Working Group for Sustainable Finance has prepared the **Philippine Sustainable Finance Guiding Principles** (Guiding Principles). The Guiding Principles were developed to provide principles-based guidance on identifying activities that contribute to supporting sustainable development, with a focus on addressing the impacts of climate change.

Also, the SEC's rules on green, social and sustainability bonds identify categories of projects eligible to be financed by proceeds from the issuance of said bonds.

10 Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

The Philippine Sustainability Reporting Committee has been established to evaluate ISSB's IFRS sustainability disclosure standards for local use and to issue local interpretation and guidance.

11 Other upcoming developments / direction of travel

The SEC is considering making the sustainability reporting requirement mandatory (instead of comply-or-explain) for listed companies, and expanding the mandatory reporting requirement to other types of companies (e.g., public companies, registered issuers and, perhaps, even private companies).



B. TRANSITION PLANNING AND NET ZERO

1 Has your jurisdiction set decarbonisation targets and strategies?

The Philippines has committed to a GHG emissions reduction and avoidance target of 75%, referenced against the business-as-usual scenario, for the period of 2020 to 2030. Of this, 2.71% is unconditional and 72.29% is conditional.

The **National Climate Change Action Plan 2011–2028** outlines specific programs and strategies for climate change adaptation and mitigation. Four of these programs and strategies relate to achieving lower carbon emissions: (a) Ecological and Environmental Stability; (b) Climate-Smart Industries and Services; (c) Sustainable Energy; and (d) Knowledge and Capacity Development.

The **Philippine Sustainable Finance Roadmap** lays out an action plan to promote sustainable finance in the Philippines, with its first phase focusing on the transition to a low carbon economy.

2 Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

There is currently no carbon trading market in the Philippines. However, a **bill** was recently filed in the upper house of Congress for a domestic cap and trade system, with provisions on emission reduction measures and targets, caps on GHG, allowances, and the establishment of a carbon trading system.

3 Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

No, it is not mandatory to have a transition plan for listed companies, public companies, registered issuers, and IC regulated companies. It is also not mandatory for them to disclose whether they have a transition plan.

4 Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

No, there are no mandatory requirements for companies to set climate targets.

However, there are disclosure requirements under the SEC's Sustainability Reporting Guidelines, which requires listed companies to disclose the organization's governance around (a) climate-related risks and opportunities, (b) the actual potential impacts of these climate-related risks and opportunities, (c) how the organization identifies, assesses, and manages climate-related risks, and (d) the metrics and targets used to assess and manage relevant climate-related risks and opportunities.

On the other hand, banks are required to have a transition plan with specific timelines to implement board-approved strategies and policies that integrate sustainability principles into their corporate governance, risk management frameworks, strategic objectives, and operations. However, this transition plan relates to the bank's sustainability policies and objectives generally, and is not necessarily limited to transition towards a lower-carbon economy.

5 Other upcoming developments / direction of travel

In May 2022, the Philippine Commission on Human Rights (CHR) issued a **report** on its National Inquiry on Climate Change, where it concluded its landmark inquiry and determined the impact of climate change poses a threat to individuals' human rights. The CHR made several recommendations, including compelling carbon majors within Philippine jurisdiction to undertake human rights due diligence and provide remediation for their adverse human rights impact. While the CHR report does not have a binding effect, we expect increased calls for accountability and legal action against major GHG emitting companies and businesses as a result of the CHR report.

Recently, there is an increased interest in forest carbon projects in the Philippines. While this activity was unregulated for many years, the Department of Environment and Natural Resources is moving towards putting regulations and frameworks in place. Moreover, there have also been expressions of interest in blue carbon initiatives. Incidentally, the Guiding Principles emphasize, among others, the importance of nature-based solutions.



C. GREENWASHING RISKS

1 Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

No. However, from time to time, activist groups undertake activities and issue press releases calling out companies for supposed greenwashing.

2 Are there any laws or regulations specifically dealing with greenwashing?

No, but some guidance does exist.

- (a) **BSP Circular No. 1149** (Guidelines on the Integration of Sustainability Principles in Investment Activities of Banks) requires banks to adopt measures to ensure that investments are channelled to, among others, companies that do not engage in greenwashing. It defines greenwashing as the deceptive marketing used to persuade the public that an organization's products, aims, and policies are environmentally friendly. Greenwashing may also come in the form of dissemination of misleading information, whether intentional or not,

regarding a company's environmental strategies, goals, motivations, and actions that can induce false positive perception of a company's environmental and social performance.

- (b) As previously mentioned, SEC regulations set guidelines when bonds may be labelled as green, social, sustainability, or sustainability-linked bonds, and when funds may be labelled as SRI funds.

3 What are the likely grounds on which such proceedings, action or investigations can be instigated?

Likely grounds for a suit include:

- (a) Making of false or misleading statements, or fraud under the Securities Regulation Code;
- (b) False, deceptive or misleading advertisement under the Consumer Act of the Philippines;
- (c) Fraud, giving rise to damages under the Civil Code;
- (d) Estafa by false pretenses or deceit under the Revised Penal Code; and
- (e) Breach of express warranties in a contract of sale.

Administrative penalties may also be imposed against investment funds for unauthorized use of SRI, ESG, or any other similar or associated terms in the names and/or marketing materials, or for making false statements as to its qualification as an SRI fund or over-emphasizing sustainability or ESG features in any communication or advertising materials.

4 Other upcoming developments / direction of travel

With the enactment of the Extended Producer Responsibility Act of 2022, which requires product producers (including brand owners and product manufacturers) to recover up to 80% of their plastic packaging waste by 2028, environmental claims made by product producers may become subject to even greater scrutiny by consumer and public interest groups. There may also be increased risk of legal action against major GHG emitting companies as a result of the CHR report mentioned above.

SINGAPORE

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Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of Singapore.

 **ESG in APAC – Singapore**
By Allen & Gledhill LLP



A. ESG REPORTING

1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes.

2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

ESG disclosure requirements apply to a wide array of companies and funds:

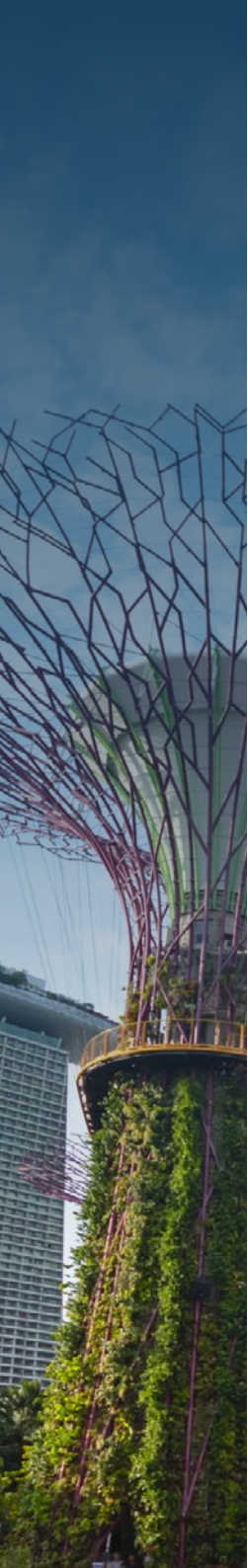
Issuers listed on the Singapore Exchange (SGX):

Listed issuers have, since 2016, been required to prepare an annual sustainability report containing the following primary components: (i) identifying material ESG factors to the business, (ii) selecting a suitable sustainability reporting framework, and (iii) setting out sustainability policies, practices, performance and targets in relation to material ESG factors¹.

Climate reporting is required on a “comply or explain” basis starting from the financial year (FY) commencing between 1 January to 31 December 2022. Climate reporting is thereafter mandatory for issuers in the (i) financial industry; (ii) agriculture, food and forest products industry; and (iii) energy industry for the FY commencing between 1 January to 31 December 2023; and for issuers in the (iv) materials and buildings industry; and (v) transportation industry for the FY commencing between 1 January to 31 December 2024.

SGX further **recommends** a list of 27 Core ESG Metrics for issuers to use as a starting point for sustainability reporting. They include matrices such as GHG emissions, occupational health and safety, age-based diversity, and alignment with frameworks.

¹ Please refer to Listing Rule 711A and Listing Rule 711B of the SGX [Mainboard Rules](#) and the [Catalist Rules](#), read together with [Practice Note 7.6 on the Sustainability Reporting Guide](#).



The SGX Listing Rules were also amended on 1 January 2022 to require issuers to set a board diversity policy that addresses gender, skill and experience, as well as other relevant aspects of diversity. Issuers must describe the board diversity policy and details relating to the diversity targets, plans, timelines and the progress in their annual reports².

On 6 July 2023, the Sustainability Reporting Advisory Committee (SRAC), formed by the Accounting and Corporate Regulatory Authority (ACRA) and Singapore Exchange Regulation (SGX RegCo), issued a [consultation paper](#) (SRAC Climate Reporting Roadmap) proposing that:

- (i) listed issuers will be required to make ISSB-aligned climate disclosures by FY2025; and
- (ii) large non-listed companies (NLCs) with revenue of at least S\$1 billion are required to make ISSB-aligned climate disclosures in FY2027.

A review will also be conducted in 2027 with a view to mandating climate reporting by NLCs with revenue of at least S\$100 million a few years later, by around 2030.

In terms of the assessment of the applicable size threshold, this is proposed to be assessed based on the financials for two financial years immediately preceding the current FY, unless:

- (i) the company has not reached its third FY after incorporation, or
- (ii) the company is in the first or second FY when the proposed reporting obligations commence,

in which case, size threshold will be assessed based on the current FY.

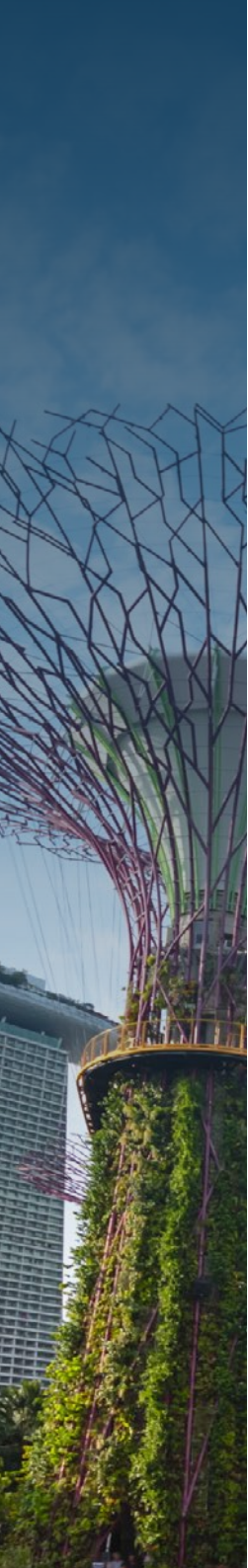
Additionally, the proposed reporting timelines from the SRAC set out above apply to prescribed climate-related disclosures (CRD) relating to Scope 1 and Scope 2 GHG emissions, and reliefs from complex disclosures such as Scope 3 GHG emissions will be available. Reporting on Scope 3 GHG emissions will commence for the subsequent FY after

the mandatory reporting requirements take effect for listed issuers, and two years later for NLCs. Entities subject to the climate reporting requirements are also required to obtain external limited assurance in respect of its Scope 1 and Scope 2 GHG emissions two years after the mandatory reporting requirements take effect.

Retail funds with ESG investment focus

[Circular No. CFC 02/2022](#) (Circular) issued by the Monetary Authority of Singapore (MAS) in 2022 prescribes specific disclosure and reporting guidelines that companies offering retail ESG funds that are lodged with MAS on or after 1 January 2023 must comply with. It also sets out MAS' expectations on how existing requirements under the [Code on Collective Investment Schemes](#) (CIS Code) and the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (SF(CIS)R) apply to retail ESG funds.

² Please refer to Listing Rule 710A of the SGX Mainboard Rules and the Catalyst Rules, read together with Practice Note 7.6 on the Sustainability Reporting Guide.



Financial institutions (FIs)

Under MAS's [Guidelines on Environmental Risk Management \(Banks\)](#) and [Guidelines on Environmental Risk Management \(Asset Managers\)](#) (Guidelines) published in 2020, FIs should make regular and meaningful disclosure of their environmental risks, including with reference to international reporting frameworks, such as the TCFD, so as to enhance market discipline by investors. The Guidelines also set out MAS's supervisory expectations for FIs (which include banks, insurers and asset managers) in their governance, risk management and disclosure of environmental risk. Boards and senior management of FIs are expected to incorporate environmental considerations into their strategies, business plans, and product offerings, and maintain effective oversight of the management of environmental risk. FIs should also put in place policies and processes to assess, monitor, and manage environmental risk.

Sector-specific

On a sector-specific basis, there are also targeted disclosure requirements relating to energy consumption, production and greenhouse gas emissions, as well as the use of packaging.

3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

Issuers listed on SGX and large non-listed companies

Climate reporting is required on a “comply or explain” basis for all SGX-listed issuers from the FY commencing between 1 January to 31 December 2022. Climate reporting is thereafter mandatory for issuers in the (a) financial industry; (b) agriculture, food and forest products industry; and (c) energy industry for the FY commencing between 1 January to 31 December 2023; and for issuers in the (d) materials and buildings industry; and (e) transportation industry for the FY commencing between 1 January to 31 December 2024.

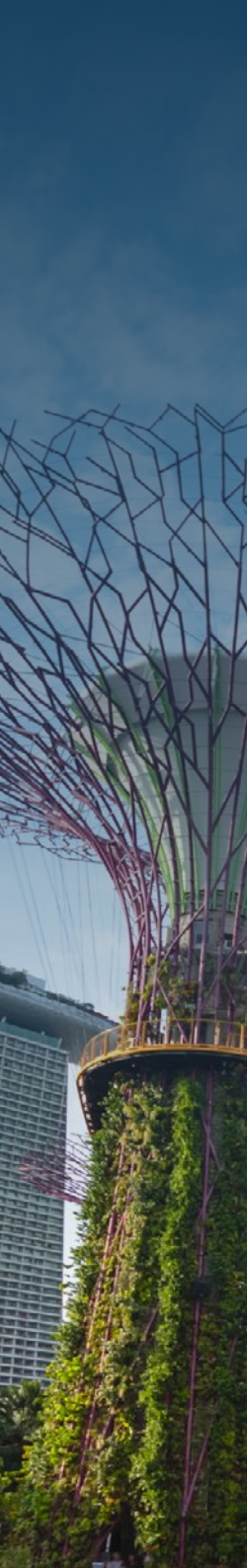
Under the SRAC Climate Reporting Roadmap, SRAC has proposed for climate reporting to be mandatory for all listed issuers by FY2025 and NLCs by FY2027 by amending the Companies Act 1967 and the SGX Listing Rules. The public consultation on the SRAC proposal will end on 30 September 2023.

Retail ESG funds

Disclosures under the SF(CIS)R, read together with the Circular, are mandatory for a fund that represents itself as ESG-focused and includes ESG or green related terms in its name. While the CIS Code is a non-binding code, non-compliance could be considered in determining whether to revoke or suspend the authorisation or recognition of the scheme or refusing to recognise a new scheme offered by the same offeror under sections 286 and 287 of the Securities and Futures Act 2001.

FIs

The [Guidelines on Environmental Risk Management](#) set out MAS's supervisory expectations for banks, insurers and asset managers in their governance, risk management, and disclosure of environmental risk. They are illustrative rather than prescriptive, as they are intended to promote



certain best practices to be taken into consideration by FIs as part of their low carbon transition. How well an institution observes the guidelines and assesses, monitors, mitigates and discloses its risk exposures will factor into MAS' overall risk assessment of banks and insurers.

Sector-specific

On a sector-specific basis, there are mandatory disclosure requirements relating to energy consumption, production and greenhouse gas emissions, as well as the use of packaging, which are mandatory for companies that meet the prescribed thresholds.

4 Which aspects of ESG do the requirements focus upon?

The requirements are primarily focused on climate and the environment, but the requirements by SGX on listed issuers and MAS's requirements on retail ESG funds also include other ESG factors.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

TCFD recommendations

For climate-related disclosures, issuers listed on SGX are **required** to make disclosures in line with TCFD recommendations. For other sustainability aspects, issuers are not obliged to adopt any specific international standards but should give priority to globally recognised frameworks and disclosure practices to guide their reporting.

ESG metrics for reporting

SGX also **recommends** a list of 27 core ESG metrics for issuers to use as a starting point for sustainability reporting, with each metric mapped against globally accepted reporting frameworks such as the SASB; the TCFD recommendations; and the World Economic Forum's recommended set of metrics and disclosures.

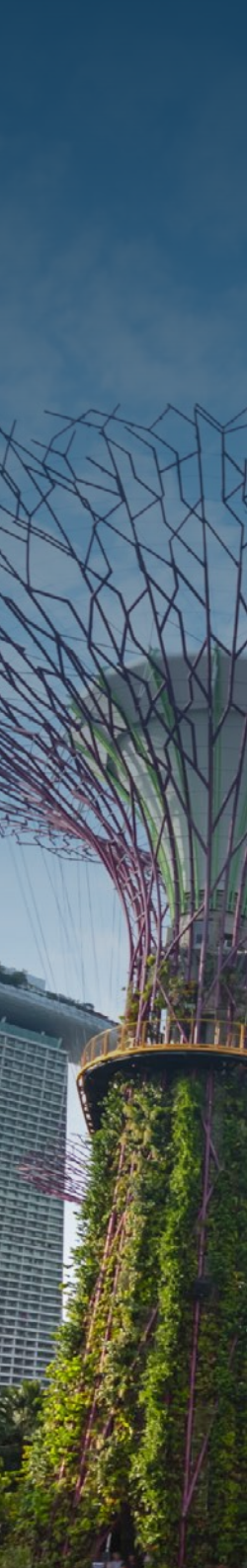
ISSB standards for disclosure

MAS intends to set out a roadmap for mandatory disclosure requirements by financial institutions based on the ISSB standards.

Under the SRAC Climate Reporting Roadmap, SRAC has proposed to extend mandatory climate reporting to large NLCs in addition to listed issuers on the SGX, in accordance with ISSB standards comprising of both the International Financial Reporting Standards (IFRS) S1 and S2 standards. To cater to diverse needs and circumstances, disclosures in accordance with other standards and frameworks could be included if the standards and frameworks applied are prominently disclosed, and the additional disclosure does not contradict or obscure the information required by the prescribed climate reporting requirements.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

There are currently no mandatory requirements for the disclosure of Scope 3 GHG emissions. However, the SRAC has proposed under the SRAC Climate Reporting Roadmap that Scope 3 GHG emissions will be required to be reported by listed issuers from FY2026, as well as in-scope NLCs from FY2029 onwards.



7 Are there assurance requirements?

There are currently no external assurance requirements for ESG reporting in Singapore.

However, there are **internal assurance requirements** by SGX for issuers, although the Board is not required to provide a separate statement on internal review.

Moving forward, SRAC has proposed that entities subject to the climate reporting requirements under the SRAC Climate Reporting Roadmap be required to obtain external limited assurance in respect of its Scope 1 and Scope 2 GHG emissions two years after the mandatory reporting requirements take effect.

8 Are voluntary ESG disclosures customary?

In general, voluntary ESG disclosures by non-publicly listed companies are still in a nascent stage in Singapore.

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

The Green Finance Industry Taskforce (GFIT), convened by MAS, is **working towards** finalising a taxonomy to guide financial institutions in Singapore to identify and transition towards green activities. There have been three rounds of consultation papers since January 2021. The **third consultation paper** was published on 15 February 2023 proposing a “traffic light system” to classifying the degree of environmental damage certain activities pose, and **proposed** criteria for conducting a “Do No Significant Harm” assessment to ensure that while the economic activities make substantial contribution to climate change mitigation, they do not cause significant harm to all other environmental objectives of the taxonomy.

If the green taxonomy comes into force, its adoption will likely be on a voluntary rather than mandatory basis. The MAS has indicated that the purpose of the taxonomy is to provide guidelines to enable transparent and consistent disclosures by corporates of their own economic activities that accommodates the varying characteristics of each FI, as opposed to a binding set of criteria guiding ESG disclosure by FIs.

10 Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

MAS intends to set out a roadmap for mandatory disclosure requirements by financial institutions based on the ISSB standards, comprising of IFRS S1 and S2 standards.

Under the SRAC Climate Reporting Roadmap, SRAC has proposed that mandatory climate reporting requirements in accordance with ISSB standards, comprising of IFRS S1 and S2 standards, will be extended to large NLCs from FY2027 in addition to listed issuers from FY2025 on the SGX. To cater to diverse needs and circumstances, disclosures in accordance with other standards and frameworks could be included if the standards and frameworks applied are prominently disclosed, and the additional disclosure does not contradict or obscure the information required by the prescribed climate reporting requirements.

II Other upcoming developments / direction of travel

Green taxonomy

GFIT concluded its third public consultation on developing a green taxonomy for FIs on 15 March 2023.

Project Greenprint and Project Savannah

MAS is actively **working** with regulators and organisations such as the Association of Banks in Singapore, ACRA and Enterprise Singapore to standardise and streamline sustainability data to support relevant stakeholders in the industry for mobilising capital to sustainable projects, monitoring commitments and measuring impact. MAS also announced an initiative named Project Savannah on 22 June 2023, to generate ESG data credentials for micro, small and medium-sized enterprises, and simplify the ESG reporting process.



B. TRANSITION PLANNING AND NET ZERO

1 Has your jurisdiction set decarbonisation targets and strategies?

Yes. Singapore has committed to achieving net zero emissions by 2050. Singapore has also committed to reduce emissions to around 60 million tonnes of carbon dioxide equivalent (MtCO₂e) in 2030 after peaking emissions earlier as part of its revised 2030 Nationally Determined Contribution.

To facilitate the attainment of these goals, Singapore unveiled the **2030 Green Plan**, where Singapore plans to reduce emissions by:

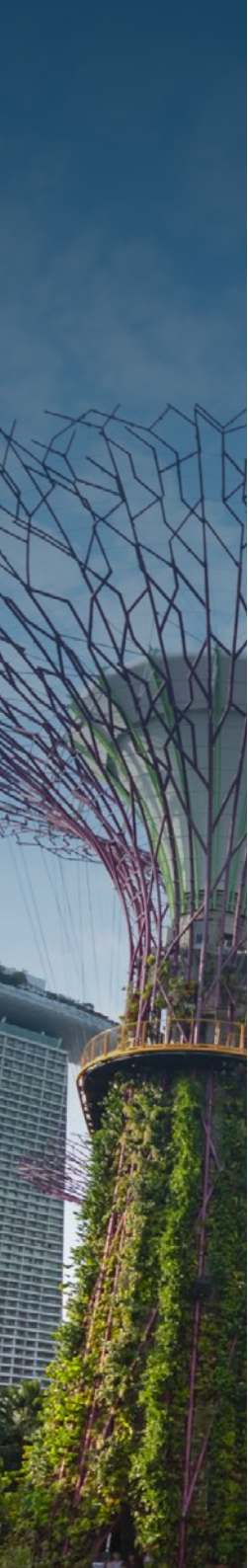
- (a) Transforming its industries, economies and societies towards adopting more renewable energy, greater energy efficiency and reducing energy consumption.
- (b) Adopting advanced low-carbon technologies, and use of low-carbon fuels.
- (c) Implementing effective international collaboration, relating to international climate action, regional power grids, and market-based mechanisms.

2 Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

Yes. **Climate Impact X** is a voluntary carbon trading market established in Singapore in 2021.

3 Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

It is currently not mandatory for companies to have a transition plan. The SGX Listing Rules currently require SGX-listed companies to make (on a comply-or-explain basis) climate-related disclosures in line with TCFD recommendations, and such disclosures are mandatory on a phased approach for specified industries (please see **Q&A A.2** above).



- 4 Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

Please see [Q&A B.3](#) above. There is no mandatory requirement to set climate-related targets, but TCFD recommendations include disclosures of targets used by the organisation to manage climate-related risks and opportunities and performance against such targets.

- 5 Other upcoming developments / direction of travel

Pursuant to the Singapore Green Plan 2030 and Singapore's [long-term low emissions development strategy](#), the Singapore Government will continue to implement policies to facilitate the reduction of GHG emissions and the transition to net-zero.

One such notable policy is the [policy on carbon tax](#), which will be implemented through a progressive framework. As of 2023, the carbon tax rate is at \$5 a tonne, which will be raised to \$25 per tonne in 2024 and 2025, \$45 per tonne in 2026 and 2027 with a view of reaching \$50 to \$80 per tonne by 2030.



C. GREENWASHING RISKS

- 1 Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

On 15 February 2023, Market Forces, a climate activist group in Australia, [filed](#) a complaint to the SGX against JERA CO. Inc. (JERA) alleging that JERA (Japan's biggest power generator) did not fully disclose risks related to its US\$300 million bond issue on SGX in 2022, notably of:

- (a) The material financial risk associated with JERA's significant exposure to the Liquefied Natural Gas industry; and
- (b) Ongoing litigation which could have a material effect on JERA's future financial prospects.

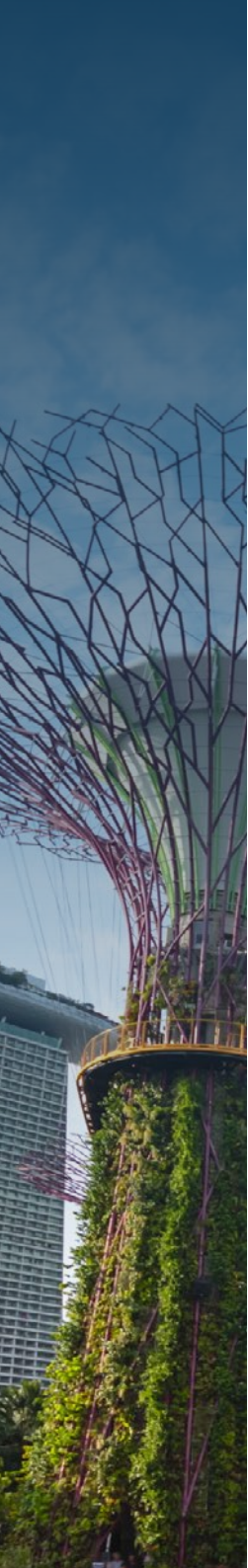
Allegations of greenwashing by Singaporean organisations have also been reported in media outlets. For example, in 2021, an investigation by Reuters [discovered](#) that the Alliance to End Plastic Waste, a Singapore-based not-for-profit organisation was not spending US\$1.5 billion (approximately S\$2.0 billion) on cleaning up plastic waste in developing countries as

it claimed, with its progress being far behind its promised targets. Furthermore, it was accused of being backed by major players in the petrochemical industry, letting its members lobby against policies that would help reduce plastic pollution.

- 2 Are there any laws or regulations specifically dealing with greenwashing?

There is no specific law that is aimed at greenwashing in Singapore, but there are various laws and regulations in Singapore that can be applied to address greenwashing:

- (a) Misrepresentation: Companies engaged in greenwashing may be liable for fraudulent or negligent misrepresentation and be liable for damages under section 2(1) of the [Misrepresentation Act 1967](#) should civil proceedings be commenced against them.
- (b) Consumer protection: Greenwashing in respect of consumer transactions can contravene section 4 of the [Consumer Protection \(Fair Trading\) Act 2003](#) (CPFTA) as an "unfair practice". Consumers have the right to obtain redress against the company for engaging in an unfair practice through the Consumers Association of Singapore and may be able to claim damages



from losses due to the greenwashing or to obtain an injunction from the court to restrain the business from continuing to engage in said unfair practice.

- (c) Securities laws and regulations: Amongst other provisions, section 199 of the **Securities and Futures Act 2001** provides that persons must not make statements that are false or misleading and that are likely to induce other persons to subscribe for, induce the sale or purchase of, or have the effect of raising, lowering, maintaining or stabilising the market price of securities without care as to the truth of the statement, or with actual or constructive knowledge that the statements are false or misleading.
- (d) Directors' duties: Greenwashing can expose directors to a breach of directors' duties under common law or the **Companies Act 1967**. Under section 157 of the Companies Act 1967, directors are under a duty to act honestly and use reasonable diligence in the discharge of their duties, which may be breached if the company is found to have engaged in greenwashing and in breach of relevant laws.

- (e) Advertising standards: the **Singapore Code of Advertising Practice** requires all advertisements to be legal, decent, honest, and truthful.

3 What are the likely grounds on which such proceedings, action or investigations can be instigated?

Please see **Q&A C.2** above.

There are also risks of regulatory enforcement pursuant to, for example, codes / guidance issued by financial regulators on the marketing of financial products and SGX Rulebooks.

4 Other upcoming developments / direction of travel

Singapore Minister of State for Trade and Industry, Alvin Tan, said in Parliament on 21 March 2023 that Singapore is studying developments on greenwashing in other jurisdictions "to assess if any specific guidance or regulations would be useful in the Singapore context".

This is even while the current scope of the CPFTA is "sufficiently broad" to address greenwashing claims by a supplier in a business-to-consumer transaction, and there are

existing guidelines under the Singapore Code of Advertising Practice to ensure that advertisers clearly explain, adequately substantiate and qualify any environmental claim where necessary.

The risk of greenwashing litigation against companies (in particular, listed companies) is expected to grow as reporting requirements become more robust and various stakeholders become more proactive in combatting potential greenwashing, including through litigation.

The Competition and Consumer Commission of Singapore (CCCS) also awarded a research grant to the NUS Business School's Centre for Governance and Sustainability for a research project on "Promoting Best Practices in Online Marketing: An Examination of Greenwashing in Singapore", which aims to identify the prevalence and types of greenwashing in Singapore, with a focus on e-commerce websites. CCCS is separately also preparing to issue guidance on how it will assess sustainability collaborations between competitors.

SOUTH KOREA

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Yoonjae Jang, Advisor

Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of South Korea.

 **ESG in APAC – South Korea**
By Shin & Kim LLC



A. ESG REPORTING

1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

There is a voluntary disclosure regulation on the publication of sustainability reports by listed companies.

There are currently no mandatory disclosure regulations in place, but they are likely to be introduced soon. In 2021, the Financial Services Commission (FSC) announced that ESG disclosures will be mandatory for KOSPI-listed companies with assets of KRW 2 trillion (approx. US\$ 1.56 billion) or more from 2025. By 2030 all KOSPI-listed companies will be **required** to make ESG disclosures. Q&A A.2 to **A.8** below give more information on the FSC's plan.

2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

ESG disclosure requirements are primarily aimed at listed companies:

Under Article 8, Paragraph 7(e) of the Enforcement Rules of KOSPI Market

Disclosure Rules of the Korea Exchange (KRX), sustainability reports are included as voluntary disclosure items. Accordingly, listed companies are currently publishing sustainability reports voluntarily.

However, with the FSC's decision to make ESG disclosure mandatory for certain listed companies (with assets of KRW 2 trillion or more) starting in 2025, it is expected that these companies will be required to report their ESG related information.

For the purpose of providing guidance on the fundamental principles for companies to voluntarily disclose ESG information, KRX has published the **ESG Disclosure Guideline** (ESG Disclosure Guideline), which are recommendations and does not have legally binding effect.

For the ESG fund disclosure, the Financial Supervisory Service (FSS) operates the Capital Market ESG Supervision Task Force team, which selects ESG fund disclosure matters, prepares disclosure items and standards related to fund management, and is **in the process** of revising relevant laws and regulations relating to ESG fund disclosure matters.

3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

The Corporate Governance Report has adopted a comply-or-explain approach to voluntarily describe compliance with 10 core principles of corporate governance. Other than this, there are currently no ESG-related disclosure requirements that are on a mandatory or comply-or-explain basis.

However, as mentioned above, sustainability information will be required to be disclosed from 2025 by certain listed companies.

For ESG fund disclosures, disclosure standards are expected to be finalized in the first half of this year, but it is unclear whether they will be mandatory.

4 Which aspects of ESG do the requirements focus upon?

For listed companies, environmental, social and governance aspects are all covered.

For disclosure of ESG funds, there is currently no specific requirement.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

Most companies selectively adopt various international standards such as GRI, SASB, and TCFD.

However, FSC is planning to prepare (through the Korea Sustainability Standards Board) sustainability reporting standards based on the IFRS's ISSB sustainability reporting standards in consideration of domestic conditions.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

Given that the sustainability reporting is currently voluntary, disclosure of Scope 3 GHG emissions is not mandatory.

Even though the relevant regulation, “**Framework Act on Low Carbon, Green Growth**” and “**Act on the Allocation and Trading of Greenhouse-gas Emission Permits**”, requires disclosure of the status of emission facilities by places of business, the status of emissions by places of business, and the status of emissions by emission activity, there is no disclosure obligation for Scope 3 GHG emissions.

However, we expect that the disclosure obligation of Scope 3 GHG emissions will be introduced after a grace period of several years.

7 Are there assurance requirements?

Not mandatory.

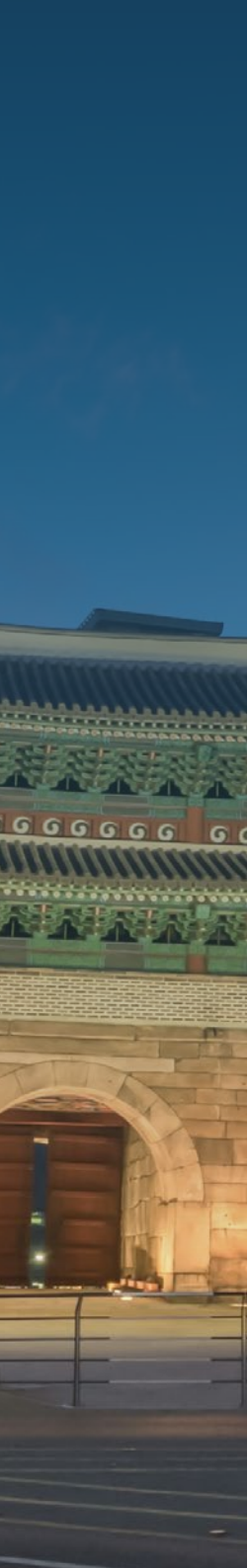
8 Are voluntary ESG disclosures customary?

Many listed companies reference international standards (such as the TCFD and SASB) in their ESG reports even though it is not mandatory.

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

In December 2022, the Ministry of Environment revised the Guidelines for the Korean Green Classification System and published a detailed explanatory book, which was **implemented** on 1 January 2023. The guidelines are not mandatory.

On 8 December 2021, FSS **entered** into business agreements with financial companies to develop a K-taxonomy application system so that a stable K-taxonomy can be established.



10 Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

In response to the ISSB's release of its draft standards in 2022, FSC has been actively engaging with stakeholders' views from the outset. FSC has stated that it will consider the ISSB's final disclosure standards, trends in major countries overseas, and opinions of domestic and foreign stakeholders, including corporates, to prepare a plan to improve the ESG disclosure system.

11 Other upcoming developments / direction of travel

As outlined above most of the reporting will be set up and improved in the future.

In December 2022, FSC announced that the relevant agencies will jointly set policy directions and prepare detailed plans for the overall domestic ESG disclosure system within 2023. This will include more specific details such as the schedule for mandatory ESG disclosure, applicable companies, disclosure items, disclosure standards, and verification/assurance systems.

In May 2023, the Vice Chairman of FSC, Kim So-young, announced that FSC would release a "ESG disclosure system roadmap" that includes the scope of covered companies, reporting standards, and third-party verification in a seminar open to public on "ESG disclosure and improvement of the retirement pension system" held at the Korea Exchange.



B. TRANSITION PLANNING AND NET ZERO

1 Has your jurisdiction set decarbonisation targets and strategies?


Yes, to reduce Korea's carbon emissions by 40% before 2030 (compared to 2018).

The Korean government has also outlined four major decarbonisation strategies: "low-carbonization of the economic structure", "creation of a low-carbon industrial ecosystem", "fair transition to a carbon-neutral society" and a "strategy of strengthening the foundation for a carbon-neutral system".

2 Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

Yes. In May 2012, the Emissions Trading Act was enacted, and in January 2015, the KRX launched the emission trading market (K-ETS).

The Korea government sets its greenhouse gas emission reduction targets roadmap, and accordingly allocates mandatory greenhouse gas reductions targets and emissions allowance for trading to companies whose greenhouse gas emissions exceed a certain scale, and if



designated as an allowance allocated company, it can trade through the emission exchange. In other words, it is a mandatory compliance market for certain companies.

K-ETS's participants are only government-designated companies and market makers who are also designated by the government. They are Korea Development Bank, Industrial Bank of Korea, Hana Financial Investment, Korea Investment & Securities and SK Securities.

However, the Korea Chamber of Commerce and Industry **plans** to open the first voluntary carbon market exchange in Korea in the second half of this year.

3 Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

It is not mandatory to have a transition plan. To date, ESG disclosure standards do not have clear disclosure items, timing of disclosures, and industry-specific standards, and there is no obligation to disclose transition plans.

However, as mentioned above, details with respect to the disclosure of transition plans are likely to be included in the “ESG disclosure system roadmap” at the end of the third quarter.

4 Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

Korea currently has no mandatory requirements for companies to set, meet and/or disclose climate-related targets. However, the Korean government is enacting ESG disclosure standards according to the mandatory disclosure to be applied from 2025, based on the ISSB's sustainability reporting standards. However, the details have not yet been released and as noted above, are expected to be released at the end of the third quarter of 2023.

5 Other upcoming developments / direction of travel

In order to achieve the 2030 carbon reduction target of 40% compared to 2018 carbon emissions, goals and implementation measures for each sector such as energy conversion and industry were established in 2021, and revised in March 2023.

Specifically, the Government revealed plans to (1) accelerate energy transformation, (2) innovate high-carbon industrial structures, (3) transition to future mobility and (4) reduce urban and local carbonization. In particular, the Government plans to accelerate the transition to clean energy such as solar and hydrogen and a balanced energy mix through harmony between nuclear power and renewable energy.



C. GREENWASHING RISKS

1 Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

In February 2023, the Ministry of Environment **issued** an administrative guidance against SK Enmove's advertisement of carbon-neutral lubricants.

In September 2022, SK Enmove launched engine oils and advertised them as carbon-neutral because they were made by purchasing carbon credits from Verra, a U.S. carbon credit certifier. However, the advertisements were criticized as greenwashing, as carbon credits alone cannot permanently eliminate carbon from petroleum products.

In response, the Ministry of Environment issued an advance notice of corrective order in December 2022, but given that the advertisement and product sales were suspended, it was ultimately an administrative guidance, which is not enforceable and is a recommendation to be careful about the use of related terms in the future.

2 Are there any laws or regulations specifically dealing with greenwashing?

The **Act on Fair Labelling and Advertising** restricts unfair labels and advertisements in general, and the "**Guidelines for Examination of Environmentally Related Labels and Advertisements**" stipulates specific examination criteria for unfair labels and advertisements related to the environment, including greenwashing.

3 What are the likely grounds on which such proceedings, action or investigations can be instigated?

Likely grounds include:

- (a) Breaches of the Act on Fair Labelling and Advertising and the Guidelines for Examination of Environmentally Related Labels and Advertisements – e.g. providing false or exaggerated information about the environmental performance of a product.
- (b) Disclosure liabilities under the **Financial Investment Services and Capital Markets Act** and the Securities Market Disclosure Rules of the Korea Exchangelink – e.g. providing materially false or misleading information in listing documents or other corporate disclosure documents.

4 Other upcoming developments / direction of travel

In June 2023, the KFTC **announced** the draft revised "Guidelines for Examination of Environmentally Related Labels and Advertisements", stating that the amendments are aimed at preventing greenwashing by refining the examination criteria for labels and advertisements related to the environment and adding various examples to increase consistency in law enforcement and predictability of offenders.

Specifically, the amendments (a) clarify that in order to advertise improved environmental performance, the improvement must occur throughout the entire life cycle of a product, including the acquisition, production, distribution, use, and disposal of raw materials; (b) provide examples of commonly prohibited unfair labels and advertisements practices related to the environment; and (c) create a simplified checklist for businesses to self-assess whether they are in violation of the law.

TAIWAN

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Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of Taiwan.

 **ESG in APAC – Taiwan**
By Lee and Li, Attorneys-at-Law



A. ESG REPORTING

- 1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes.

- 2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

The **Climate Change Response Act (CCRA)** provides that businesses announced by the Environmental Protection Administration (EPA) are required to report their GHG emissions by submitting relevant data to the registry of the EPA, and the data submitted must be verified by a certified verification institute.

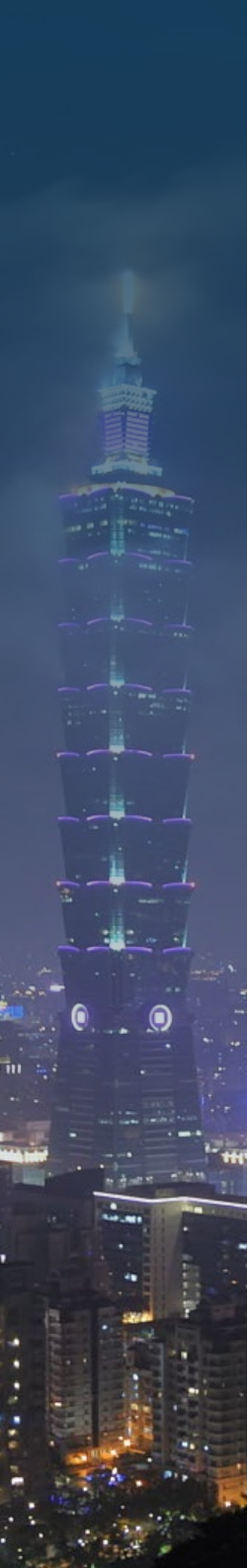
The Taiwan Stock Exchange's **Corporation Rules Governing the Preparation and Filing of Sustainability Reports by Listed Companies** and the Taipei Exchange's **Rules Governing the Preparation and Filing of Sustainability Reports by Listed Companies** require listed companies (in phases) to submit ESG reports (including GHG emissions data) on an annual basis, subject to a verification and certification process.

Listed companies and financial institutions are also required to disclose their climate-related information in their annual reports.

The Financial Supervisory Commission (FSC) has promulgated the **Guidelines of Climate-Related Financial Disclosure for Domestic Banking Institutions** and the **Guidelines of Climate-Related Financial Disclosure for Insurance Institutions** that require the domestic financial institutions to disclose their climate-related financial risks every year from June 2023.

- 3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

The ESG disclosure requirements are mandatory. Failure to submit the ESG reports would trigger an administrative fine ranging from NTD10,000 to 30,000.



4 Which aspects of ESG do the requirements focus upon?

Listed companies are required to specify in their ESG reports various sustainability-related factors based on the FSC's requirements by industry, and must also indicate the response measures and their progress in respect of the risks and opportunities as a result of climate change (such as the short, medium-term and long-term plan for the operation and strategy of the company, financial impact of climate change on the company, GHG emission data etc). The reporting generally covers all the commonly seen ESG elements.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

The mandatory ESG reporting requirements in Taiwan incorporate the standards of GRI, TCFD and SASB.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

Encouraged but not mandatory.

7 Are there assurance requirements?

The sustainability indicators reporting and the Scope 1 and Scope 2 GHG emissions reporting in the ESG reports submitted by the listed companies must be assured by certified institutions.

8 Are voluntary ESG disclosures customary?

No. However, as ESG is becoming commonplace in the corporate world, the incorporation of ESG and other non-financial considerations into investment strategies have been gradually gaining momentum in Taiwan as more investors realize that ESG investing is able to boost their portfolios and profitability.

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

Yes. In December 2022, various regulators jointly promulgated the **Taiwan Taxonomy Guidelines for Sustainable Activities** that includes 16 types of regular economic activities (e.g., transportation and logistics) and 13 types of forward-looking economic activities (e.g., CCUS technologies). It is not a mandatory requirement, but financial

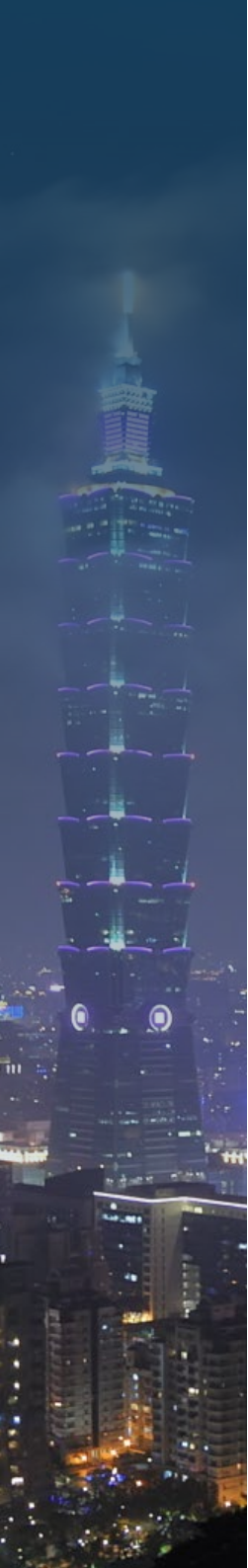
institutions are encouraged to refer to said Taxonomy Guidelines when making investments and issuing financial instruments to be labelled "sustainable".

10 Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

In July 2023, the FSC announced that the government plans to incorporate the newly published IFRS Sustainability Disclosure Standards by the International Sustainability Standards Board into the annual reporting requirements applicable to listed companies.

11 Other upcoming developments / direction of travel

With the legal framework of ESG reporting now in place, it is expected that the regulators will focus on implementation and strengthen the enforcement of listed companies' mandatory ESG reporting.



B. TRANSITION PLANNING AND NET ZERO

1 Has your jurisdiction set decarbonisation targets and strategies?

Yes, Taiwan's "2050 Net Zero Pathway" was announced in March 2022 in which the government vowed to reach net-zero emissions by 2050 by focusing on 4 main strategies in energy, industry, lifestyle, and social transition. Similarly, the CCRA codifies this commitment of decarbonization and sets out the net-zero emissions as Taiwan's long-term goal to be attained by 2050.

2 Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

Currently there is no carbon trading market in Taiwan. However, it is expected that a voluntary carbon exchange will be established in July 2023. Pursuant to the CCRA, it is also expected that a trading market for voluntary reduction quotas will be established soon.

3 Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

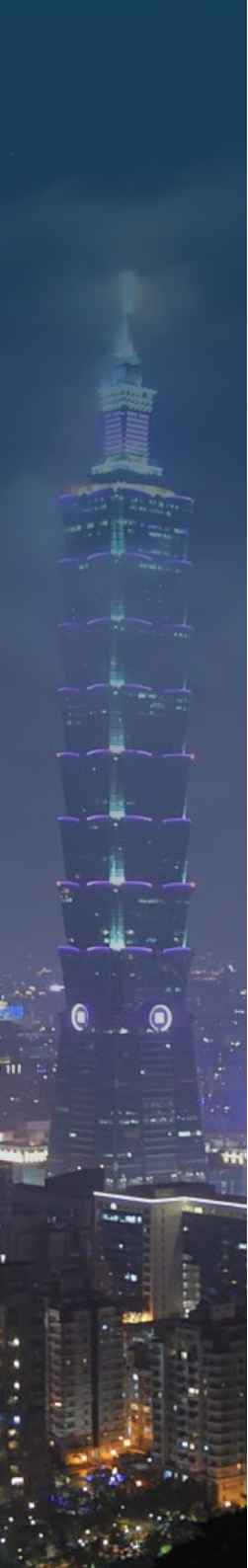
There are no mandatory requirements for corporate transition plans and/or their disclosure.

4 Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

Other than the mandatory GHG emissions and ESG disclosures, companies are not required to disclose, set or meet climate-related targets.

5 Other upcoming developments / direction of travel

Based on the 2050 Net Zero Pathway and 12 Key Strategies set out to achieve the 2050 net zero emission goal, it is expected that high emitting sectors (e.g., cement, steel, petrochemicals) would start to transit to low carbon production process and undergo facilities upgrades in order to be more sustainable.



C. GREENWASHING RISKS

- 1 Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

No.

- 2 Are there any laws or regulations specifically dealing with greenwashing?

No, but greenwashing conduct is likely to be subject to the regulatory and penalty regimes under the [Securities and Exchange Act](#), the [Fair Trade Act](#), and/or the [Civil Code](#).

- 3 What are the likely grounds on which such proceedings, action or investigations can be instigated?

The possible grounds may include securities fraud, false statement, false advertising, and/or tort liabilities.

- 4 Other upcoming developments / direction of travel

Greenwashing is not fully regulated in Taiwan. It remains to be seen how the regulators as well as courts would define greenwashing and deal with greenwashing claims. Given that a more comprehensive ESG disclosure regime has been established, it is generally expected that regulation of the accuracy of ESG disclosures would be introduced following the disclosure requirement.

THAILAND

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Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of Thailand.

 **ESG in APAC – Thailand**
By Chandler MHM



A. ESG REPORTING

- 1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes.

- 2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

ESG-related disclosures are mandatorily required only for listed companies and sustainable and responsible investing funds (SRI Funds).

The Security Exchange Commission sets out the following guidelines:

- (a) **reporting guidelines**, including the disclosure of ESG aspects, (SEC Reporting Guide) to be reported annually (in Form 56-1 (One Report)) by Thai listed companies; and
- (b) **disclosure guidelines** for asset managers of SRI Funds as a measure to prevent greenwashing. The disclosure requirements apply to mutual funds which invest in sustainable and responsible projects in

accordance with international standards, such as the United Nations Global Compact, the United Nations Sustainable Development Goals, the TCFD, and the International Capital Market Association's Green Bond Principles.

ESG-related disclosures may expand to financial institutions as a result of a **policy** introduced by the Bank of Thailand (BOT) on business operations of financial institutions in consideration of environmental perspectives and climate change (BOT Policy), to raise the standard of governance, strategy, risk management, and disclosures to be in line with international standards, such as the UN's Principles for Responsible Banking (UNPRB), Principles for Responsible Investment (UNPRI), and the Equator Principles.

Although the BOT Policy is not currently mandatory, the BOT will monitor and assess the adoption of this policy from the year 2024 onwards. As the adoption will allow financial institutions to manage risks, attract investors and customers, and contribute to long-term business viability in a sustainability-focused landscape, it is likely that financial institutions will cooperate in implementing this policy.



3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

The disclosure guidelines for SRI Funds contain mandatory disclosures in relation to ESG.

Pursuant to the SEC Reporting Guide, environmental aspects are on a “comply-or-explain” basis. If a listed company does not disclose their GHG emissions, the company must clarify their reasoning for not making this disclosure. Further, in the event a listed company may be in material breach of environmental laws, it must clarify the relevant facts, reasons, impacts, and measures taken to remedy the breach.

4 Which aspects of ESG do the requirements focus upon?

Under the SEC Reporting Guide, environmental, social and governance aspects are covered for listed companies.

The disclosure guidelines for SRI Funds focus on the disclosures of investment objectives, goals that the fund aims to achieve, types and characteristics of securities that the fund focuses on investing in, which prioritize globally recognized sustainability and ESG aspects such as climate change, environmental protection, low carbon footprint or reducing inequality.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

According to the SEC Reporting Guide, listed companies are encouraged (but not required) to align with international standards. For social aspects, companies are encouraged to implement international standards to their internal policies, such as the UN Guiding Principles on Business and Human Rights, or the OECD Guidelines for Multinational Enterprises. Listed companies may also disclose their social and environmental aspects based on the guidelines provided by the GRI.

The disclosure guidelines for SRI Funds are based on IOSCO’s Recommendations for Sustainability-Related Practices, Policies, Procedures and Disclosures in Asset Management (Final Report).

Pursuant to the BOT Policy, financial institutions should disclose their sustainability activities in accordance with acceptable or international standards, such as the TCFD or ISSB reporting standards.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

No. The SEC Reporting Guide requires disclosure of direct and indirect GHG emissions. At present, the disclosure requirements only apply to Scope 1 and Scope 2 GHG emissions.

7 Are there assurance requirements?

There are no mandatory assurance requirements.

8 Are voluntary ESG disclosures customary?

In recent years, there has been an increasing trend in ESG disclosures, where many private companies acknowledge the significance of being transparent and accountable with respect to their environmental, social, and governance impacts and standards. Listed companies are influenced by the Stock Exchange of Thailand’s mandatory reporting requirements to adopt ESG policies. As there are no penalties for not having such policies, each company’s progress depends on institutional and stakeholder pressure.



9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

Thailand Taxonomy, Phase I has been officially announced on 30 June 2023. The Thailand Taxonomy has been prepared to be compatible with the ASEAN and EU taxonomies. It will take a targeted approach in its first phase and focus on voluntary disclosures. It will be applicable to the energy and transportation sectors as pilot projects.

10 Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

No, we are not aware of any plans from Thai regulators to officially adopt the ISSB sustainability and/or climate-related disclosure standards on the policy or regulatory level.

11 Other upcoming developments / direction of travel

Regulators, investors and other stakeholders in Thailand are placing an increasing focus on the adoption of ESG principles across all sectors both as legally required measures and as voluntary guidelines for action. Ongoing and upcoming developments include:

(a) Equator Principles

We believe it is likely that more financial institutions in Thailand may elect to adopt the Equator Principles to enable better assessments and evaluations of environmental and social risks associated with project finance transactions.

(b) Human Rights Due Diligence

Companies in Thailand are being encouraged to examine the extent to which their human rights commitments apply to their global supply chain. The Guiding Principles on Business and Human Rights developed by the United Nations has been used as the main reference guide.



B. TRANSITION PLANNING AND NET ZERO

1 Has your jurisdiction set decarbonisation targets and strategies?

Yes. Thailand has taken many steps towards becoming a carbon-neutral country by 2050 and achieving net-zero emissions by 2065 in accordance with its updated nationally determined contributions (NDCs) to the Paris Agreement.

Accordingly, energy transition policies have been implemented primarily by Thailand's Ministry of Energy and its departments, as well as the state electricity utilities. Under the current Power Development Plan and Alternative Energy Development Plan, renewable energy is targeted to increase to 30% of total energy consumption by 2037. However, in light of Thailand's most recent NDCs, it is likely that the mid-term renewable energy projections will need to increase significantly.



2 Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

Yes. Thailand has a voluntary carbon trading market. The Thailand Voluntary Emission Reduction Program (T-VER Program) has been established by the Thailand Greenhouse Gas Management Organization as a mechanism for creating, acquiring and trading carbon credits in Thailand. Carbon credits in Thailand can be traded on an over-the-counter basis or via a market platform, such as the Federation of Thai Industries' trading platform.

3 Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

It is not mandatory to have a transition plan. However, the SEC Reporting Guide contains requirements for listed companies to disclose plans to achieve certain environmental targets (including GHG emission targets) and social targets on a comply-or-explain basis.

Furthermore, listed companies may voluntarily use alignment with the Thailand taxonomy to demonstrate their commitments to sustainability and to access sustainable finance. Therefore, companies may include their transition plans, including the ESG aspects, which align with the Thailand Taxonomy in their annual reports.

4 Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

The SEC Reporting Guide does not require listed companies to set or meet climate-related targets, except that the listed companies are required to disclose (on a comply-or-explain basis) any GHG emission targets they have set.

As mentioned above, the BOT Policy encourages financial institutions to disclose their sustainability efforts in accordance with acceptable or international standards, such as the TCFD or ISSB, with such standards incorporating disclosure of any climate-related targets set by the reporting entity.

5 Other upcoming developments / direction of travel

As part of the global movement to progress towards net zero, the Thai government could take Thailand Taxonomy into consideration when forming and proposing any relevant policy and regulation in the future. We expect to see various incentives for taxonomy-aligned projects and financial products in the future.

Furthermore, a draft climate change bill which aims to provide stakeholders with certainty regarding greenhouse gas emission mitigation and adaptation plans through a national GHG inventory, including mandatory reporting for certain state agencies, and designated private sector actors, is being considered.

Given the increasing pressure for businesses in Thailand to reduce their carbon footprint, any forthcoming climate change-related obligations are likely to be even more onerous.



C. GREENWASHING RISKS

- 1** Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

We are not aware of any recent legal proceedings, regulatory actions or investigations against or into greenwashing.

- 2** Are there any laws or regulations specifically dealing with greenwashing?

Thai regulators have taken into account greenwashing concerns when crafting sustainability policies. For instance, the draft Thailand Taxonomy is prepared to provide clear and standardized criteria for classifying and labelling sustainable economic activities. Also, the SEC's disclosure guidelines for SRI Funds sets out measures to prevent greenwashing.

- 3** What are the likely grounds on which such proceedings, action or investigations can be instigated?

Likely grounds would include:

- (a) disclosure liabilities under the SEC's laws and regulations, e.g., providing materially false or misleading information in the annual report or disclosure documents;
- (b) breaches of directors' duties; and/or
- (c) claims in tort for misrepresentation.

- 4** Other upcoming developments / direction of travel

Although there have not been any major claims concerning greenwashing in Thailand, in the future, we anticipate that there may be more robust disclosure/reporting requirements for listed companies and/or financial institutions to prevent greenwashing.

VIETNAM

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Please click on the podcast below for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing in respect of Vietnam.



ESG in APAC – Vietnam
By YKVN



A. ESG REPORTING

1 Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes. ESG disclosures are governed by legislation applicable to specific regimes, principally environmental laws and corporate governance laws.

2 What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

The Ministry of Finance has issued Circular 96¹ that requires certain public disclosures to be made which include disclosures in respect of GHGs, resource management, energy consumption, water consumption, compliance with laws on environmental protection, policies related to employees, responsibility to the local community and reports related to green

capital market activities. These disclosures are imposed on (a) public companies (whether listed or not), and (b) companies that publicly offer or have corporate bonds listed.

Decree 47 provides that state-owned enterprises must publicly report on their performance of public interest tasks assigned to them in terms of a plan or bidding, including the following information:²

- (a) Responsibility for environmental protection;
- (b) Responsibility to contribute to the social community;
- (c) Responsibility to suppliers;
- (d) Responsibility to ensure the interests and safety of consumers; and
- (e) Responsibility to ensure benefits for shareholders and employees in the enterprise.

¹ Circular No. 96/2020/TT-BTC (Ministry of Finance, November 11, 2020) providing guidelines on disclosure of information on securities market (Circular 96), Appendix IV.

² Decree No. 47/2021/ND-CP (Government, April 01, 2021) elaborating some articles of the law on enterprises, Form No. 4 in Appendix II.



Decree 08 requires that companies that issue green bonds shall make an annual public disclosure on assessment results of the environmental benefits of the projects using capital raised from issuance of the green bonds.³

Moreover, certain voluntary tools apply, such as the Vietnam Sustainability Index (which indexes the top 20 listed companies in respect of sustainability scores on the Ho Chi Minh Stock Exchange). It is implicit that disclosures would be required in order to be included in the index.

3 Are the requirements mandatory or do they apply on a comply-or-explain basis?

Circular 96 and Decree 47 are both mandatory.

4 Which aspects of ESG do the requirements focus upon?

Circular 96 has a general focus on corporate governance, thereafter with specific categories skewed more towards environmental than social aspects. Decree 47 has significant focus on social responsibility.

5 Are the disclosure requirements based on international standards? If so, which one(s)?

The following standards are the common frameworks that form the basis of sustainability reporting as well as relevant guiding documents:

- (a) GRI Standard;
- (b) International Finance Corporation;
- (c) International Integrated Reporting Council; and
- (d) ISO 26000:2010.

6 Are there any mandatory requirements for the disclosure of Scope 3 GHG emissions?

Every 2 years, GHG-emitting establishments (not necessarily based on Scope 3 GHG emissions) which are specified in a list issued by the Prime Minister⁴ (Specified Establishments) are subject to a GHG inventory (kiem kê khí nhà kính in Vietnamese) and must report certain operation and inventory information. These establishments are heavy emitters and

form part of sectors that traditionally result in significant emissions (e.g. energy, industrial processes).

7 Are there assurance requirements?

Assurance is not mandatory.

8 Are voluntary ESG disclosures customary?

No.

9 Is there a local taxonomy? Is it mandatory and what is its scope of application?

No. In broad terms, there is no taxonomy regime in respect of ESG. However, numerous actors such as the GIZ Macroeconomic Reforms/ Green Growth Programme or the Institute of Strategy and Policy on Natural Resources and Environment (ISPONRE) have been motivating the implementation of such classification. We note that the ASEAN Taxonomy for Sustainable Finance may be utilised.

³ Decree No. 08/2022/ND-CP (Government, January 10, 2022), Article 157.6(a).

⁴ Decision 01/2022/QĐ-TTg (Prime Minister, 18 January 2022) on promulgation of lists of sectors and GHG emission facilities subject to GHG inventory development, Article 1.

- 10** Are there plans to adopt the ISSB sustainability and/or climate-related disclosure standards? If so, to what extent will the standards be mandatory, to whom will they apply and what is the timeline?

No.

- 11** Other upcoming developments / direction of travel

The Prime Minister has issued Decision No. 167/QD-TTg approving the “2022-2025 program to support private sector enterprises in sustainable business” with (a) general objectives relating to 17 sustainable development goals by 2030, and (b) specific objectives relating to sustainability awareness. These objectives strongly connect with, and may be seen as a part of, ESG development.



B. TRANSITION PLANNING AND NET ZERO

- 1** Has your jurisdiction set decarbonisation targets and strategies?

Yes. At the 26th United Nations Climate Change Conference of the Parties (COP26) in December 2021, Vietnam set out a goal of achieving net zero emissions by 2050.

In order to adopt this, in July 2022, the Government issued the National Climate Change Strategy to 2050 (Decision No. 896/QD-TTg dated July 26, 2022 of the Prime Minister) which set out the general target that Vietnam will reduce GHG emissions under the goal of net zero emissions by 2050. The specific goals include ensuring that:

- i. by 2030, total national GHG emissions are reduced by 43.5%;
- ii. emissions peak will be reached in 2035; and
- iii. by 2050, total national GHG emissions reach net zero emissions.

The National Climate Change Strategy to 2050 sets out the strategies for reduction of GHG emissions for each sector. As an example, the energy sector promotes clean energy development, economical and efficient use of energy and use of breakthrough technology solutions.

- 2** Are there carbon trading markets? If so, please give details. If not, are there plans for such markets?

No. Vietnam has not officially launched a domestic carbon trading market, though has adopted plans to form a domestic carbon credit trading market by 2030, to be operated and connected to regional and global carbon markets.⁵ A roadmap has been developed in respect of this.⁶

⁵ The Scheme on Tasks and Solutions to Implement the Results of COP26 adopted by Decision No. 888/QD-TTg dated July 25, 2022 of the Prime Minister, Section 1.2.

⁶ Decree No. 06/2022/ND-CP (Government, January 7, 2022) providing regulations on greenhouse gas emission reduction and ozone layer protection, Article 17.



As part of the development process, Quang Nam Province has been approved by the Government to develop a pilot project on trading forest carbon credits (implemented from 2021 to 2025). Gia Lai Province is planning to develop, and seek approval for, a similar pilot project.

3 Are there mandatory requirements for transition plans and/or their disclosure? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?

Yes, in relation to certain companies. The Law on Environment Protection⁷ requires Specified Establishments (as mentioned in [Q&A A.6](#)) to (a) formulate and implement annual GHG emission reduction plans, and (b) integrate GHG emission reduction activities with quality management programs, cleaner production programs and environmental protection

programs. The reduction plan regime includes a reporting mechanism to the Ministry of Natural Resources and Environment, other related ministries and ministerial-level agencies, and the provincial People's Committee, with annual reporting thereafter. The reporting is however not public.

For public companies, the annual report required in terms of Circular 96 (see above [Q&A A.2](#)) contains certain disclosure requirements overlapping with the GHG emission reduction plan (e.g., total GHG emission, measures and initiatives to reduce GHG emission).

Furthermore, enterprises that manufacture products containing or using ozone-depleting substances and/or controlled greenhouse effect substances (as identified by the Government) are obliged to develop an appropriate roadmap to replace and eliminate such substances (in accordance with treaties to which Vietnam is a party).⁸

4 Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If not, are there plans for such requirements?

Yes, in relation to certain companies. See [Q&A B.3](#) above for mandatory requirements for transition and mitigation planning which will include setting certain climate-related targets for the reporting periods from 2026 onwards.

5 Other upcoming developments / direction of travel

Vietnam also plans to, by 2030, develop total GHG emission quotas and allocate GHG emission quotas to GHG emitting facilities that must carry out GHG inventory from 2026 as well as to develop and complete an online database on GHG inventory and measurement, reporting and appraisal of GHG emission mitigation activities.

Vietnam's approach is to encourage investment into greenfield and brownfield projects to be in transformative technologies for low-GHG emission and encourage participation in mechanisms and modes of cooperation on GHG emission reduction.

7 Law on Environment Protection No. 72/2020/QH14 (National Assembly, November 17, 2020), as amended on November 14, 2022 (Law on Environment Protection), Article 91.7.

8 Law on Environment Protection, Articles 92.3(b) and 92.5.



C. GREENWASHING RISKS

1 Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

No. There have, in the past, been incidences of greenwashing which had sparked public anger. However, there have not been any recent direct proceedings.

2 Are there any laws or regulations specifically dealing with greenwashing?

Vietnam has not adopted laws or regulations specifically dealing with greenwashing, but the Law on Competition⁹, Law on Advertising¹⁰, Law on Protection of Consumer's Benefits¹¹, Law on

Securities¹² and the Penal Code¹³ do regulate the giving of false information about the products or the enterprise itself. The Civil Code¹⁴ allows for a claim by those suffering harm.

3 What are the likely grounds on which such proceedings, action or investigations can be instigated?

The above-mentioned principal laws would allow for proceedings, action or investigations to be instituted on the basis of false claims.

There is an intersection with corporate governance in the sense that directors could be liable for failure to adhere to their duties.

Where there is harm suffered, compensation for damages could also be another ground.

4 Other upcoming developments / direction of travel

The Vietnamese Government has gravitated towards a greater focus on sustainable development and ESG. Market participants, including a growing consumer middle class, are also more concerned with ESG. It is therefore expected that there will be greater scrutiny of greenwashing, in respect of both compliance and reporting. The needs of foreign investors are also expected to play a role.

9 Law on Competition No. 23/2018/QH14 (National Assembly, June 12, 2018).

10 Law on Advertising No. 16/2012/QH13 (National Assembly, June 21, 2012), as amended on November 20, 2018.

11 Law on Protection of Consumer's Benefits No. 59/2010/QH12 (National Assembly, November 17, 2010), as amended on November 20, 2018.

12 Law on Securities No. 54/2019/QH14 (National Assembly, November 26, 2019).

13 Penal Code No. 100/2015/QH13 (National Assembly, July 10, 2017), as amended on June 20, 2017.

14 Civil Code No. 100/2015/QH13 (National Assembly, November 24, 2015).

GLOSSARY

GHG or greenhouse gas	The seven greenhouse gases listed in the Kyoto Protocol: carbon dioxide; methane; nitrous oxide; hydrofluorocarbons; nitrogen trifluoride; perfluorocarbons; and sulphur hexafluoride. GHG emissions of reporting entities are commonly categorised into Scope 1, Scope 2 and Scope 3 (see below)
GRI	Global Reporting Initiative, an international independent standards organisation founded by, amongst others, the United Nations Environmental Programme, to develop sustainability reporting standards
ISSB	International Sustainability Standards Board, an independent, private-sector body that was established by the International Financial Reporting Standards Foundation to develop globally consistent sustainability-related financial reporting standards
SASB	Sustainability Accounting Standards Board, a non-profit organisation, founded in 2011 to develop sustainability accounting standards
Scope 1 emissions	Direct emissions from owned or controlled sources
Scope 2 emissions	Indirect emissions from the generation of purchased energy
Scope 3 emissions	All indirect emissions (not included in Scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions
TCFD	Task Force on Climate-related Financial Disclosures, a task force created by the Financial Stability Board to improve and increase reporting of climate-related financial information
Transition plan	Generally understood to be an aspect of a company's overall business strategy that outlines its action plan to mitigate or adapt to climate-related risks for its transition towards a lower carbon economy, including actions such as reducing its GHG emissions



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