

ESG IN APAC

Jurisdictional overview on ESG reporting, transition planning and greenwashing

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This is an interactive publication

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INTRODUCTION

This publication¹ will help businesses unpack the current ESG regulatory landscape in 16 APAC jurisdictions and get a sense of the commonalities and direction of travel within APAC in relation to three key themes:

- **ESG reporting requirements** – Investors, financiers and others have been demanding better quality and comparable ESG disclosures from companies for their capital allocation, risk assessment and own reporting obligations. We explore the extent to which APAC jurisdictions have been enhancing their ESG reporting requirements to address this demand, including the extent of any greenhouse gas (GHG) emissions disclosure requirements and convergence around the sustainability and climate change reporting standards² issued by the International Sustainability Standards Board (ISSB) just over a year ago.
- **Transition planning** – We delve into the extent to which there are regulatory requirements or incentives in place for corporates to reduce their GHG emissions. Such regulatory initiatives may include emissions trading schemes (ETS) or other carbon pricing tools anchored by the “polluter pays” principle, as well as requirements for corporates to disclose climate-related targets and transition plans, with the enhanced transparency creating more pressure for companies to develop credible strategies to decarbonise.

- **Greenwashing risks** - As requirements on ESG reporting and transition planning generally harden, the risks of being accused of greenwashing may correspondingly increase. We explore the extent to which this has translated into any material litigation or regulatory action in APAC and the grounds for such action.

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 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

¹ The content of this publication represents the position as at 30 June 2024.

² IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 Climate-related Disclosures, issued in June 2023.

KEY THEMES AND OBSERVATIONS ACROSS APAC

Based on the responses in the jurisdictional chapters, some broad themes are observed.



ESG REPORTING REQUIREMENTS

- **ESG reporting requirements being strengthened across much of APAC** – Over the last year, the majority of covered jurisdictions have enhanced or are in the process of enhancing their ESG reporting requirements, whether through incorporation of the ISSB Standards or otherwise.
- **Significant take-up of the ISSB Standards with varying extent of alignment**

 - APAC is taking steps to align with the ISSB Standards, with 11 of the 16 covered jurisdictions having announced that they will incorporate, or consider the incorporation of, the ISSB Standards into local climate reporting or sustainability reporting rules. The rules will primarily target listed companies and (in some cases) financial institutions, with certain jurisdictions (Australia, Singapore and potentially Mainland China, Malaysia and Philippines) stating they will apply or consider applying the rules to large non-listed companies as well.
 - Interoperability of ESG reporting rules and comparability of ESG information are therefore expected to improve over the region, with a common language and structure built around the four pillars of governance, strategy, risk management and metrics and targets.
 - Some degree of fragmentation will however remain within the region as (a) some jurisdictions with more bespoke reporting requirements (e.g. Cambodia, Myanmar and Vietnam) have not made indications to incorporate the ISSB or TCFD standards (the latter being the conceptual foundation for the ISSB Standards); and (b) variations exist in how each ISSB-aligned jurisdiction will incorporate and apply the ISSB Standards. For example, some will initially apply the standards only to climate reporting (e.g. Australia, Hong Kong and Singapore) or financial institutions (e.g. India) and some may not mandate some of the more challenging disclosures such as Scope 3 emissions. Jurisdictions adopting the “single materiality” approach of the ISSB Standards will also be distinct from those that take a “double materiality” approach (like the EU and potentially Mainland China), as the ISSB Standards assess materiality by reference to financial materiality rather than a company’s external impact. These differences and fragmentation can create challenges for companies operating in multiple jurisdictions.
 - Further alignment with the ISSB Standards will likely take place after jurisdictions and businesses become more familiar with the new requirements.
 - In relation to the 11 jurisdictions that have announced steps to align with the ISSB Standards, the following is a high-level summary of where they are in the process and the expected scope of application and timing (where known). For many of the jurisdictions, the precise degree of alignment with the ISSB Standards is not yet confirmed as the rules are still under development and the relevant jurisdictional chapters of this publication will highlight the expected degree of alignment.

Jurisdiction	Status of incorporating ISSB Standards
Australia	Bill introducing ISSB-aligned climate disclosure rules has been tabled and is expected to apply to larger companies, high emitters and financial institutions in phases, starting with larger companies in respect of FYs commencing on or after 1 January 2025.
Hong Kong	ISSB-aligned climate disclosure rules for listed companies have been finalised and will apply (subject to a phased approach) in respect of FYs commencing on or after 1 January 2025. ISSB-aligned sustainability disclosure requirements are under development for application to regulated financial institutions and listed companies.
India	Draft climate disclosure rules for certain banks and financial institutions structured around the four pillars of IFRS S2 have been published and are expected to apply in a phased manner, starting with larger banks in respect of FY2025-2026 onwards.
Indonesia	In the process of incorporating IFRS S1 and IFRS S2 – no details on implementation timeline or scope of application.
Japan	Exposure drafts of sustainability disclosure standards based on IFRS S1 and IFRS S2 have been published. Scope of application and timing are under discussion.
Mainland China	Exposure draft of “Basic Standard – Corporate Sustainability Disclosure Standards” based on IFRS S1 has been published. The objective is to apply the Basic Standard and a Climate Standard to listed companies by 2027, and to expand to non-listed companies and shift from voluntary to mandatory in stages.
Malaysia	Consultation on ISSB-aligned sustainability disclosure rules for listed companies and large non-listed companies has been published, with a proposed phased approach (starting with Main Market listed companies in respect of FYs ending on or after 31 December 2027).
Philippines	ISSB-aligned sustainability disclosures for listed companies are under development and are expected to apply to FY2024 with reporting due in 2025.
Singapore	ISSB-aligned climate disclosures will apply to listed companies from FY2025 and large non-listed companies from FY2027. Proposed amendments to the reporting regime are under development.
South Korea	Consultation on draft sustainability disclosure standards based on IFRS S1 and IFRS S2 is under way to apply to listed companies in a phased manner after 2026.
Taiwan	Plans to adopt IFRS S1 and IFRS S2 for sustainability disclosures by listed companies in a phased manner from 2026 have been announced.

- **Emissions reporting requirements apply in most jurisdictions** – 12 jurisdictions currently have GHG emissions reporting requirements in place (though the precise scope of the requirements vary). GHG reporting requirements are expected to be enhanced across much of APAC with the incorporation of the ISSB Standards.
- **Gradual movement towards external assurance** – Currently, only New Zealand and Taiwan mandate reporting entities to obtain external assurance requirements for their GHG emissions disclosures. Australia, India and Singapore will be introducing such requirement (with India on a comply-or-explain basis for larger listed companies). More jurisdictions are expected to move towards external assurance requirements. For example, Japan is considering such a move, and Hong Kong has announced that it is developing local assurance standards with reference to international developments.



TRANSITION PLANNING

- Governments in all the covered jurisdictions have announced net zero and/or decarbonisation commitments.
- Outside of specific high-emitting sectors, none of the jurisdictions have introduced mandatory requirements for businesses more generally to adopt or implement climate transition plans or set

climate-related targets. Having said that, the following is worth noting.

- **Enhanced transparency:** Most jurisdictions have introduced, or will be introducing, reporting requirements for reporting entities to disclose aspects of their climate strategies. For jurisdictions that are implementing, or proposing to implement, the IFRS S2, the disclosure of any corporate transition plans and climate-related targets that are set will be a key aspect of ISSB-aligned reporting. The enhanced transparency is expected to 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 climate strategy; and
- **Growth of carbon markets and other pricing tools:**
 - i. The use of carbon pricing tools in APAC continues to grow. In Australia, Indonesia, Mainland China, New Zealand and South Korea, this primarily takes the form of compliance-based ETS for the power or industrial sectors. India, Japan, Philippines and Vietnam are making progress towards launching their ETS. Carbon tax for certain sectors and/or high emitters have been introduced in the Malaysian State of Sarawak and Singapore, with Indonesia and Taiwan planning to introduce carbon taxes as well. Malaysia and Thailand have both announced

they will explore options for carbon pricing (including carbon tax and ETS). In addition to incentivising GHG reduction, these tools will help mitigate against the impact of the EU's Carbon Border Adjustment Mechanism, which would otherwise impose a charge on certain goods to reflect the carbon emitted during their production; and

- ii. We see the continued development of government-administered domestic carbon crediting mechanisms (which supply carbon credits generated through voluntary emission reduction activities). These are in place in Australia, Japan, Mainland China, South Korea and Thailand, and are under development in India, Indonesia, Taiwan and Vietnam. In particular, Mainland China recently relaunched its China Certified Emissions Reduction Scheme (**CCER**) and issued the first batch of CCER project methodologies. The growth of such mechanisms may reflect the plans of certain jurisdictions to link their domestic carbon market with international carbon markets (e.g. Vietnam) and/or to allow the use of domestic carbon credits to offset (with limits) compliance obligations under their ETS (e.g. Mainland China).

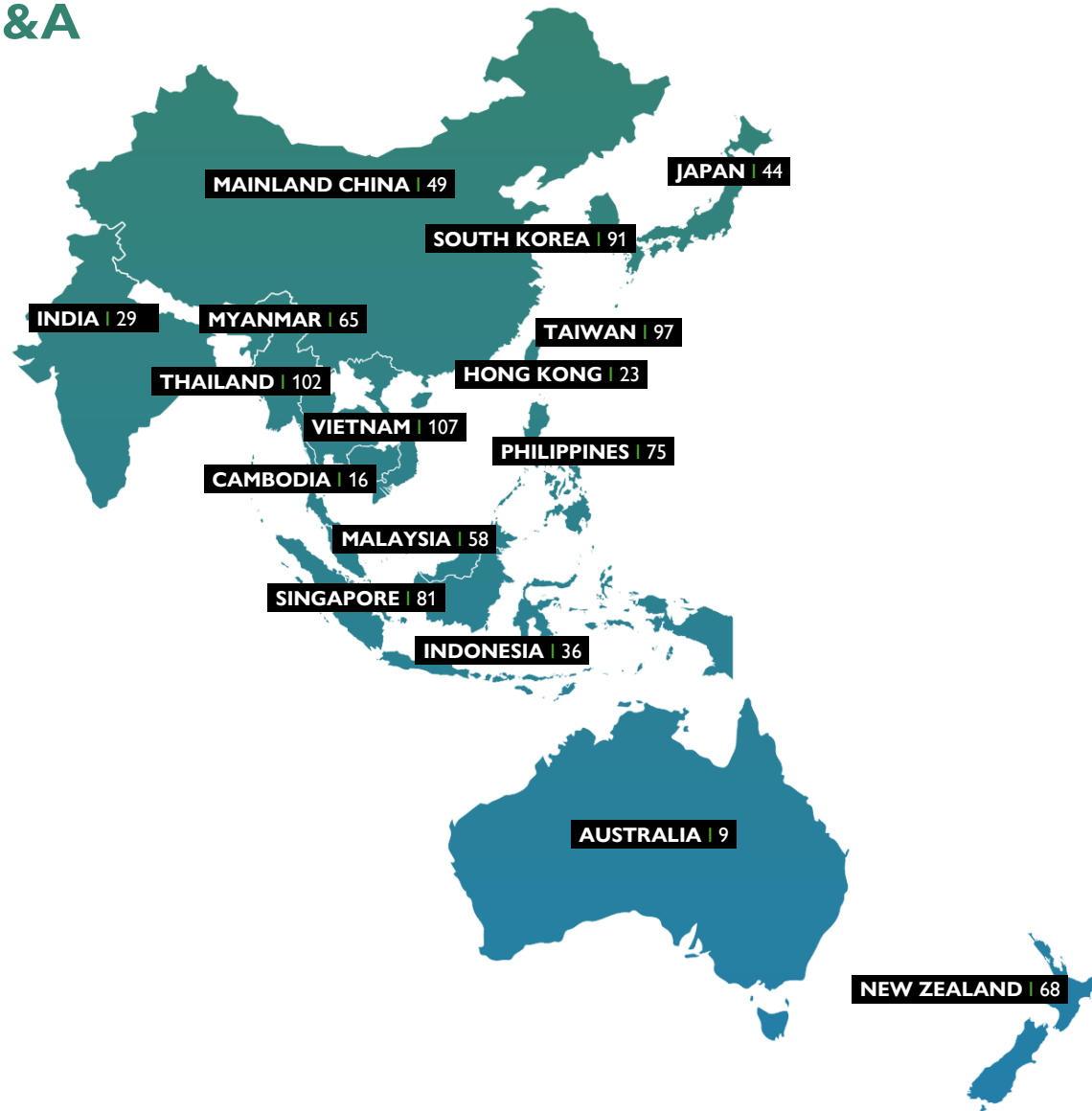


GREENWASHING

- With the exceptions of Australia, and to a lesser degree, New Zealand, Singapore and South Korea, there are no known examples of material legal claims or regulatory enforcement against greenwashing across the covered jurisdictions.
- Australia has been the most active in this regard – its securities regulator has brought three greenwashing civil penalty actions and has so far been successful in two, bringing it towards the top of the list of regulators globally taking enforcement actions against greenwashing. Actions have been brought on the grounds of false or misleading representations and conduct liable to mislead the public in relation to the purported application of criteria that would exclude certain securities from investment products badged as having ESG credentials.
- In New Zealand, several NGOs have recently instigated proceedings against a large energy company for overstating its emissions reduction. New Zealand’s consumer regulator and financial markets regulator have taken some enforcement actions, primarily in relation to unsubstantiated environmental claims for certain products.
- In Singapore, the Advertising Standards Authority made the nation’s first ruling against a company for misleading environmental claims about a product, and a complaint was made to the Singapore Stock Exchange last year by an Australian climate activist group against a power generator on misleading disclosures related to a bond issue on the Singapore Stock Exchange.
- South Korea has seen a complaint lodged by an NGO against major companies for false and misleading advertisements related to statements on their GHG reductions, and an administrative guidance issued by the environmental regulator regarding a claim of carbon neutrality based on carbon credits.
- Some minor actions have also been taken in Mainland China and the Philippines in relation to environmental claims related to consumer products.
- All jurisdictions have grounds on which greenwashing proceedings or action can potentially be launched, with many answers noting that greater scrutiny against greenwashing conduct can be expected as disclosure requirements are enhanced.

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 AU\$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 companies 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”. The ASX Corporate Governance Council is currently [consulting](#) on a fifth edition of its Corporate Governance Principles and Recommendations, which refers to the impact of climate change-related risk and advises entities to consider ongoing developments in sustainability standard setting when making disclosures under Recommendation 7.4.

In addition, Australian regulators have released guidance that incorporates 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) 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, it is 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 IPCC 2006 Inventory Guidelines.

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

6 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

The forthcoming climate-related financial disclosure regime (as outlined in section A.11 below) adopts a single materiality approach in line with the ISSB Standards. If there is no impact on the company from climate-related issues, then the company is required to state that in their sustainability report.

A double materiality approach can be considered but is not currently required.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

Yes, the NGER Act requires companies that meet certain thresholds relating to GHG emissions and production and consumption of energy to provide yearly reports relating to Scope 1 and Scope 2 GHG emissions from particular sources, energy production and energy consumption. The

[National Greenhouse and Energy Reporting \(Measurement\) Determination 2008](#) provides the methods and criteria for calculating GHG emissions and energy data under the NGER Act.

The forthcoming climate-related financial disclosure regime in Australia will require in-scope entities to disclose any metrics and targets relating to climate that are required to be disclosed by the forthcoming Australian Sustainability Reporting Standards (**ASRS**), including Scopes 1, 2 and 3 GHG emissions (and financed emissions). The bill introducing the climate-related financial disclosure regime aligns the definitions of Scopes 1, 2 and 3 GHG emissions with the ASRS and ISSB Standards. It also provides that Scope 3 GHG emissions disclosures are to include details of financed emissions, being the portion of GHG emissions of an investee or counterparty attributed to the loans and investments made by an entity to the investee or counterparty.

In relation to Scope 3 GHG emissions, the draft ASRS provide that entities will not be required to disclose exact data or detailed information that cannot be easily provided by their customers or suppliers. Entities will also only be required to disclose Scope 3 emissions from their second reporting year onwards.

However, approximately half of the top 50 ASX listed entities have set targets and are already

reporting on their Scope 3 GHG emissions with varying degrees of detail.

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?

The bill introducing the forthcoming climate-related financial disclosure regime proposes that sustainability reports will be subject to mandatory audit requirements, in accordance with the Auditing and Assurance Standards Board (**AUASB**) auditing standards. A phased-in approach is proposed for the auditing of sustainability reports, with a progressive assurance phasing-in regime until 1 July 2030.

9 For companies not subject to mandatory or comply-or-explain ESG reporting, are voluntary ESG disclosures customary?

Many companies make ESG disclosures in their annual reports which are made against the TCFD recommendations, ISSB Standards or other international standards (such as the SASB standards or the GRI standards).

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? Is it mandatory and what is its scope of application?

In May 2024, the Federal Government released a public [consultation paper](#) on the Australian

Sustainable Finance Taxonomy (**Taxonomy**), which is being developed by the Australian Sustainable Finance Institute (**ASFI**) in partnership with the Australian Government. This is the first public consultation, which will be followed by further consultations later in 2024.

The Taxonomy will initially comprise technical screening criteria addressing climate change mitigation for six priority economic sectors: electricity generation and supply; minerals, mining and metals; construction and the built environment; manufacturing and industry; transport; and agriculture and land.

The adoption and use of the Taxonomy will not be compulsory. 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.

11 Are there plans to adopt or incorporate the ISSB's IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

Yes, in March 2024, the Australian Government introduced the [Treasury Laws Amendment \(Financial Market Infrastructure and Other Measures\) Bill 2024 \(Cth\)](#), which proposes a new

mandatory climate-related financial disclosure regime. As part of the proposed regime, the Australian Accounting Standards Board is developing the ASRS. These standards align as far as possible with both the IFRS S1 and IFRS S2.

The proposed regime will be mandatory for entities that are required to prepare financial reports under Chapter 2M of the [Corporations Act 2001 \(Cth\)](#) and meet certain thresholds in relation to consolidated revenue, gross assets and full-time equivalent employees, or report under the NGER Act. The largest entities (Group 1) will be required to submit sustainability reports for their financial years commencing from 1 January 2025, whilst other in-scope entities (Groups 2 and 3) will be progressively phased into reporting obligations in 2026 and 2027 respectively.

The Bill is currently still being considered by the Australian Parliament. It is anticipated to be enacted in late 2024, with the regime to commence at the beginning of 2025.

12 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 Disclosure (**TNFD**) has developed a global nature-related risk management and disclosure framework to help businesses and financial institutions identify and act on nature-related impacts, risks, dependencies and opportunities. In September 2023, the TNFD released its [recommendations](#) on its nature-related risk management and disclosure framework in September 2023.

The Australian Department on Climate Change, Energy, the Environment and Water (**DCCEEW**) has expressly announced its support of the TNFD framework, including as a strategic funding partner. In 2023, DCCEEW published [TNFD Pilots – Australian case study report](#) and value chain deep-dive specific industry guidance for Australian businesses.



B. TRANSITION PLANNING

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 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

Carbon Trading Scheme

Yes, Australia's [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 (**ACCUs**) which represent one tonne of carbon dioxide-equivalent emissions stored or avoided by a project.

Australia has also recently made amendments to the [Safeguard Mechanism](#), which commenced on 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 to other large facilities to reduce their net emissions in order to meet their baseline.

Carbon Taxes

No, Australia does not currently have a carbon tax or carbon price. Whilst a carbon tax was introduced in Australia in 2012, it was the subject of divisive political debate and was ultimately removed by a subsequent government in 2013. Neither major party has proposed to re-introduce a carbon pricing scheme since then. In the absence of an economy-wide carbon price, and any indication that one may be forthcoming in Australia, a shadow carbon price has recently been proposed by the Australian Energy Market Commission (**AEMC**).

In March 2024, a [report](#) released by the AEMC on “How the National Energy Objectives Shape Our Decisions” announced that its future decisions will be based upon a shadow price on carbon, which will be set initially at AU\$70 per tonne. A shadow price is not a cost to be paid by emitters, like a carbon price or tax. Rather, it is an estimate of how much each tonne of CO₂ equivalent costs the world, collectively. This cost will be included in the AEMC’s calculation of benefits and costs of energy-related rule changes, for example, transmission network rules to make

it easier for new wind and solar projects to connect to the electricity grid. The shadow price is expected to increase to AU\$420 per tonne by 2050, in line with Australia’s target to achieve net zero emissions.

3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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, under the forthcoming climate-related financial disclosure regime, entities will need to include details about their strategy for managing climate-related risks and opportunities, including information about their transition plans (if any), within their sustainability report. The Australian Treasury has also announced in its recently published [Sustainable Finance Roadmap](#), that it will develop and publish best practice guidance for the disclosure of corporate transition plans by the end of 2025.

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 in section B.2 above). The reforms to the Safeguard Mechanism have introduced “baseline decline rates” for standard and landfill facilities, which have been set at 4.9% per year for most covered facilities. This means that those facilities’ baseline emissions, being their maximum level of permitted Scope 1 GHG emissions, will decline by 4.9% each financial year through to 30 June 2030.

Carbon credits can be surrendered by entities to manage any excess emissions to stay within their baseline. There are currently no limits on facilities’ ability to surrender ACCUs or SMCs to meet their declining baselines.

Entities and individuals, both within and outside the scope of the Safeguard Mechanism, may also choose to voluntarily purchase and cancel ACCUs and other types of carbon offsets, to meet social responsibility and sustainability goals, or other targets.

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, met and 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. As noted, the Australian Government has announced that it will prepare separate guidance on 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 March 2024, the Federal Court of Australia found that Vanguard Investments Australia Ltd made false or misleading representations and engaged in conduct that was liable to mislead the public in relation to an “ethically conscious” fund offering in breach of the [Australian Securities and Investments Commission Act 2001 \(Cth\) \(ASIC Act\)](#). ASIC alleged, and the Court upheld, that Vanguard had made false or misleading representations that one of their funds was of an

ethically conscious standard, with securities screened against specific ESG criteria before inclusion in the fund. This was ASIC’s first successful greenwashing civil penalty action and puts ASIC towards the top of the list of financial regulators globally taking enforcement action to combat greenwashing.

In June 2024, the Federal Court of Australia found that LGSS Pty Ltd, as the trustee of the superannuation fund known as Active Super, made false or misleading representations and engaged in conduct liable to mislead the public in relation of its ESG credentials. Specifically, ASIC alleged, and the Court found, that Active Super made false or misleading representations by claiming in its marketing materials that it would not invest in companies associated with gambling, tobacco, oil tar sands, coal mining or in Russian companies, where there was evidence to the contrary.

In both cases brought by ASIC, it remains to be seen what the Court will order in terms of pecuniary penalties and adverse publicity orders, which will be the subject of a further hearing in both matters.

There is a third civil penalty proceeding that has been brought by ASIC in the Federal Court of Australia, alleging greenwashing conduct by Mercer Superannuation (Australia) Limited, in relation to statements on Mercer’s website about its “Sustainable Plus” investment options.

The Australian Competition and Consumer Commission (**ACCC**) also recently initiated its first greenwashing proceedings in the Federal Court, against Clorox Australia Pty Ltd for allegedly making false or misleading representations that its GLAD branded kitchen tidy and garbage bags are made of 50% ocean plastic.

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 Scopes 1 and 2 GHG emissions by 2040. This was the first court proceeding globally to challenge a net zero target and is ongoing.

There have been various other complaints made to the ACCC to investigate green claims made by companies. For example, Victorian Forest Alliance has lodged a [complaint](#) with the ACCC against a Victorian government agency, VicForests, for greenwashing over its advertisements and claims with messages such as “Sustainability is at the heart of everything we do.”

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 ASIC Act also prohibits engaging in misleading or deceptive conduct in trade or commerce in relation to financial services.
- (d) In addition, ASIC has also 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 also released in December 2023 a [guidance](#) for businesses on making environmental claims, enshrining eight principles to help businesses ensure their environmental marketing and advertising claims are clear and accurate, and not misleading.

3 **What are the likely grounds on which such proceedings, actions 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; and
- (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 key enforcement priorities for 2024. The ACCC has also announced that it will investigate a number of businesses for greenwashing, following an “internet sweep” of 247 businesses across eight sectors that identified 57% of those businesses as making what the ACCC considered to be “concerning environmental claims”.

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.

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.

In addition, there are some regulatory frameworks that appear to support or can be deemed as supporting ESG practices as described in section 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 on ADCE](#)¹ to inform the Ministry of Commerce, among other things, about any changes to management, directors and shareholding of the company.
- (b) For the securities sector:
 - (i) 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](#)

¹ Prakas No. 107 on Annual Declaration of Commercial Enterprises, issued by the Ministry of Commerce on 05 April 2017 (**Prakas on ADCE**).

[Issuance and Trading of Non-Government Securities \(Securities Law\)](#) 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.

- (ii) 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 directors or the key management of the company and publish an annual report which must include, amongst other things, information on corporate governance.
- (iii) 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 an issuer of green bonds is expected to report and provide updates regarding the allocation of bond

proceeds on green assets and projects, and performance and implementation of such green assets and projects. However, the guidance is of a non-legally binding nature and is pending implementing regulations.

(c) For the banking sector:

- (i) 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](#).
- (ii) Any change to the corporate governance (i.e., shareholders, directors, senior managements, branch managers of foreign bank branches, head of internal audit and head of compliance) 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).

- (iii) The Association of Banks in Cambodia, the official organization representing the country's private banking sector, has developed the Cambodian Sustainable Finance Initiative (**CSFI**) with support from the National Bank of Cambodia and USAID. Currently, there are 47 private banks and financial institutions who have voluntarily adopted the CSFI and pledged to abide by CSFI 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 Inspection](#),² enterprises registered with the Ministry of Labor and Vocational Training must make a self-declaration twice a year to inform the ministry of, among other things, the working

² 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 Labour Self Inspection](#)").

conditions and benefits provided to employees, occupational health and safety framework in place and social security registration of the employees.

From an environmental perspective

(e) For development projects regardless of sector which involves pollution sources, industrial zones, or natural resource development activities, e.g. mining, petroleum treatment, fuel storage, cement factory, battery manufacturing, and landfill:

(i) Environmental and social impact reporting requirements apply to an owner or person in charge of such projects, including 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 thresholds³, e.g. projects developed in a tourism area of more than fifty hectares.

(f) Requirements under the Code of Environment and Natural Resources⁴:

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

- The Ministry in charge of environment and natural resources must ensure that information on a full or initial environmental impact assessment report are made public and stakeholders and local communities affected by the project can obtain sufficient and clear information.
- The project owners shall publish at least a copy of the full or initial environmental impact assessment report as well as mitigation measures for the project.
- There will be procedures issued for public participation and the right to access information related to the project implementation, except for confidential information.

(ii) Climate change reporting requirement for development projects:

- Under the Code of Environment and Natural Resources, regulation will be developed 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.

- 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.
- The code does not define the term “project owner” nor specify any sector, category and/or threshold for the project.

(iii) Environmental disclosures for sites owners of production, commercialization, or services that discharge waste at high risk of environmental pollution:

- Under the Code of Environment and Natural Resources, site owners of production, commercialization, or services that discharge waste at high risk of environmental pollution (hazardous substances and hazardous waste) are required to provide immediate data reports on pollutant

³ 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 03 February 2020.

⁴ The Code of Environment and Natural Resources was promulgated by Royal Kram No. 0623/007 on 29 June 2023, which came into force on 29 June 2024 (**Code of Environment and Natural Resources**).

release or transfer to the environment. There will be regulation on the types of entities that are subject to this immediate data report obligation.

- An environment pollution control register will be created by the ministry responsible for environment and natural resources and be accessible to the public in downloadable form.

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

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

4 Which aspects of ESG do the requirements focus upon?

In light of our answer to section A.2 above:

- (a) In general for any sector — the focus is primarily on the disclosure of corporate governance and social aspects.
- (b) For securities sector — the focus is on the disclosure of corporate governance.
- (c) For banking sector — the focus is on the disclosure of corporate governance. For the banks and financial institutions who are part of CFSI, 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 the disclosure of environmental and social impact. 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 section A.2 above are based on any international standards.

6 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

There is no information available to the public to confirm the materiality approach under the requirements mentioned in section A.2 above.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

To the best of our knowledge, the current regime, including, the Code of Environment and Natural Resources does not expressly provide for

requirements for the disclosure of GHG emissions. However, as mentioned in section A.2(f), as part of a climate change reporting requirement, data and information on climate may be further regulated, which could include information on GHG emissions.

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?

Current laws/regulations do not impose requirements on independent assurance of any ESG disclosure. However, in order to fulfil certain requirements described in section A.2(e) above, an accredited service provider has to be retained, e.g. to conduct “a full environmental and social impact assessment” and prepare a report on such for submission to the Ministry of Environment.

9 For companies not subject to mandatory or comply-or-explain ESG reporting, 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 Standards.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? Is it mandatory and what is its scope of application?

The 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 (universal and 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.

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.

11 Are there plans to adopt or incorporate the ISSB's IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

To the best of our knowledge, we are not aware of any upcoming plans to adopt the ISSB Standards or require reports to be prepared in compliance with such standards.

12 Other upcoming developments / direction of travel

We are aware that there is a draft Prakas (ministerial directive) on Environmental, Social, and Governance Disclosure, under the jurisdictions of the Ministry of Economy and Finance, and Non-Banking Financial Service Authority. A public consultation was initiated earlier this year; however, it is pending further clarity and inputs from relevant stakeholders, including the standard(s) to be adapted / implemented.



B. TRANSITION PLANNING

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 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

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 any 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.

Among other carbon credit projects, Cambodia is implementing the three REDD+ projects below with USD 11.6 million sale proceeds:

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

3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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 is no mandatory requirements for transition plans and/or their disclosure.

Please see sections A.2(f) and A.7 above on the Code of Environment and Natural Resources. 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 is no mandatory requirements to set, meet and/or disclose climate-related targets.

It is, however, possible that such mandatory requirements may be set forth in future regulations of the Code of Environment and Natural Resources as noted in sections A.2(fi) and A.7 above.

5 Other upcoming developments / direction of travel

To our best 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 best 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) [Law on Consumer Protection](#);
- (b) Criminal Code;
- (c) Civil Code;
- (d) [Sub-Decree No. 232 on the Management of the Advertisement of Goods and Services](#); and
- (e) For securities traded on a securities market conducted in Cambodia:
 - (i) 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; and⁵
 - (ii) making false or materially misleading statements or disseminating information

⁵ Article 41 of the Securities Law

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.⁶

3 What are the likely grounds on which such proceedings, actions 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.

For securities trading, likely grounds on which proceedings, action or investigation can be instigated are false trading, market manipulation and false or misleading statements as mentioned in section 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.

⁶ Article 42 of the Securities Law

HONG KONG

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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 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 C2 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. The climate-related aspects will be significantly enhanced from 1 January 2025 as outlined in section A.11 below.
- (b) The Hong Kong Monetary Authority's Supervisory Policy Manual contains a [Climate Risk Management module](#) (**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. However, these requirements are relatively high-level.

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

The requirements are mandatory, except as noted below.

The ESG Reporting Guide contains mandatory disclosures in relation to ESG governance structure. General disclosures and key

performance indicators regarding environmental and social aspects are on a “comply-or-explain” basis. The upcoming HKEX Climate Disclosure Rules (as defined below) will permit smaller listed companies to report on a comply-or-explain basis for most climate disclosures, while larger listed companies are subject to a higher degree of compliance obligation – see section A.11 below for more detail.

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 it 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, with explanations and plans for future enhancements given.

4 Which aspects of ESG do the requirements focus upon?

For listed companies, environmental, social and governance aspects are all covered, but the focus of the upcoming changes is on climate.

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 is influenced by elements of the GRI Standards and the TCFD recommendations. Listed companies are encouraged (but not required) to align with the TCFD recommendations on their climate disclosures. The upcoming HKEX Climate Disclosure Rules are substantially based on IFRS S2, with the accompanying implementation guidance incorporating reporting principles under IFRS S1 (insofar as they are relevant to climate-related 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 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

Broadly speaking, the HKEX’s current reporting framework under the ESG Reporting Guide can be regarded as double materiality, whilst the upcoming HKEX Climate Disclosure Rules adopt a single materiality approach in line with the ISSB Standards (though listed companies can prepare

additional disclosures under a double materiality approach if they wish).

The requirements applicable to authorized institutions and asset managers are based on the TCFD recommendations and therefore adopt a single materiality approach.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

Currently, Scope 3 reporting is encouraged (but not mandatory). Listed companies report on Scope 1 and Scope 2 emissions on a comply-or-explain basis. Authorized institutions are subject to Scope 1 and Scope 2 reporting requirements under the HKMA Climate Module. Large asset managers are required to report on portfolio carbon footprints of Scope 1 and Scope 2 GHG emissions where data is available or can be reasonably estimated. It is not mandatory to adopt a specific GHG measurement methodology.

Under the upcoming HKEX Climate Disclosure Rules:

- (a) Scope 1 and Scope 2 emissions must be reported on a mandatory basis by all listed companies. Scope 3 emissions will be

mandatory for larger listed companies (after a phasing-in period) and comply-or-explain for other Main Board listed companies. See section A.11 for more detail.

- (b) In line with IFRS S2, companies must adopt the GHG Protocol as the measurement methodology unless it is required by another jurisdiction or exchange to use a different method.

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?

Encouraged but not mandatory.

The government has announced it will develop local sustainability-related assurance standards (see section A.12 below). It is not yet clear whether and, if so, to what extent mandatory assurance requirements will apply.

9 For companies not subject to mandatory or comply-or-explain ESG reporting, are voluntary ESG disclosures customary?

Some large non-listed entities have issued ESG reports even though it is not mandatory and referenced international standards.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? Is it mandatory and what is its scope of application?

There is no mandatory taxonomy, but the HKMA has issued a local [taxonomy](#) (referencing the EU-Mainland Common Ground Taxonomy amongst other frameworks). The taxonomy currently covers certain activities in the following sectors: power generation; transportation; waste management; and construction.

The aim is to expand its coverage to include more sectors and activities, including transition activities, in future iterations.

11 Are there plans to adopt or incorporate the ISSB's IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

Yes, the HKEX has finalised [climate disclosure requirements](#) which are substantially based on IFRS S2 (the **HKEX Climate Disclosure Rules**).

The HKEX Climate Disclosure Rules will apply to listed companies in a phased manner as follows:

- (a) **Scope 1 and Scope 2:** mandatory for financial years commencing on or after 1 January 2025.
- (b) Other new climate disclosures (including Scope 3):
 - (i) Main Board issuers included in the Hang Seng Composite LargeCap Index¹ (**Large Cap Issuers**): comply-or-explain for financial years commencing on or after 1 January 2025 and mandatory for financial years commencing on or after 1 January 2026;
 - (ii) other Main Board issuers: comply-or-explain for financial years commencing on or after 1 January 2025; and
 - (iii) GEM-listed issuers: voluntary.

ESG reports prepared in compliance with IFRS S1 and IFRS S2 will be considered as having complied with the HKEX Climate Disclosure Rules.

In addition, the Government has appointed the Hong Kong Institute of Certified Public Accountants to develop local sustainability reporting standards (**HK Standards**) aligned with the ISSB Standards (i.e. IFRS S1 and S2). It is intended that reporting rules based on the HK Standards will be developed by financial

¹ An issuer that is a Hang Seng Composite LargeCap Index (**HSCLI**) constituent throughout the year immediately prior to the reporting year will be considered a Large Cap Issuer. Once an issuer becomes a

Large Cap Issuer, it will continue to be treated as such for the purposes of climate reporting even if it subsequently ceases to be a HSCLI constituent.

regulators and HKEX for adoption by regulated financial entities and listed companies.

The HKEX Climate Disclosure Rules are therefore regarded as an interim step. In particular, the HKEX notes it will consider whether and how to upgrade the requirements to a mandatory status for all listed issuers (and not just Large Cap Issuers) when it consults on the adoption of the HK Standards.

12 Other upcoming developments / direction of travel

Under the Government’s [Vision Statement](#):

- (a) the HK Standards under development are intended to align with the ISSB Standards for application to regulated financial entities and listed companies; and
- (b) local sustainability-related assurance standards will be developed, taking into account the latest global developments including those at the International Auditing and Assurance Standards Board.

As mentioned, the HKEX will consider whether the HK Standards (when available) will apply on a mandatory basis to all listed issuers (and not just Large Cap Issuers).

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.

A code of conduct is being developed for voluntary adoption by ESG ratings and data products providers providing products and services in Hong Kong. The voluntary code is being developed by an industry working group and is intended to align with IOSCO recommendations. The initiative is supported and sponsored by the SFC.



B. TRANSITION PLANNING

1 Has your jurisdiction set decarbonisation targets and strategies?

Yes, to reduce Hong Kong’s carbon emissions by 50% before 2035 (compared to 2005) and a carbon intensity target of 65% to 70% by 2030 with 2005 as the baseline.

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 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

The HKEX has established a voluntary carbon trading platform, [Core Climate](#), for eligible participants from any sector to trade international voluntary carbon credits.

3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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, there are certain existing and upcoming disclosure requirements related to transition planning:

- (a) The ESG Reporting Guide contains requirements for listed companies to disclose (on a comply-or-explain basis) steps taken to achieve environmental targets that have been set, including emission targets.
- (b) The HKEX Climate Disclosure Rules will require a listed company (subject to the phased implementation outlined in section

A.11) to disclose information about how it has responded to, and plans to respond to, climate-related risks and opportunities in its strategy and decision-making, specifically any transition plan the issuer has, or a negative statement where it does not have a transition plan. Issuers should also disclose the progress of plans disclosed in previous reporting periods.

There is no mandatory standard on the content of transition plans, though issuers should refer to the HKEX's [Implementation Guidance for Climate Disclosures](#) for guidance, illustrative disclosures and further resources.

- (c) Under the HKMA Climate Module, authorized institutions are expected to disclose any transition plans they have.

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. However, disclosure requirements apply to listed companies that have set climate-related targets as outlined below.

The ESG Reporting Guide contains requirements for listed companies to disclose (on a comply-or-explain basis) certain environmental targets (emission targets, waste reduction targets, energy

use efficiency targets and water efficiency targets) that have been set.

The HKEX Climate Disclosure Rules will in addition require listed companies (subject to the phased implementation mentioned above) to disclose:

- (a) any climate-related targets it has set and any targets it is required to meet by law or regulation (including any GHG emissions target);
- (b) certain details in relation to each target e.g. how it aligns with the latest international agreement on climate change and whether it covers Scope 1, 2 or 3. The planned use of carbon credits to meet any net GHG emissions target will trigger further disclosures;
- (c) information about its approach to setting and reviewing each target, and how it monitors progress, including any third-party validation; and
- (d) information about its performance against each climate-related target.

5 Other upcoming developments / direction of travel

Sustainable finance (in particular transition finance) has been highlighted by regulators as a priority area. The further development of the Hong Kong taxonomy as mentioned in section

A.10 should assist companies and financial institutions in raising / structuring green finance products to fund transition efforts.



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:

- (a) the HKMA's [circular](#) on expected standards in respect of sale and distribution of green and sustainable investment products by registered institutions deals with how registered institutions offering such products should minimise greenwashing risks;
- (b) the HKMA has also issued a [circular](#) on good practices relating to the due diligence processes for green and sustainable products offered by authorized institutions. It seeks to ensure such products and related funds are managed in a way consistent with their climate strategies, thereby reducing exposure to greenwashing risks;

- (c) the SFC has issued requirements on retail green and ESG funds, including on the fund's name and marketing materials; and
- (d) the voluntary Hong Kong taxonomy should help to minimise greenwashing risks in the covered sectors.

3 What are the likely grounds on which such proceedings, actions 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 or regulatory enforcement against companies (in particular, listed companies and financial institutions) are expected to increase as reporting requirements become more robust and Hong Kong seeks to enhance its status as a sustainable finance hub.

INDIA

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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 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.

- (a) 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 is segregated into essential (mandatory) and

leadership (voluntary) indicators. The leadership indicators in the BRSR also include disclosure related to the value chain of the listed entities.

SEBI also introduced an additional subset of BRSR disclosures, namely the BRSR Core (as defined below) consisting of nine key ESG reporting parameters such as greenhouse gas footprint, water footprint, energy footprint, embracing circularity, enhancing employee wellbeing and safety, enabling gender diversity in business, enabling inclusive development, fairness in engaging with customers and suppliers and openness of business (**BRSR Core**). The detailed nuances of BRSR Core are set out in section A.3 below.

- (b) The issuance and listing of green bonds is governed by 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 SEBI has mandated issuers of green bonds to: (i) disclose environmental objectives of the issue under

the offer documents; (ii) indulge in continual disclosure of performance; and (iii) verify utilisation of proceeds.

- (c) SEBI has mandated mutual funds to disclose their ESG policies and practices under offer documents.
- (d) 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 (save for the voluntary leadership indicators) are mandatory for the top 1,000 listed companies by market capitalisation.

Per 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 nine key performance indicators. 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

2025-2026, each in relation to the BRSR Core indicators.

For financial institutions issuing green bonds, there is a requirement for 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?

The BRSR-mandated disclosures focus on all ESG tenets, including energy and water consumption, 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.

The nine key ESG reporting parameters under BRSR Core have been mentioned above.

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

BRSR and BRSR Core have evolved in accordance with global best practices and several disclosure requirements have been mapped with global reporting frameworks, such as GRI, the UN Sustainable Development Goals, TCFD, Carbon Disclosure Project (CDP) and SASB.

6 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

The BRSR and BRSR Core frameworks by SEBI adopt a double materiality approach, requiring disclosures on both the financial impact of ESG issues on the company and the company's impact on the environment and society. The BRSR and BRSR Core frameworks mandate detailed reporting on ESG risks, opportunities, and their financial implications, as well as the company's broader environmental and social impacts, such as GHG emissions, resource usage, labour practices, and community engagement.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

Based on SEBI's guidance on BRSR for listed companies, there are requirements for the disclosure of GHG emissions encompassing Scope 1, Scope 2 and Scope 3 emissions (of which the Scope 3 disclosures have to be made on a voluntary (leadership indicator) basis by all in-scope listed entities). These requirements apply to all eligible listed entities mandated to submit BRSR.



The BRSR Core framework stipulates that the GHG emissions may be measured in accordance with the Greenhouse Gas Protocol (though this is not a strict requirement). For BRSR Core indicators, the top 250 listed companies by market capitalisation are required to disclose (from financial year 2024-2025) Scope 3 GHG emissions on a comply-or-explain basis.

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?

The top 250 listed companies by market capitalisation are required to meet assurance requirements for Scope 3 emissions on a comply-or-explain basis from 2025-2026.

The assurance requirement and the Scope 3 emissions related disclosure were introduced recently by the SEBI (under SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations 2023, dated 14 June 2023) and the [BRSR Core Circular](#).

9 For companies not subject to mandatory or comply-or-explain ESG reporting, 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. Companies are making voluntary ESG disclosures as customary practice owing to increasing requirements from investors, lenders etc. Such requirements are now also being hardwired in contractual arrangements for better optics from stakeholders' perspective.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? Is it mandatory and what is its scope of application?

India has not yet issued or adopted a comprehensive local taxonomy on sustainable activities akin to the EU taxonomy. However, India has been making strides towards creating frameworks and guidelines that promote sustainable finance and green activities by measures such as the BRSR, BRSR Core, the Carbon Credit Trading Scheme 2023 and Green Credit Programme (*mechanisms for trading in carbon credits*), etc.

Currently, there is no regulatory mandate for taxonomy on sustainable activities, however, regulators have indicated development of a green taxonomy. For instance, SEBI published a circular

on 6 February 2023, pursuant to which SEBI revised disclosures for issuers of green debt securities to align the disclosure regime with the updated Green Bond Principles recognised by IOSCO. The issuers of such green debt securities are required to (among other things) disclose details of any taxonomies, green standards or certifications (both Indian and global) that were referenced) and the alignment of projects with said taxonomies.

11 Are there plans to adopt or incorporate the ISSB's IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and 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 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 respects accordingly.

The draft guidelines on “[Disclosure framework on Climate-related Financial Risks, 2024](#)” issued by the Reserve Bank of India (RBI), the apex bank of India, indicates the development of a disclosure framework, divided into four thematic areas: governance, strategy, risk management, and metrics and targets, which is in line with the IFRS S2. See section A.12 below for more detail.

12 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 increase 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 regulate ESG investment schemes and compliances by asset management companies.

RBI has published a draft “Disclosure framework on Climate-related Financial Risks, 2024”, which will require entities in scope of the draft framework to disclose information about their climate-related financial risks and opportunities

for the users of financial statements. The draft framework applies to the following entities:

- (a) all scheduled commercial banks (excluding local area banks, payments banks and regional rural banks);
- (b) all tier-IV primary (urban) co-operative banks;
- (c) all-India financial institutions (i.e. EXIM bank, NABARD, NaBFID, NHB and SIDBI);
- (d) all top and upper layer non-banking financial companies.



B. TRANSITION PLANNING

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 from now till 2030; and
- (d) reduce carbon intensity of its economy by less than 45%.

2 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

The (Indian) Energy Conservation Amendment Act, 2022, [as amended in 2022](#), has introduced the 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, which was notified on 28 June 2023, and amended in [December 2023](#), provides a framework for the Indian Carbon Market (ICM) and contemplates both a compliance mechanism, applicable to “obligated entities”, as well as a voluntary offset mechanism for non-obligated entities.

In July 2024, The Bureau of Energy Efficiency (BEE) (the administrator for the CCTS) released the [Detailed Procedure for Compliance Mechanism under CCTS](#) under which obligated entities would be required to meet annual GHG emission intensity targets, which will be notified for three-year trajectory periods. Obligated entities that exceed their respective targets shall be entitled to the issuance of carbon credit certificates, which could thereafter be traded on power exchanges as per the procedure to be

defined by the Central Electricity Regulatory Commission. Carbon credit certificates can also be banked to meet subsequent years' compliance requirements or sold. Under the [Detailed Procedure for Compliance Mechanism under CCTS](#), obligated entities who do not achieve their targeted reduction in GHG emission intensity shall surrender an equivalent number of banked carbon credit certificates or purchase carbon credit certificates to comply with the intensity targets, and may be penalised. Non-obligated entities may also voluntarily trade in carbon credit certificates.

The CCTS is yet to be implemented, but the Detailed Procedure for Compliance Mechanism under CCTS sets out the details of the compliance mechanism and clarifies that obligated entities shall be from specified energy intensive industries as specified by the Central Government. The cement, iron and steel, pulp and paper, as well as petrochemicals industry are covered in Annexure II. It also sets out the framework of the GHG emissions covered, monitoring and reporting process, verification process, and issuance and surrender of carbon credit certificates. However, other relevant rules and directives for operationalization of the ICM and implementation of the CCTS are yet to be notified.

3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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 disclose a climate strategy in the BRSR or otherwise.

However, the [Detailed Procedure for Compliance Mechanism under CCTS](#) would require "Obligated Entities" to prepare and submit a long-term action plan to reduce, remove or avoid greenhouse gas emissions and act in accordance with the long term action plan. Compliance with such submitted long-term action plan must be submitted in a specified format. Where the actions implemented in terms of the submitted action plan are found inadequate for achieving compliance with the specific GHG emission norm, the shortfall would have to be met by purchasing carbon credit certificates.

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.

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 [Detailed Procedure for Compliance Mechanism under CCTS](#) envisions that obligated entities will be subject to targets for reduction of GHG emissions set by relevant authorities and the (Indian) Energy Conservation Amendment Act, 2022 designates different share 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" 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 the Central Government notifications, to meet energy savings

targets through issuance of 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 once the detailed procedures thereunder come into force and will involve 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?

Yes.

The Advertising Standards Council of India (**ASCI**) is a voluntary self-regulatory organization

incorporated under the Companies Act, 2013, which aims to ensure that advertisements in India are fair, honest and compliant with the [ASCI Code for Self-Regulation of Advertising Content in India \(ASCI Code\)](#). ASCI is a self-regulatory body, and its decisions are not binding unless the party in question submits to them.

ASCI has recently issued [Guidelines for Advertisements Making Environmental/ Green Claims](#), effective from 15 February 2024 (**ASCI Guidelines**) which explain the ASCI’s approach in determining whether an environmental/green claim on advertisements violates Chapter I of the ASCI Code.

While decisions of the ASCI are non-binding, the Central Consumer Protection Authority (**CCPA**) formed under the [Consumer Protection Act, 2019](#) has [requested](#) the ASCI to forward any advertisements non-compliant with the ASCI Code and which could potentially violate the Consumer Protection Act, 2019 to the CCPA, for appropriate action.

The CCPA has also issued [draft Guidelines for the Prevention and Regulation of Greenwashing, 2024 \(Draft CCPA Guidelines\)](#) on 20 February 2024 which are to apply to all advertisements in respect of goods or services and requires that environmental and green claims be substantiated though appropriate disclosures backed by verifiable evidence. Any contravention of the Draft CCPA Guidelines (once brought in force),

would be considered a violation of the Consumer Protection Act, 2019 and would be punishable by imprisonment and a fine.

Separately, SEBI has introduced stringent disclosure requirements (under its Circular dated 3 February 2023, “Dos and Don’ts 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, actions 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 where



environmental/green claims are used falsely, without adequate substantiation, or without appropriate disclosures and qualifications as to the scope of the claim so as to be misleading.

There are also risks of regulatory enforcement, for example, 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, the risk is expected to increase as reporting requirements

become more robust and action in relation to false/misleading environmental and green claims under the Consumer Protection Act, 2019 increases in view of the ASCI Guidelines and the CCPA's focus on greenwashing.

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, ESG disclosures are mandatory for publicly listed companies and financial institutions.

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

(a) Financial Services Authority (Otoritas Jasa Keuangan or OJK) Regulation No. 51/POJK.03/2017 of 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 service institutions, issuers and public companies to implement sustainable finance and to submit a Sustainability Report, either as part of their annual report or as a stand-

alone report, annually to the OJK and to make the report publicly accessible.¹

(b) [OJK Circular Letter No. 16/SEOJK.04/2021](#) regarding the Form and Substance of the Annual Report of Issuers (*Emiten*) and Public Companies (dated June 29, 2021) (**OJK CL 16/2021**). OJK CL 16/2021 governs the form and content of ESG disclosures in the annual reports of publicly listed companies and issuers. For example:

- (i) 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;²
- (ii) 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:

¹ Arts. 1 point 13, 2(1), 10(1)-(3), 12, OJK Reg. 51/2017.

² Pages 26-27, OJK CL 16/2021.

- The company's sustainability strategy;
 - Summary of the company's sustainability efforts (economic, social, and environment);
 - Brief profile of the publicly listed company;
 - Board of Directors' remarks;
 - Sustainable governance;
 - Sustainable performance;
 - Written verification from independent party(ies), if any;
 - Feedback from readers, if any;
 - Response of the publicly listed company to the feedback from the previous year's report.
- (c) OJK Regulation No. 17 of 2023 regarding the Implementation of Governance for General Banks (dated 14 September 2023) (**OJK Reg. 17/2023**) mandates that banks must prepare and publish a sustainability report guided by OJK Reg. 51/2017.³
- (d) The Minister of State-Owned Enterprises (**MSOE**) Regulation No. PER-2/MBU/03/2023 of 2023 regarding Guidelines for the

Organization and Significant Corporate Activities of State-Owned Enterprises (dated 24 March 2023) (**MSOE Reg. 2/2023**). State-owned enterprises (**SOEs**) are required to prepare reports on a quarterly and annual basis through their Board of Directors containing, among other information, reports on the implementation of their social and environmental programs.⁴ These reports must also be made accessible to the public.⁵ A sustainability report may be drafted as part of the aforementioned publicized annual report.⁶

- (e) Presidential Regulation No. 60 of 2023 regarding the National Strategy on Business and Human Rights (dated 26 September 2023) (**PR 60/2023**). This regulation requires the Regional Business and Human Rights Task Force, the National Business and Human Rights Task Force, and the Ministry of Law and Human Rights (**MOLHR**) to report on the implementation and outcome for Business and Human Rights Actions (**BHAM Action**). **BHAM Action** refers to strategies and steps that elaborate on the National Strategy on Business and Human Rights, which serve as guidelines for stakeholders, e.g. government

organs, institutions, agencies and business actors, to improve the protection, respect and remedy of human rights. This reporting is to take place in the following sequence:

- (i) The Regional Business and Human Rights Task Force reports the outcome of the **BHAM Action** implementation to the National Business and Human Rights Task Force;⁷
- (ii) The National Business and Human Rights Task Force (**GTN BHAM**) reports the outcome of the **BHAM Action** implementation to the **MOLHR**;⁸
- (iii) The **MOLHR** reports the outcome of the **BHAM Action** implementation to the President of the Republic of Indonesia.⁹

These reports will be published and therefore will be accessible to the public.¹⁰ It is important to note that PR 60/2023 merely serves as a roadmap and national strategy for the formulation of binding regulations to be issued in the future.

- (f) Law No. 40 of 2007 regarding Limited Liability Companies (dated 16 August 2007), as last amended by Law 6 of 2023 regarding

³ Art. 96, OJK Reg. 17/2023.

⁴ Arts. 214(1)(g), 217 (1)(g), MSO Reg. No. 2/2023.

⁵ Art. 221(2)(c), MSO Reg. No. 2/2023.

⁶ Art. 221(3), MSO Reg. No. 2/2023.

⁷ Arts. 7(5)(c), 12(1), PR 60/2023.

⁸ Arts. 5(d), 12(1), PR 60/2023.

⁹ Art. 12 (2), PR 60/2023.

¹⁰ Art. 12(3), PR 60/2023.

the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 regarding Job Creation into Law (dated 31 March 2023) (**Law No. 40/2007**). This law requires limited liability companies to include a disclosure on the fulfilment of social and environmental responsibilities in their annual reports.¹¹ Further details governing such responsibilities are governed under Government Regulation No. 47 of 2012 regarding the Social and Environmental Responsibilities of Limited Liability Companies (dated 4 April 2012) (**GR 47/2012**).

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

The disclosure requirements envisaged in the abovementioned regulations are mandatory, with the exception of the sustainability report referred to in MSOE Reg. 2/2023. Non-compliance with the aforementioned disclosure requirements is sanctionable, save for those required under PR 60/2023.¹²

4 Which aspects of ESG do the requirements focus upon?

Overall, the requirements cover economic, environmental, social and governance aspects.

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

Indonesia's disclosure requirements are not based on international standards. However, the following points should be kept in mind:

- (a) reference to international standards is possible when preparing Sustainability Reports pursuant to OJK Reg. 51/2017 and OJK CL 16/2021.¹³ The information in the section of the Sustainability Report referred to in section F.25 of Appendix II to OJK CL 16/2021 is to be disclosed with reference to the 17 UN Sustainable Development Goals.
- (b) PR 60/2023 is based on the United Nations Guiding Principles on Business and Human Rights: Implementing the UN Protect, Respect and Remedy Framework (UNGP). As such, the contents of reports made pursuant to this regulation will reflect the standards of the UNGP.

6 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

The disclosures contained in Sustainability Reports prepared pursuant to OJK Reg. 51/2017 and OJK CL. 16/2021 adopt a double materiality approach.¹⁴ However, no explicit guidance is provided in MSOE Reg. 2/2023 or PR 60/2023 regarding the particular approach to be applied with respect to the disclosure requirements.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

Yes, there are requirements for the disclosure of GHG emissions.

A Sustainability Report prepared pursuant to OJK Reg. 51/2017 and OJK CL 16/2021 must disclose the amount of emission reduction produced by financial institutions, issuers, and public companies through their business activities

¹¹ Art. 66(2), Law No. 40/2007.

¹² Art. 13, OJK Reg. 51/2017; Art. 75, MSOE Reg. 2/2023.

¹³ Page 6, Annex II, OJK CL 16/2021.

¹⁴ For impact materiality, please see, *inter alia*, pages 6, 8, 10, Appendix II, OJK Reg. 51/2017. For single materiality, please refer to pages 7, 8, Appendix II, OJK Reg. 51/2017. Based on our understanding, the Appendix to OJK CL 16/2021 merely replicates in greater detail while providing examples of points already disclosed in Appendix II to OJK Reg. 51/2017.

directly related to the environment.¹⁵ Such entities must also disclose their Scope 1 (specifically regarding consumption of fuel), Scope 2 (specifically regarding usage of electricity) and Scope 3 (specifically regarding official travel by flight) emissions.¹⁶ While no specific methodology was designated for these disclosures, international standards may be employed and identified in the Sustainability Report.¹⁷

Save for the above, it is worth noting that the current legal landscape in Indonesia often does not distinguish between the different scopes of GHG emissions. Bearing this in mind, the following regulations are also noteworthy in this context:

- (a) Ministry of Environment and Forestry (**MOEF**) Regulation No. 13 of 2021 regarding the Continuous Industrial Emission Monitoring Information System (**MOEF Reg. 13/2021**) requires all businesses or activities mandated to monitor their emissions using the Continuous Emissions Monitoring System (**CEMS**) to integrate their data into the Information on Continuous Industrial Emission Monitoring System (**SISPEK**) by 1 January 2023.

Ten industries are required to use SISPEK, namely: iron and steel smelting, pulp and paper, synthetic fibre (*rayon*), carbon black, oil and gas, mining, thermal waste treatment, cement, thermal power generation, and fertiliser and ammonium nitrate. These industries are further regulated by sectoral regulations.

For instance, in the thermal power generation sector, MOEF Regulation No. P.15/MENLHK/SETJEN/KUM.1/4/2019 Tahun 2019 regarding Emission Quality Standards for Thermal Power Plants (dated April 23, 2019) (**MOEF 15/2019**) requires a party operating a thermal power plant to report the calculation of emission load produced, which includes GHG emissions on a scheduled basis.¹⁸ The monitoring of such emissions is to be done using CEMS or manual calculations (i.e. a testing laboratory).¹⁹

- (b) Presidential Regulation No. 98 of 2021 regarding the Implementation of Carbon Economic Value to Achieve Nationally Determined Contribution Targets and Control Over Greenhouse Gas Emissions in Relation to National Development (dated

October 29, 2021) (**PR 98/2021**) requires business actors, regents/mayors, governors and relevant ministries to report on corporate, sectoral, regency/city and provincial GHG emissions for purposes of inventorying GHG emissions in the context of implementing climate change mitigation acts to achieve Indonesia's targeted Nationally Determined Commitments (**NDCs**).²⁰

In this vein, the relevant measurements, especially in regard to reductions in GHG emissions, should meet with the customary standards of the United Nations Framework Convention on Climate Change or the Intergovernmental Panel on Climate Change.²¹

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?

Independent assurance of ESG disclosures is encouraged but not mandatory. While one of the minimum requirements for Sustainability Report, pursuant to OJK Reg. 51/2017 and OJK CL 16/2021, is written verification from independent

¹⁵ Section A(2)(b)(2), Appendix II, OJK Reg. 51/2017.

¹⁶ Page 11, Appendix II, OJK Reg. 51/2017; page 40, section F11, Appendix, OJK CL 16/2021.

¹⁷ Page 41, Appendix, OJK CL 16/2021.

¹⁸ Arts. 17-20, MOEF 15/2019.

¹⁹ Art. 8; Appendix XV, MOEF 15/2019.

²⁰ Arts. 9(a), 11(2), 12, PR 98/2021.

²¹ Art. 10 (6), PR 98/2021.

parties, this requirement is accompanied by the qualifier “if any”.

MSOE Reg. 2/2023 and PR 60/2023 do not explicitly require independent assurance for ESG disclosures by SOEs, Human Right Task Forces or the MOLHR.

9 For companies not subject to mandatory or comply-or-explain ESG reporting, are voluntary ESG disclosures customary?

A few notable companies in various sectors (oil and gas, mining, etc.) have issued sustainability reports even though it is not mandatory.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? Is it mandatory and what is its scope of application?

Yes. Indonesia introduced a voluntary [Taxonomy of Sustainable Finance](#) aimed at supporting Indonesia's Sustainable Development Goals, covering economic, environmental, and social aspects. The taxonomy serves as a guide to enhance capital allocation and sustainable financing, thereby supporting Indonesia's goal of achieving net-zero emissions by 2060.

The Sustainable Finance Taxonomy was developed for sectors outlined in Indonesia's Enhanced NDCs document, specifically, energy, forestry and other land use, waste, agriculture, and industrial activities.

11 Are there plans to adopt or incorporate the ISSB's IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

Yes. The Institute of Indonesia Chartered Accountants (*Ikatan Akuntan Indonesia*) is in the process of preparing to adopt both ISSB's IFRS S1 and S2 standards. Further details regarding the extent of alignment, the nature of the standards and to whom they will apply, and the expected timeline for completion have yet to be confirmed as discussions are still in the initial stages.²²

12 Other upcoming developments / direction of travel

There are no other current updates on ESG reporting.



B. TRANSITION PLANNING

1 Has your jurisdiction set decarbonisation targets and strategies?

Yes, Indonesia has set targets to reduce carbon emissions by 31.89% (unconditionally) and by 43.2% (conditionally), which were included in Indonesia's Enhanced NDCs Document that is to be aligned with the Long-Term Low Carbon and Climate Resilience Strategy 2050 with a vision to achieve net-zero emissions by 2060.

The government has also issued PR 98/2021, which stipulates various strategies to achieve Indonesia's NDCs. These strategies include:

- (a) Development of ownership and commitment;
- (b) Capacity building;
- (c) Creation of enabling conditions;
- (d) Formulation of a framework and communication network;
- (e) Policy for a single greenhouse gas emission and climate resilience data;
- (f) Formulation of policies, plans, and programs;
- (g) Development of NDC implementation guidelines;

²² https://web.iaiglobal.or.id/Berita-IAI/detail/dsk_gelar_fgd_terbatas_pelaporan_keberlanjutan#gsc.tab=0 & https://web.iaiglobal.or.id/Berita-IAI/detail/siaran_pers_-_pastikan_standar_keberlanjutan_di_indonesia_iai_sahkan_pembentukan_dpsk_dan_dsk#gsc.tab=0

- (h) Implementation of the NDCs; and
- (i) Monitoring and review of the NDCs.

2 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

Yes, both compliance and voluntary carbon markets are contemplated. The compliance carbon market was launched in 2023 and is initially to be limited to coal-fired power plants and will be expanded to other types of power plants from 2025, under Ministry of Energy and Mineral Resources (**MEMR**) Regulation No. 16 of 2022 regarding Guidelines for the Implementation Carbon Economic Value in the Power Plant Sub-Sector (dated 27 December 2022) (**MEMR Reg. 16/2022**). Similarly, the recent enactment of MOEF Regulation No. 7 of 2023 (dated 15 June 2023) (**MOEF Reg. 7/2023**) also provides a framework for carbon trading in the forestry sector.

Further progress has also been made in the development of voluntary carbon trading markets. OJK Regulation No. 14 of 2023 regarding Carbon Trading through the Carbon Exchange now provides the basic legal framework

for carbon trading through the Indonesia Carbon Exchange (**IDX Carbon**), which launched in September 2023 for the trading of domestic voluntary carbon credits and potentially international voluntary carbon credits. The OJK has issued a carbon exchange licence to the Indonesia Stock Exchange. Outside of IDX Carbon, carbon trading can be conducted by direct trade, with the requirement that any direct trade must be recorded in the National Climate Change Control Registry System (**SRN PPI**).²³ Any overseas carbon trading requires the prior authorization of the MOEF.²⁴

It is important to note that voluntary carbon credits (whether issued domestically or internationally) cannot be purchased to offset obligations under the compliance carbon trading schemes unless explicitly permitted by the applicable regime. The current laws and regulations in Indonesia do not allow the purchase of voluntary carbon credits for the purpose of achieving compliance under the compliance carbon trading scheme.²⁵

In 2021, the Indonesian Government issued Law No. 7 of 2021, regarding the Harmonization of Tax Regulations (**Harmonized Tax Law**) (dated 29 October 2021), which sets out that a

carbon tax will be imposed on carbon emissions that have a negative impact on the environment. The implementation of the carbon tax will target industries with high carbon emissions, starting with coal-fired power plants, which was to begin in 2022, with the full imposition of the carbon tax in 2025. However, the imposition of the carbon tax for coal-fired power plants has been postponed several times and is now planned to be introduced in 2025.

The carbon tax rate is IDR 30 per kilogram of CO₂ or equivalent to around US\$1.85 per tCO₂.

3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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, the following list highlights key regulations governing the requirements for companies to have in place and/or disclose climate-related transition plans:

²³ Art. 46(1)(d), MOEF Regulation No. 21 of 2022 regarding the Procedures for the Implementation of Carbon Economic Value (**MOEF Reg. 21/2022**).

²⁴ Arts. 48(2)(g), 73(3), PR 98/2021; Arts. 4(3)(c), 19(a), 20(3), 25(1), MOEF Reg. 21/2022.

²⁵ See, for instance: Arts. 1(23), 12(6), MOEF Reg. 21/2022; Arts. 50(2), 51, PR 98/2021.

- (a) PR 98/2021 obliges every business actor²⁶ to record and report, among other things, its climate change mitigation and adaptation actions. This report is to be recorded in the SRN PPI.²⁷ Further guidance concerning the implementation of climate change mitigation and adaptation actions will be coordinated by the MOEF, which may involve other ministries as relevant.²⁸ The regulation does not oblige companies to consider the social impact of the actions.
- (b) OJK Reg. 17/2023 which obliges banks to apply good corporate governance in the context of managing climate-related risk.²⁹ This obligation requires banks, among other entities, to maintain appropriate policies, procedures, and controls pertaining to the effective management of climate risks.³⁰ No further guidance is provided in this regard.
- While not explicitly stated in the context of climate risk management, OJK Reg. 17/2023 does require banks to duly consider, implement, and integrate ESG values including

through social enriching of the community.³¹

- (c) MEMR Decree No. 188.K/HK.02/MEM.L/2021 of 2021 regarding the Ratification of the Electricity Supply Business Plan (**RUPTL**) of the State Electricity Company (**PT PLN**) from 2021 to 2030 (dated 28 September 2021) (**MEMR Decree No. 188/2021**). This decree obliges PT PLN to deliver regular reports (on a quarterly basis or upon the request of the MEMR) on the implementation of the RUPTL, which includes the gradual retirement of coal power plants starting from 2030, among other goals.³² Further guidance concerning the content and implementation of the RUPTL can be found in the Appendix to MEMR Decree No. 188/2021. See section B.4 below.

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, while OJK Reg. 51/2017 and OJK CL 16/2021 do not explicitly require the disclosure

of climate-related targets, they do oblige the disclosure of certain sustainability targets that were achieved in the past three years.³³

Similarly, there are requirements for certain companies to meet certain climate-related targets. Most prominently, PR 112 of 2022 regarding the Acceleration of Renewable Energy Development for the Supply of Electrical Power (dated 13 September 2022) (**PR 112/ 2022**) establishes certain targets to be met:

- (a) In implementing the RUPTL, PT PLN (i.e. the State Electricity Company) is obliged to, among other things:³⁴
- (i) Prioritize the purchase of electricity from power plants utilizing renewable energy;
 - (ii) Operate power plants utilizing renewable energy on a ‘must-run’ basis; and
 - (iii) Develop power plants utilizing renewable energy.
- (b) PT PLN shall accelerate the termination of:
- (i) The operation of its own power plants;

²⁶ Business actor is defined as any individual or business entity that engages in business and/or activities in certain sectors.

²⁷ Arts. 66-67, 69(1), PR 98/2021; Position Paper of the MOEF dated 5 May 2023 (**MOEF Position Paper**); MOEF Circular Letter to Indonesian Governors dated 10 May 2023.

²⁸ Arts. 6(3), 36(3), 37(2)-(3), 40 (6)-(7), etc of PR 98/2021.

²⁹ Art. 125(1), OJK Reg. 17/2023.

³⁰ Art. 125(2)(c), OJK Reg. 17/2023.

³¹ Art. 124(f), OJK Reg. 17/2023.

³² Pg. II-16, Appendix, MEMR Decree No. 188/2021.

³³ Pages 12, 21, Annex II, OJK CL 16/2021; section F.12, Annex II, OJK CL 16/2021.

³⁴ Art. 2(3), PR 112/2022.

- (ii) The electricity sale-purchase agreements of power plants developed by partner companies.
- (c) The establishment of new power plants (with certain exceptions) is prohibited.³⁵

The government has also outlined its commitment to energy efficiency through GR No. 33 of 2023 regarding Energy Conservation (dated 16 June 2023) (**GR 33/2023**). This regulation requires various stakeholders – including governmental bodies, private entities such as energy producers and users – to engage in energy conservation efforts, both upstream (primarily aimed at conserving energy resources) and downstream (focused on enhancing energy efficiency and conservation through energy-saving practices and the adoption of energy-efficient technologies), in energy management.

5 Other upcoming developments / direction of travel

The Draft Law on Climate Change Management has been stipulated in the Priority National Legislation Program. However, no draft or academic paper has been prepared at this stage.³⁶

Various regulators are currently planning a pilot project concerning the trading of international voluntary carbon credits through IDX Carbon. Regulations governing the project are to be prepared in the near future.³⁷



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, there are no laws or regulations that deal specifically with greenwashing.

3 What are the likely grounds on which such proceedings, actions 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

None at the moment.

³⁵ Art. 3(4), PR 112/2022.

³⁶ <https://www.hukumonline.com/berita/a/bumi-semakin-panas--ruu-perubahan-iklim-urgen-disahkan-lt66460dd19641c/?page=1>; <https://www.hukumonline.com/berita/a/ini-daftar-ruu-prolegnas-prioritas-2024-lt650bd7d9ae4e2/>

³⁷ <https://ppid.menlhk.go.id/berita/siaran-pers/7644/ojk-bursa-karbon-ri-terbaik-di-asia>

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 (**FSA**), 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 environmental aspects.

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.

Environmental-related disclosures in a corporate governance report are expected to be in line with the TCFD recommendations or an equivalent framework.

6 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

While neither the Disclosure Order nor the Corporate Governance Code clarifies that it adopts a single or double materiality approach, the Principles about Disclosure of Non-Financial

Information issued by the FSA mentions that materiality shall be determined by each company taking into consideration various factors including the category of business, business environment and enterprise value of such company.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

It is not required that a company report its GHG emissions in the annual securities report or corporate governance report. However, a company that considers climate change to be one of its material risks must state metrics and targets for climate change in its annual securities report, which often includes information about GHG emissions of the company.

Separately, under the Act on Promotion of Global Warming Countermeasures of Japan, a company that (i) emits a certain amount of GHG within a year from all of its business facilities in Japan or (ii) transports a certain amount of freight within a year in Japan by itself or with the assistance of carriers, is required to calculate and disclose the amount of GHG emissions from the company's business facilities in Japan (i.e., Scope 1 and 2) in its report to be filed with the relevant

governmental authority in accordance with the instructions published by the Ministry of Environment of Japan. The reported data can be accessed by the public.

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?

Not mandatory.

9 For companies not subject to mandatory or comply-or-explain ESG reporting, are voluntary ESG disclosures customary?

It is uncommon for a company not subject to the ESG disclosure obligation under the Disclosure Order or the Corporate Governance Code to voluntarily make substantial ESG disclosures.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? Is it mandatory and what is its scope of application?

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

11 Are there plans to adopt or incorporate the ISSB's IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

Yes.

In March 2024, the Sustainability Standards Board of Japan (**SSBJ**) released [exposure drafts for new standards](#):

- (a) the universal sustainability disclosure standards (the Application of the Sustainability Disclosure Standards);
- (b) the theme-based sustainability disclosure standards No. 1 (the General Disclosures); and
- (c) the theme-based sustainability disclosure standards No. 2 (the Climate-related Disclosures).

The SSBJ decided to incorporate all requirements in IFRS S1 and S2 and to add that, when considered necessary, a reporting entity can choose to apply any jurisdiction-specific alternatives. If a company chooses not to apply any of the jurisdiction-specific alternatives, the disclosures will be in compliance with the ISSB Standards. On the other hand, if a company chooses to apply the jurisdiction-specific alternatives, the disclosures may or may not result in compliance with the ISSB Standards. However, it is intended that the companies preparing disclosures for these additional requirements would not be required to obtain additional information beyond the information obtained in the process of preparing disclosures in accordance with IFRS S1 and S2.

Once implemented, sustainability information disclosure in annual reports and other documents is expected to be legally required to be based on the SSBJ standards. The SSBJ's exposure drafts do not prescribe the scope of companies that would be required to apply the sustainability disclosure standards issued by the SSBJ. However, the SSBJ developed such drafts following the direction indicated by the FSA that the scope of companies that would be required to apply the SSBJ standards should be those companies which centre their business on constructive dialogue with global investors. The SSBJ standards are therefore expected to apply to all or a portion of companies listed on the Prime Market of the Tokyo Stock Exchange.

The SSBJ's new standards are expected to apply to annual securities reports for the fiscal year ending 31 March 2027 or later in stages according to market capitalisation of each reporting company. The finalised, new SSBJ standards are expected to be released in March 2025. Details such as scope of application and timing are currently under discussion and are expected to be confirmed in early 2025.

12 Other upcoming developments / direction of travel

In addition to the matters referred to above, the Sustainability Disclosure and Assurance Working Group in the Financial System Council of Japan

began discussion about independent assurance and the safe harbor rule of ESG disclosures provided in an annual securities report of a company. The discussion will take a fair amount of time before reaching a conclusion.



B. TRANSITION PLANNING

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 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

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 the first phase of the GX-ETS, (i) each participant sets out its own 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. It is expected that

it will become fully operational in 2026 with increased government intervention and allowance trading under the scheme – details such as scope of coverage and extent of mandatory application are being considered. Also, new legislation to push green transition was passed in May 2023 to implement the paid allocation of emission allowances to the electricity sector from 2033, which is expected to be linked to the GX-ETS. Details of the scheme are to be further discussed, but this will be a mandatory ETS for the electricity sector.

Separately, in October 2023, [the Tokyo Stock Exchange set up a voluntary market](#). This market currently deals with J-Credits, which are public-sector credits certified by the Japanese government.

- 3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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?**

As discussed above, the SSBJ published exposure drafts of the new sustainability disclosure standards. A company subject to those standards shall disclose details of its climate-related

transition plans such as major assumptions and essential factors and conditions of the plans in its annual securities report if the company has such plans.

- 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?**

Participants of the GX-ETS are now subject to GHG reduction targets, with the targets set by the participants.

Other than that, companies are not generally required to set or meet climate-related targets.

The Disclosure Order provides that, if (and only if) companies regard climate change as a material risk to themselves, such companies must set climate-related targets such as GHG emissions targets and state them in their annual securities reports.

- 5 Other upcoming developments / direction of travel**

In October 2023, the government published “[Addressing the Challenges of Financed Emissions](#)”, which summarises the expected role of financial institutions in achieving carbon neutrality and the characteristics of financed emissions, so that funding for innovation and hard-to-abate industry transitions towards decarbonisation can be properly assessed and

promoted. The proposed solutions to the challenges of financed emissions are organised and presented in two categories: 1) methods for calculating and disclosing financed emissions, and 2) methods for disclosing indicators other than “financed emissions”.

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 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 FSA, there is a section titled “Appropriateness of Business Operations related to the Investment Trust Management Business.” Under this section, a subsection titled “Points of Attention with respect to consideration of ESG” refers to the fact that, where an investment trust does not fall under the

category of ESG investment trust, the FSA will monitor to make sure 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, actions 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 (1) stipulate 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 1 - Disclosure Requirements for Social Responsibility

Reports of Listed Companies, and (2) encourage other companies listed on the Shenzhen Stock Exchange to disclose their SR reports.

- (b) [Self-regulatory Guidelines of Shanghai Stock Exchange for Listed Companies No.1 - Standardized Operation](#), which stipulate that companies listed on the “Shanghai Stock Exchange Corporate Governance Sector”, companies listed on both Shanghai Stock Exchange and other jurisdictions 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 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 which have already disclosed ESG reports are exempted from separate disclosure of SR reports. Other companies listed on the SSE STAR Market are also encouraged 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.

- (d) [Self-regulatory Guidelines of Shenzhen Stock Exchange for Listed Companies No.17 - Sustainable Development Report \(Trial\)](#) stipulates that the listed companies included in the “Shenzhen Stock Exchange 100 Index, Growth Enterprise Index, and enterprises simultaneously listed in the Exchanges in China and abroad” shall disclose sustainability reports covering environmental, social and governance topics, including typical and more innovative aspects.
- (e) [Self-regulatory Guidelines of Shanghai Stock Exchange for Listed Companies No. 14 - Sustainable Development Report \(Trial\)](#) stipulates that the listed companies included

in the “Shanghai Stock Exchange 180 Index, STAR 50 Index, and enterprises simultaneously listed in the Exchanges in China and abroad” shall disclose sustainability reports covering environmental, social and governance topics, including typical and more innovative aspects.

- (f) [Self-regulatory Guidelines of Beijing Stock Exchange for Listed Companies No. 11 - Sustainable Development Report \(Trial\)](#) stipulate similar rules as items (d) and (e) above for Beijing Stock Exchange listed companies but they are proposed to be non-mandatory at this stage.

The new guidelines mentioned at paragraphs (d) to (e) above are termed the “**Sustainable Development Report Guidelines**” in this chapter.

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

- (i) key pollutant-discharging entities;
- (ii) enterprises subject to compulsory cleaner production audit;

- (iii) listed companies and their subsidiaries at all levels (to the extent consolidated) that are subject to the provisions of Article 8(1) of the Measures (e.g. those that have breached environmental laws);
- (iv) enterprises issuing enterprise bonds and corporate bonds, and non-financial enterprises issuing debt financing instruments that are subject to the provisions of Article 8 of the MEE Measures; and
- (v) 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 the Shenzhen Stock Exchange and Shanghai Stock Exchange discussed in section A.2(a) to (c) are now mandatory for (1) the listed companies included in the “Shenzhen Stock Exchange 100 Index”, (2) the representative companies listed on the “Shanghai Stock Exchange Corporate Governance Sector”, (3) the Shanghai Stock Exchange listed financial companies, (4) the companies listed on both Shanghai Stock Exchange and other jurisdictions outside the mainland of China, and (5) SSE STAR Market listed companies. They are otherwise voluntary for other listed companies

on the Shenzhen Stock Exchange or Shanghai Stock Exchange.

The disclosure requirements under the Sustainable Development Report Guidelines of the Shenzhen Stock Exchange and Shanghai Stock Exchange (as discussed in section A.2(d) and (e) above) will be mandatory from 2025 for (1) the listed companies included in the “Shenzhen Stock Exchange 100 Index”, (2) the companies listed on “Growth Enterprise Index”, (3) the listed companies included in the “Shanghai Stock Exchange 180 Index”, (4) the companies listed on “STAR 50 Index”, and (5) the companies listed on Shenzhen Stock Exchange or Shanghai Stock Exchange and other jurisdiction outside the mainland of China.

The Sustainable Development Report Guidelines stipulate similar rules for companies listed on the Beijing Stock Exchange, but they are proposed to be non-mandatory. There is no indication of when they may become mandatory.

The requirements under the MEE Measures on environmental disclosure are mandatory for certain enterprises as discussed in section A.2.

4 Which aspects of ESG do the requirements focus upon?

Based on the requirements of the Shenzhen Stock Exchange and Shanghai Stock Exchange as discussed in section A.2(a) to (c), 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 companies subject to the Sustainable Development Report Guidelines of the Shenzhen Stock Exchange and Shanghai Stock Exchange, various environmental, social and governance aspects are covered, including typical and more innovative ESG topics. The environmental aspect mainly includes climate change (including GHG emissions), pollution, biodiversity and ecosystem, resource use and circular economy. The social aspect mainly includes rural revitalization and social contribution, innovation and scientific ethics, supply chain and customer, and worker’s rights. The governance aspect mainly includes corporate sustainable development management system, anti-bribery and anti-unfair competition.

For companies subject to the MEE Measures, 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 annual disclosure of temporary environmental information; 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)?

The regulatory disclosure requirements themselves do not specify any reference to international standards. However, based on a recent analysis by China Association for Public Companies, they share some commonalities with IFRS S1 and IFRS S2 in terms of framework structure, basic concepts, disclosure principles, disclosure framework, and disclosure of climate change issues. This is particularly the case for the Sustainable Development Report Guidelines.

In practice, many companies listed on the Shanghai Stock Exchange or Shenzhen Stock Exchange prepare their ESG/SR reports with reference to the international standards/frameworks such as the GRI standards, ISO26000 and TCFD Recommendations.

6 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

The disclosure requirements of the Shenzhen Stock Exchange and Shanghai Stock Exchange adopt double materiality.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

Based on the latest Sustainable Development Report Guidelines of the Shanghai Stock Exchange and Shenzhen Stock Exchange:

- (a) The disclosing entity should account for and disclose the total GHG emissions during the reporting period and convert the emissions of different GHGs into MTCO₂e. The entity should disclose the emissions categorised into Scope 1 and Scope 2 emissions, and it is encouraged to disclose Scope 3 emissions for those entities that have the conditions to do so.
- (b) The disclosing entity should disclose the standards, methods, assumptions, or calculation tools used to account for GHG emissions, and explain the consolidation methods of the emissions (such as equity

proportion, financial control, operational control, etc.). If there are changes in the accounting standards, methods and assumptions etc. during the reporting period, the reasons should be explained and the specific impacts should be disclosed.

On 18 October 2023, China's MEE issued the [Notice on the Reporting and Verification of Greenhouse Gas Emissions of Enterprises in Certain Key Industries in 2023-2025](#), which stipulates that key emission enterprises, including those with annual carbon emissions of or above 26,000 tCO₂ in key industries such as petrochemicals, chemicals, building materials, steel, non-ferrous metals, paper, and civil aviation, are required to report GHG emissions on the National Carbon Market Information Network. This notice focused on designated emission factors relating to manufacturing and operation, encompassing only Scope 1 and Scope 2 emissions. The notice outlines the reporting verification methods prescribed by the MEE in the [Guidance for Verification of Enterprise Greenhouse Gas Emissions Reporting \(Trial\)](#).

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?

No mandatory requirements. However, the Sustainable Development Report Guidelines

encourage disclosing entities to engage third-party institutions to provide assurance/audit for their greenhouse gas emissions and other disclosed data.

The disclosed information should include the independence of the institution, the relationship with the disclosing entity, experience and qualifications, and the assurance or audit report. The content of the report should include but is not limited to the scope of assurance or audit, the standards used, main procedures, methods and limitations, opinions or conclusions, etc.

9 For companies not subject to mandatory or comply-or-explain ESG reporting, 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 Sustainability Reporting for Chinese Enterprises (CASS-ESG 6.0) and Guidance for Enterprise ESG Disclosure (T/CERDS 2-2022)) in their ESG reports even though they are not mandatory.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? 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, 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.

The guidance on “green investment” and the Green Bond Endorsed Projects Catalogue mentioned in section C.2 below apply in the sustainable finance context.

11 Are there plans to adopt or incorporate the ISSB’s IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

On 27 May 2024, China’s Ministry of Finance released the “Corporate Sustainability Disclosure Standards - Basic Standards (Exposure Draft)” (the **Basic Standards**), marking the gradual establishment of a unified sustainability disclosure standards system for China. The Basic Standards is based on IFRS S1 and is generally consistent with IFRS S1 in terms of information quality characteristics, disclosure elements, and related disclosure requirements, but fully considers China’s national conditions in terms of purpose, scope of application, disclosure objectives, and materiality standards, for example, (1) a “double materiality” perspective is adopted, and (2) “rural

revitalization”, a distinctive Chinese topic has been recognised for disclosure. The Basic Standards have many similarities with IFRS S1, such as the four-pillar framework of “governance, strategy, risk and opportunity management, metrics and targets”, and the content of the fourth chapter on disclosure elements corresponds broadly with the content of IFRS S1. The Basic Standards also adopts the information quality requirements from IFRS S1, that is, reliability, relevance, comparability, verifiability, understandability, and timeliness, which are consistent with Appendix IV of IFRS S1.

Compared with the Sustainable Development Report Guidelines issued by the three major stock exchanges, the impact of the Basic Standards seems to be greater. On the one hand, it is intended that the Basic Standards are not only required to be followed by listed companies but also by non-listed small and medium-sized enterprises; on the other hand, the Basic Standards draw on the international standards of the ISSB, demonstrating China’s efforts to align with international practices in sustainable information disclosure, while including topics with Chinese characteristics.

The consultation period for the Basic Standards ended on 24 June 2024.

Article 3 of the Basic Standards indicates that the corporate sustainable disclosure standards will eventually consist of: basic standards, specific

standards, and application guidelines. The blueprint of China’s corporate sustainable disclosure standards system is structurally similar to that of the ISSB: for example, the basic standards correspond to IFRS S1 (General Requirements), the specific standards correspond to IFRS S2 (Climate-related Disclosures), and the application guidelines correspond to technical support documents like the SASB standards. Drafts of the specific standards have not yet been issued.

See section A.12 below for the intended scope of application of the nationwide standards.

12 Other upcoming developments / direction of travel

The establishment of a nationwide unified sustainable disclosure standards system is an ambitious goal that will be implemented in stages.

The overall objective of China’s Ministry of Finance is to successively introduce the basic standards for corporate sustainable disclosure and climate-related disclosure standards by 2027. By 2030, a basic national unified sustainable disclosure standards system will be essentially established. The requirements for enterprises will also be implemented gradually, with the general approach being to expand from listed companies to non-listed companies, from large enterprises to small and medium-sized enterprises, from qualitative requirements to quantitative

requirements, and from voluntary disclosure to mandatory disclosure.



B. TRANSITION PLANNING

1 Has your jurisdiction set decarbonisation targets and strategies?

China has set clear decarbonisation targets and strategies. The white paper “China’s Policies and Actions on Climate Change” published by the Chinese government details China’s national strategies and actions in response to climate change. China has included the reduction of carbon emission intensity as a binding indicator in the national economic and social development plan, and in the “14th Five-Year Plan,” it has clearly set the target of reducing carbon dioxide emissions per unit of GDP by 18% by 2025 compared to 2020.

In addition, China announced new national autonomous contribution targets, striving to reach the peak of carbon emissions before 2030, and striving to achieve carbon neutrality before 2060. At the same time, China has also set specific targets such as reducing carbon dioxide emissions per unit of GDP by more than 65% by 2030 compared to 2005, increasing the proportion of non-fossil energy in primary energy consumption to about 25%, and a total installed capacity of wind and solar power of more than 1.2 billion kilowatts.

China is also accelerating the construction of the “1+N” policy system for carbon peak and carbon neutrality, formulating top-level design documents and implementation plans for various fields and industries, clarifying the timetable, roadmap, and construction drawing, and comprehensively promoting works in each aspect of carbon peak and carbon neutrality.

2 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

China’s carbon market is composed of mandatory and voluntary markets. The mandatory market mainly targets high-emission industries and enterprises, while the voluntary market encourages enterprises in a wider range of industries to participate. China has not introduced carbon taxes yet (although there are certain tax types which are related to carbon reduction to some extent).

(a) Mandatory Market (ETS)

The Chinese government has launched a mandatory carbon trading market and established a corresponding regulatory framework. On 4 February 2024, the State Council of China promulgated the “Interim Regulations on the Administration of Carbon Emission Trading” (**CET Regulation**) which

is the first specialised regulation in China for combatting climate change and clarifying the market trading system for carbon emission rights.

The regulation mainly focuses on clarifying the mandatory carbon trading system and mechanisms, regulating carbon trading activities, ensuring data quality, and punishing illegal activities. Currently, China’s carbon emissions are mainly concentrated in eight key industries: power generation, steel, building materials, non-ferrous metals, petrochemicals, chemicals, papermaking, and aviation, which account for about 75% of the total carbon dioxide emissions. The national carbon emission trading market has so far included more than 2,000 power companies, accounting for around 40% of the total national carbon dioxide emissions. It is anticipated that the national ETS will further expand its coverage to include more industries, i.e. (i) during the “14th Five-Year Plan” period, the cement, civil aviation, and aluminium electrolysis industries are expected to be included; and (ii) during the “15th Five-Year Plan” period, the steel, papermaking, glass, petrochemical, and chemical industries will be included in a phased manner.

The CET Regulation also stipulates the method of quota allocation, gradually implementing a combination of free

distribution and paid distribution according to national requirements, to control the total carbon emissions and make the carbon price more truly reflect the cost of carbon emission reduction. At the same time, such regulation also strengthens the requirements for data quality to ensure the healthy development of the carbon market.

(b) Voluntary Market

In addition, China has recently relaunched its national GHG voluntary emission reduction trading market known as the China Certified Emission Reduction (CCER) market. The CCER market is for the trading of voluntary carbon credits registered by the MEE, allowing various entities to voluntarily take additional greenhouse gas emission reduction actions and obtain corresponding emission reduction benefits through market sales. Entities can use CCERs to offset a portion of their carbon amount required for clearance obligations under the mandatory ETS market, but the amount for offset would be subject to a maximum percentage, for example, during the first (2019-2020) and second (2021-2022) compliance cycle of ETS, the amount of carbon offset must not be higher than 5% of the company's quota.

In general, the implementation of the CET Regulation has provided a legal foundation for the healthy development of the carbon market and

has opened a new era of rule of law for China's carbon market.

3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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 companies to have transition plans, but certain disclosure requirements on transition planning apply to certain listed companies.

Based on the latest Sustainable Development Report Guidelines discussed in section A.2(d) and (e), the disclosing company should disclose its transition plans, measures, and progress in response to climate-related risks and opportunities, including but not limited to the following content:

- (a) the company's adjustments to current and future strategies, business models, and resource allocation in response to climate-related risks and opportunities;
- (b) the measures that the company has taken or plans to take to improve production processes and update equipment to directly

or indirectly address climate-related risks and opportunities;

- (c) the transition plan formulated by the company to cope with climate-related risks and opportunities, and the basic assumptions relied upon in formulating such a plan;
- (d) the resources provided by the company for the implementation of the transition plan; and
- (e) the progress of the company in implementing the 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?

Based on the latest Sustainable Development Report Guidelines and the discussions in section A.2, the disclosing entity should disclose information related to GHG emission reduction practices, including participation in various emission reduction mechanisms, emission reduction targets, emission reduction measures (such as management measures, financial investment, technological development etc.), and their effectiveness.

The disclosing entity should also disclose its registration and trading status in the national voluntary GHG emission reduction projects and CCERs, and the registration and trading of emission reductions (if any).

When the disclosing entity includes information in the sustainability report that requires estimation or is predictive, such as financial impact and GHG reduction targets, it should be based on reasonable assumptions and premises, and provide adequate risk warnings for significant factors that may affect the accuracy of the estimates or predictions. If there are significant changes to the assumptions and premises upon which the estimates or predictive information is based, they should be disclosed promptly.

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 and low-carbon city construction plan, etc.

The government continues to develop and release regulations on carbon emission, including developing the carbon trading markets (conducting further research on expanding the scope of the national carbon trading market to include industries such as steel, petrochemicals, and building materials, and accelerating the preparatory work for the voluntary emission reduction trading market. Positive progress has been made - the MEE has officially released the first batch of CCER project methodologies) and promoting a carbon emission verification and

reporting system. Further detailed disclosure requirements on carbon emission and relevant transition planning might be considered in the future.



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 advertisements 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 that 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 (PRC) and the printing company was fined RMB 200,000.

In addition, in recent regulatory practices, we have also observed some cases in which the authenticity and accuracy of some environmental-related corporate statements and claims during marketing and sales activities have been concerned or questioned by local regulatory authorities across China. For example, some imported products with inappropriate carbon neutrality labels or statements are required by the market supervision administration of local governments to be removed from shelves due to violation of relevant provisions of the Advertising Law of the PRC.

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

No, but some regulations could be regarded as related to risk management of greenwashing.

Some relevant guidance for “green investment” exists in the finance industry, for example, (a) the Green Investment Guidelines (For Trial Implementation) issued by the Asset Management Association of China in China deals with how to make green investments and defines the scope of green investments, which should include but 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 China Securities Regulatory Commission outlines projects that can be funded by green bonds.

In addition, the Interim Regulations on the Administration of Carbon Emission Trading (effective from 1 May 2024), which regulate carbon emissions trading in the PRC, specify that the key GHG emission entity shall be responsible for the authenticity of its emission data and liabilities arising from its compliance.

3 What are the likely grounds on which such proceedings, actions 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.

For example, 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 the reporting of GHG emissions in accordance with the law. Where key GHG emission entities refuse to fulfill their GHG emission reporting obligations, fabricate, conceal, or omit GHG emission 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 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 in accordance with the Interpretation of the Supreme People's Court and Supreme People's Procuratorate on Several Issues Concerning the Application of Law in the Handling of Criminal Cases of Environmental Pollution and criminal law of the PRC.

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**)¹ 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, **Sustainability Reporting Framework**) issued by Bursa Malaysia Securities Berhad (**Bursa Malaysia**) 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.

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.

¹ Joint Committee on Climate Change members consist of Bank Negara Malaysia, Securities Commission Malaysia, Bursa Malaysia and 21 financial industry members.

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

The Climate Risk Management and Scenario Analysis (CRMSA) also requires financial institutions to produce TCFD-aligned climate disclosure in line with the TCFD Application Guide, and such disclosures shall be published together with annual financial reports for financial years beginning on or after 1 January 2024.

Disclosures on the implementation of principles in relation to the governance, strategy, risk appetite and risk management of financial institutions are currently mandatory, while disclosures on the implementation of principles in relation to scenario analysis and metrics and targets, together with Basic and Stretch recommendations will take effect for financial years beginning on or after 1 January 2024. In particular, disclosures in line with Basic recommendations are to be implemented by June 2024, and Stretch recommendations are to be implemented based on each financial institution's overall climate risk exposure and/or complexity of operations.

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

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, standards issued by the ISSB, European Union's European Financial Reporting Advisory Group and 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 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

The climate-related disclosures required under the TCFD Application Guide and Sustainability Reporting Framework adopts a "single materiality" approach which is consistent with the TCFD Recommendations.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

The TCFD Application Guide sets out mandatory disclosures, in the form of Basic and Stretch Recommendations, which are to be complied with by financial institutions within different time periods. Scope 1, Scope 2 and limited Scope 3 emissions (i.e., business travel and employee commuting) disclosures are required pursuant to the Basic Recommendations under the TCFD Application Guide, while Stretch Recommendations include disclosures for all Scope 3 emissions.

Main market listed companies are also required to make mandatory disclosures on Scope 1, Scope 2 and limited Scope 3 emissions for the financial year ending on or after 31 December

2024. Such requirements are in line with the Basic Recommendations set out in the TCFD Application Guide. TCFD-aligned disclosures, including disclosures for all Scope 3 emissions pursuant to the Stretch Recommendations, would be required on or after the financial year ending on or after 31 December 2025.

There are currently no mandatory disclosure requirements for ACE Market listed companies in respect of absolute Scope 3 emissions. ACE Market listed companies are only required to make disclosures on Scope 1, Scope 2 and limited Scope 3 emissions for the financial year ending on or after 31 December 2026.

There are no requirements under the TCFD Application Guide or the Sustainability Reporting Framework on the measurement methodology. However, disclosures of, among other things, methodologies used to calculate emissions are required.

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such 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.

See section A.11 below on the NSRF Consultation Paper which contemplates mandatory external assurance.

9 For companies not subject to mandatory or comply-or-explain ESG reporting, 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.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? Is it mandatory and what is its scope of application?

The [Climate Change and Principle-based Taxonomy \(CCPT\)](#) issued on 30 April 2021 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 disclosures by financial institutions on the classification of their respective economic activities in line with the CCPT is not currently mandatory, financial institutions submitted the first report on their application of the CCPT in

their classification of economic activities against climate objectives and reporting of lending and investment activities to BNM in August 2022.

The [Principles-Based Sustainable and Responsible Investment Taxonomy \(SRI Taxonomy\)](#) issued on 12 December 2022 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.

The [ASEAN Taxonomy for Sustainable Finance \(ASEAN Taxonomy\)](#) Version 3 issued on 27 March 2024 by the ASEAN Taxonomy Board provides alignment on underlying principles and helps harmonise the classification of sustainable activities and assets across ASEAN. It does not have mandatory application.

11 Are there plans to adopt or incorporate the ISSB's IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

The Advisory Committee on Sustainability Reporting (ACSR) had on 15 February 2024 issued a [public consultation paper on the proposed issuance of a National Sustainability Reporting Framework for Malaysia \(NSRF Consultation Paper\)](#). The NSRF Consultation Paper aims to seek feedback on the use and

application of IFRS S1 and IFRS S2, including the required transition reliefs, to consider the regulatory structure for issuance and oversight of the ISSB Standards.

Given the difference in readiness and maturity of listed and non-listed companies, the NSRF Consultation Paper proposes for IFRS S1 and IFRS S2 with reliefs to be adopted in stages and at different timelines, with IFRS S1 and IFRS S2 to be fully adopted by (i) Main Market listed issuers for annual reports issued for the financial year ending on or after 31 December 2027; and (ii) ACE Market listed issuers and large non-listed companies with revenue of RM 2 billion and above for annual reports issued for the financial year ending on or after 31 December 2029.

At this juncture, the ACSR, via the NSRF Consultation Paper, is seeking feedback on, among other things, (i) whether the proportionality and scalability mechanism for disclosures in accordance with the IFRS S2 and IFRS S1 is sufficient; (ii) whether there are any additional reliefs that should be considered to facilitate the adoption of IFRS S1 and IFRS S2; and (iii) whether companies are ready to use or already using the GHG Protocol (as defined in the ISSB Standards) to calculate its GHG emissions, and if not, what other standard(s) or methodology is being used.

The NSRF Consultation Paper is also currently seeking feedback on whether the following

additional reliefs should be applied (and if so, how long each relief should be provided) in addition to those already identified by the ISSB:

- (a) focus on sustainability-related financial disclosures specifically on principal business segments;
- (b) option not to disclose impacts of sustainability-related and climate-related risks and opportunities on a company's strategy and decision making;
- (c) permissible for a company to use boundaries other than those outlined in Paragraph 29(iv) of the IFRS S2 in respect of GHG emissions; and
- (d) option not to disclose Scope 3 emissions, except for Scope 3 emissions on business travel and employee commuting.

Therefore, at this juncture, it is not confirmed whether Scope 1, 2 and 3 emissions reporting would be mandatory under the IFRS S1 and IFRS S2.

The NSRF Consultation Paper has not indicated if reports prepared in compliance with IFRS S1 and IFRS S2 will be considered as having complied with local ESG reporting rules. The ACSR anticipates that legislative and regulatory amendments may be required to enable adoption of the NSRF by both listed and non-listed companies.

12 Other upcoming developments / direction of travel

The Capital Markets Malaysia, in collaboration with the Department of Natural Resources, Environment and Climate Change, has in October 2023 issued the [Simplified ESG Disclosure Guide for SMEs in Supply Chains](#) which provides 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. There is currently no mandatory adoption timeline for disclosures under the guide. The NSRF Consultation Paper also contemplates shifting the existing voluntary approach to mandatory external assurance. The initial focus for potential mandatory external assurance could be obtaining limited assurance for GHG emissions metrics two years after the adoption of IFRS S2.



B. TRANSITION PLANNING

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. Malaysia government aims to achieve net-zero GHG emissions in 2050.

2 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

The State of Sarawak recently passed the Environment (Reduction of Greenhouse Gases Emission) Ordinance, 2023 (**Ordinance**), which came into effect on 1 March 2024. Under the Ordinance, certain persons or business entities undertaking activities in the oil and gas sector, energy sector, and other economic sectors in Sarawak as may be determined by the Sarawak State Executive Council (Majlis Mesyuarat Kerajaan Negeri Sarawak) are required to submit a carbon emission report to the Controller of Environmental Quality. The Sarawak State Executive Council will in due course establish GHG emissions thresholds in relation to which a carbon levy will be payable as a penalty by any such persons or business entities exceeding such thresholds.

It was also recently announced that two additional taxes will be imposed: a Forest Ecosystem Fee (**FEF**) of 5% on the value of

traded carbon, and an annual land use tax for carbon trading based on the size of the licensed area of such land.

Although Peninsular Malaysia has yet to implement similar carbon taxes, the Ministry of Investment, Trade and Industry recently announced that they are exploring options for carbon pricing, trading and taxation, in anticipation of the European Union (**EU**)’s implementation of the Carbon Border Adjustment Mechanism in 2026 which aims to level the playing field by ensuring that the carbon cost of imported goods matches that of domestically produced goods within the EU.

A voluntary carbon market, the **Bursa Carbon Exchange (BCX)** was established by Bursa Malaysia² and is backed by the Malaysian government, under the purview of the Ministry of Finance and the Ministry of Natural Resources, Environment and Climate Change in December 2022. This platform is the world’s first Shariah-compliant voluntary carbon market, facilitating the trading of carbon credits from accredited nature-based and technology-based projects. The inaugural auction for the BCX was held on 16 March 2023.

The BCX has since expanded its offerings by introducing Renewable Energy Certificates

(**RECs**). The platform plans to introduce continuous trading, including the facilitation of off-market transactions for RECs, by the end of September 2024. The BCX hosted its inaugural auction of RECs on 25 June 2024.

3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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?

Under Malaysian law, there are no mandatory statutory requirements for companies in Malaysia to have in place and/or disclose climate-related transition plans. However, in recent years, Bursa Malaysia has enhanced sustainability reporting requirements in their Main Market Listing Requirements and ACE Market Listing Requirements.³

Bursa Malaysia mandates that Main Market-listed issuers integrate TCFD Recommendations into their sustainability reporting, which covers disclosures on governance, strategy, risk management and metrics and targets. Similarly, ACE Market-listed issuers are required to

² Bursa Malaysia is an exchange holding company and one of the largest bourses in ASEAN.

³ Bursa Malaysia - Bursa Malaysia to Launch Platform for Mandatory ESG Reporting

disclose a basic transition plan towards a low-carbon economy.⁴

These requirements are primarily driven by the alignment with the TCFD and include comprehensive guidelines for companies to report on their strategies for transitioning to a low-carbon economy and managing 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?

There are no mandatory requirements set by the Malaysian Government.

However, as mentioned above, 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 Statements, and for ACE Market-listed issuers to disclose a basic transition plan towards a low-carbon economy.⁵

Further, as mentioned, the TCFD Application Guide for Malaysian Financial Institutions outlines

the key recommendations and provides guidance to assist financial institutions in preparing for climate-related disclosures. The JC3 had previously announced that the TCFD Application Guide will be reviewed in light of the upcoming release of IFRS S1 and IFRS S2 by the ISSB.⁶ However, as of 30 June 2024, although the IFRS S1 and S2 have been released, the JC3 has yet to release its updated TCFD Application Guide.

5 Other upcoming developments / direction of travel

The recently announced Malaysia's Budget 2024⁷ aims to encourage green practices in business operations and to allow an easier transition to adopting green practices through various approaches, which include, among other things, the following initiatives:

- (a) Provision of funding worth RM2 billion to facilitate the national energy transition and to realise the National Energy Transition Roadmap (NETR) aspiration;
- (b) Proposing an additional tax deduction of up to RM300,000 for companies that incur expenses related to Measurement, Reporting,

and Verification in the development of carbon projects (these expenses can be deducted from the income generated from carbon credit sales traded on the BCX);

- (c) Provision of financing funds with a total value of RM200 billion by financial institutions to encourage the industry's transition towards a low-carbon economy; and
- (d) The continuation of efforts to improve the implementation of the Corporate Green Power Programme⁸ as one of the Third Party Access (TPA) model implementation methods, to achieve the target of 70% renewable energy capacity by 2050.

The Government has also announced that they intend to implement TPA in Malaysia's electricity supply industry starting in September 2024, which is expected to allow independent power producers, including renewable energy producers to use the national electricity grid to sell electricity directly to consumers, thus allowing corporate consumers to bypass the need to purchase renewable energy from Tenaga Nasional Berhad (TNB) and providing consumers an

⁴ [Mandatory TCFD Reporting Requirements for Bursa Malaysia Listed Issuers](#)

⁵ 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.

⁶ [Joint Statement by Bank Negara Malaysia and Securities Commission Malaysia: Updates from the 11th Joint Committee on Climate Change \(JC3\) Meeting.](#)

⁷ "Belanjawan 2024 Malaysia Madani: Budget 2024 Speech" issued by the Ministry of Finance Malaysia.

⁸ The Corporate Green Power Programme is a Malaysian initiative that promotes renewable energy use among businesses. It allows companies to procure renewable energy directly from independent power producers through a virtual power purchase agreement with the relevant independent power producer, while ensuring that their energy requirements are fully met by Tenaga Nasional Berhad, the primary electricity utility in Peninsular Malaysia.

additional avenue to increase renewable energy usage.

It has further been announced that the Natural Resources, Environment and Climate Change Ministry is working on a Climate Change Act which will establish a legal framework on climate change mitigation and compliance mechanisms. The Natural Resources, Environment and Climate Change Minister has mentioned the Government will not rush the tabling of the relevant bill, but is looking to table it in 2025. No details on the bill have been made public, but a carbon tax and mandatory ETS are being considered.



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 and the [Guidance Note on Managing ESG Risks for Fund Management Companies](#) 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 and sukuk, SRI-linked sukuk and ASEAN Sustainability-linked bonds and sukuk. Risks of greenwashing are therefore mitigated as the issuances of such bonds and sukuk are regulated by the SC. The [Guidelines on SRI Funds](#) also provides guidance on the disclosure and reporting requirements for SRI funds.

3 What are the likely grounds on which such proceedings, actions 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 comes into effect in stages at the end of 2023 and 2024) encourages financial institutions to use established standards and taxonomies to verify the disclosures made by their customers, as well as leverage 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.

The NSRF Consultation Paper has proposed, among other things, that external assurance be made mandatory for sustainability statements made by companies to avoid greenwashing.

In April 2024, the ASEAN Taxonomy Board, representing ASEAN finance sectoral bodies released the [ASEAN Taxonomy for Sustainable Finance \(Version 3\)](#). Whilst the first version laid out the broad framework of the ASEAN Taxonomy, the second version sets out, among other things, detailed methodologies for assessing economic activities and technical screening criteria for the first focus sector, the energy sector. Version 3 introduces technical screening criteria for two more focus sectors i.e., transportation and storage, and construction and real estate.

MYANMAR

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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 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 report 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 the 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 (**YSX**) 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 are required to disclose beneficial owners and whether they are related to any politically exposed person.

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

The disclosure requirements specified in section 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 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

The disclosure requirements for In-Scope Companies adopt a double materiality approach whereas a single materiality approach applies to YSX-listed companies and financial institutions.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

No.

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?

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

9 For companies not subject to mandatory or comply-or-explain ESG reporting, are voluntary ESG disclosures customary?

No, but a YSX-listed company has been making voluntary disclosure of their sustainability practices and initiatives.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? Is it mandatory and what is its scope of application?

No.

11 Are there plans to adopt or incorporate the ISSB's IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

No.

12 Other upcoming developments / direction of travel

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



B. TRANSITION PLANNING

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 (2018-2030), 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 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?**

No.

- 3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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 section A.1 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, actions 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; and
- (c) claims in tort for misrepresentation.

- 4 Other upcoming developments / direction of travel**

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

NEW ZEALAND

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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 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 (such as 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

- (a) The [Financial Markets Conduct Act 2013 \(FMCA\)](#) requires certain entities to make prescribed climate-related disclosures.
- (b) The regime applies to “Climate Reporting Entities” (**CREs**), comprising: large listed companies (with a market capitalisation of more than NZ\$60 million), large registered banks, large licensed insurers, large credit unions, large building societies, and fund managers with significant assets under management (more than NZ\$1 billion).
- (c) CREs are required to prepare “climate statements” relating to its accounting periods. The climate statements must comply with the “climate-related disclosure framework”, which is made up of a series of “climate standards”.
- (d) The climate-related disclosures regime took effect for accounting periods that started on or after 1 January 2023. This means (for example) that entities with a 30 June balance

date are required to prepare their first climate statement in relation to the accounting period to 30 June 2024.

- (e) 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

- (a) 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.
- (b) 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, economic, governance and social sustainability 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.

- (c) The NZX has published an updated guidance note for issuers that are considering the disclosure of ESG factors under the Code (NZX Guidance). The note aims to help issuers better understand the benefits of ESG reporting and the global reporting regimes available. The note outlines good ESG practices and accepted frameworks for issuers to consider.

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

CREs are required to prepare “climate statements” which must comply with the “climate-related disclosure framework” based on TCFD recommendations, covering governance, strategy, risk management and metrics / targets. The framework is made up of a series of “climate standards” issued by the XRB.

NZX Corporate Governance Code & NZX Guidance

The NZX Guidance encourages good ESG practices for issuers to consider adopting when making ESG disclosures, focusing on the impact of ESG factors on business models, management of ESG risks and the transition to a low carbon economy.

FMA Disclosure Framework

The FMA Disclosure Framework outlines the type of disclosure that the FMA would expect to see from issuers of “integrated financial products”. It focuses on the “fair dealing” provisions in Part 2 of the FMCA and the framework notes that the fair dealing provisions apply broadly and the FMA will consider whether the conduct or disclosure is likely to mislead or confuse as perceived by the investor. The framework also focuses on how performance against non-financial factors is measured and

evidenced, the monitoring and governance framework relevant to non-financial factors and associated risks with the integrated financial products.

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 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

The mandatory climate reporting regime explicitly approaches materiality as double materiality. The New Zealand Climate Standard 3 (**NZ CS 3**) defines information as “material” if omitting, misstating or obscuring it could reasonably be expected to influence decisions that primary users make on the basis of an entity’s climate-related disclosures. This broad definition of “materiality” requires an entity to consider the context it operates in (i.e., an entity’s geographical location, its industry sector, or the state of the economy), whilst also considering the size of ESG impacts against

measures of the entity’s financial position, performance and cash flows.

The NZX Corporate Governance Code and NZX Guidance infer that the approach to materiality is single materiality. By way of example, the NZX Guidance specifies that issuers may wish to explain the relevance of ESG factors to their business, and the material ESG risks faced by the business.

The FMA Disclosure Framework infers that the approach to materiality is double materiality. The FMA expects that an integrated financial system requires organisations to consider the impact of their activities on the environment, communities and individuals, alongside traditional financial factors. This also requires organisations to identify ESG risks for their business and to disclose how these will impact the business’ financial performance.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

Yes, there are requirements for the disclosure of GHG emissions by CREs in their climate statements.

CREs must disclose emissions for Scope 1, Scope 2 (calculated using the location-based method) and Scope 3 emissions. However, there is an exemption from this requirement for the first year – although disclosure of Scope 3 emissions is encouraged, it is not required until the climate statements for the accounting period commencing during calendar 2024.

In the mandatory climate reporting “climate standards”, the XRB recognises globally accepted standards such as the GHG Protocol Corporate Accounting and Reporting Standard and ISO 14064-1 for GHG emissions measurement and reporting. However, the XRB does not mandate a specific GHG emissions measurement approach, but requires CREs to disclose the standards they use. The XRB has determined through consultation and analysis that different measurement standards can yield comparable results. Therefore, CREs must transparently disclose their chosen standards under the XRB's guidelines.

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such 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 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 (i.e., the [Standard on Assurance Engagements 1](#), issued by the XRB on 3 August 2023). 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.

9 For companies not subject to mandatory or comply-or-explain ESG reporting, 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.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? Is it mandatory and what is its scope of application?

The three standards (listed above in section 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”; and “scope 3 emissions”.

In July 2024, the Centre for Sustainable Finance: Toitū Tahua (CSF), an industry body, prepared a recommendations report for developing a sustainable finance taxonomy for New Zealand. CSF had been tasked by the New Zealand Government to convene an Independent Technical Advisory Group to prepare and publish

non-binding advice on the design of a taxonomy and provide its recommendations to the Minister of Climate Change.

11 Are there plans to adopt or incorporate the ISSB’s IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

The XRB has stated that it is committed to paying close attention to the ISSB’s work including IFRS S1 and S2. The XRB has acknowledged the need to enable New Zealand entities to report in a globally consistent matter. To that end, they will continue to engage with the ISSB and monitor their work.

A post-implementation review of New Zealand Climate Standards will commence in December 2025 where the XRB will consider aligning with requirements in international standards if they meet user needs and the objective of New Zealand Climate Standards.

12 Other upcoming developments / direction of travel

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



B. TRANSITION PLANNING

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 Commission recently consulted on its discussion document on its review of the 2050 target, to ensure that it remains fit for purpose. The advice by the Climate Change Commission is expected to be delivered to the Minister of Climate Change and published before 21 December 2024.

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. This year, the Climate Change Commission will also be delivering advice on the fourth emissions budget period (2036 to 2040) and whether emissions budgets one, two and three (covering 2022 to 2035) should be revised.

At the time of this advice, the Government has set the first three 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 Māori, 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 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

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:

- (a) requires emitters to measure and report on their greenhouse gas emissions;
- (b) requires emitters to surrender one “emissions unit” (known as an NZU) to the Government for each one tonne of emissions they emit; and
- (c) 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 companies to have in place and/or disclose climate-related transition plans? 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 New Zealand Climate Standard 1.

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

None.



C. GREENWASHING RISKS

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

Whilst 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) **Z Energy:** Proceedings against Z Energy have been lodged in the High Court by Lawyers for Climate Action New Zealand and Consumer New Zealand for greenwashing. The claimants submit that Z Energy has made numerous claims which give the impression that it is attempting to significantly reduce its emissions and mitigate its contribution to the climate crisis, despite being New Zealand’s second largest greenhouse gas emitter. Lawyers for Climate Action originally complained to the Commerce Commission, who acknowledged the issues in the complaint, but declined to investigate. Lawyers for Climate Action therefore seek a Declaration from the High Court which will hold Z Energy accountable and will clarify the

law on greenwashing in NZ (November 2023),

- (b) **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).
- (c) **Kiwipure** was fined NZ\$162,000 under the [Fair Trading Act 1986 \(FTA\)](#) for using unsubstantiated claims relating to their water filtration system (the claims were based on anecdotal evidence and assumptions rather than reliable scientific methods) (February 2020).
- (d) **Fujitsu** was fined NZ\$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, **Christchurch Airport** chose to remove the words “climate positive” in relevant advertisements following a complaint made to the ASA regarding greenwashing (January 2024).



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

No, but the general prohibitions under the FMCA and FTA will apply (see our comments under section C.3 below).

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

3 What are the likely grounds on which such proceedings, actions 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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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, which has been incorporated as **Section 153 of the Manual of Regulations for Banks**.

- (e) SEC regulations governing the issuance of **green, social, sustainability, sustainability-linked, and blue 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?

- (a) 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 (i.e. from 2023), the

SEC has yet to issue a regulation to formalize this.

- (b) The reporting requirements under the CG Code for PCs & RIs and the CG Code for ICRCs apply on a comply or explain basis.
- (c) The requirements under the BSP's Sustainable Finance Framework are mandatory.
- (d) The reporting requirement under SEC regulations concerning green (including blue), social, sustainability, and sustainability-linked bonds, and SRI funds are mandatory.

4 Which aspects of ESG do the requirements focus upon?

- (a) The SEC's Sustainability Reporting Guidelines focus on economic, environmental (including climate) and social issues.
- (b) The CG Code for PCs & RIs and the CG Code for ICRCs focus on economic, environmental, social, and governance issues.
- (c) 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)?

- (a) 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.

- (b) 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 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

- (a) The SEC's Sustainability Reporting Guidelines focus on impact materiality.
- (b) The CG Code for PCs & RIs and the CG Code for ICRCs focus on impact materiality.
- (c) The BSP's Sustainable Finance Framework focuses on single materiality.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

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". The

Sustainability Reporting Guidelines do not prescribe any specific measurement methodology for calculation of Scope 1 and Scope 2 emissions. However, they provide guiding principles for disclosures, including that disclosures must be consistent over time, be comparable among companies within a sector, industry or portfolio, and be reliable, verifiable and objective.

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such 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 and verification are strongly encouraged under SEC rules governing the issuance of blue 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.

9 For companies not subject to mandatory or comply-or-explain ESG reporting, are voluntary ESG disclosures customary?

No, voluntary ESG disclosures are not customary in the Philippines. However, 22% of listed companies disclosed their sustainability reports to the SEC as of 2017, even prior to the adoption of the SEC's Sustainability Reporting Guidelines.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? 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 (rather than set rules detailing requirements) on identifying activities that contribute to supporting sustainable development, with a focus on addressing the impacts of climate change.

The [Philippine Sustainable Finance Taxonomy Guidelines \(SFTG\)](#) were formulated through collaborative efforts between the BSP, the SEC and the IC. It serves as an overarching guide for the financial sector and its stakeholders to operationalize the Guiding Principles. The SFTG serves as a tool to classify whether an economic activity is environmentally and socially sustainable and guides different stakeholders in making

informed investment or financing decisions. SEC regulated entities are directed to deepen understanding and familiarity with the SFTG and are encouraged to take into consideration its provisions and prescribed standards. On the other hand, banks shall be given until end-December 2024 to deepen understanding and familiarity in applying the SFTG. Starting 2025, the BSP will collect information related to the use of the SFTG.

The SEC's rules on green (including blue), social and sustainability bonds identify categories of projects eligible to be financed by proceeds from the issuance of said bonds. The list of eligible projects, while indicative, captures the most commonly used types of projects supported or expected to be supported by the market for these types of bonds.

11 Are there plans to adopt or incorporate the ISSB's IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

In late 2023, the SEC issued for public comment a [draft memorandum circular on the Revised Sustainability Reporting Guidelines for Publicly Listed Companies \(Revised Sustainability Reporting Guidelines\)](#), but subsequently deferred its implementation. It was later reported that the SEC is looking to issue a new

memorandum circular later this year, applicable to data covering the year 2024, with reporting due in 2025.

Based on the draft memorandum circular, the Revised Sustainability Reporting Guidelines:

- (a) integrate IFRS S1 and IFRS S2 in the reporting requirements;
- (b) requires the submission of sustainability reports in two formats - the SR Narrative and the Sustainability Report (**SURE**) Form; and
- (c) includes Scope 3 GHG emissions as a recommended disclosure.

Separately, the Philippine Sustainability Reporting Committee (**PSRC**) has been established to evaluate ISSB Standards for local use and to issue local interpretation and guidance. The PSRC is preparing a jurisdictional roadmap for the adoption of IFRS S1 and S2 in the Philippines. In a private sector forum hosted by the PSRC, it was disclosed that the PSRC is looking at separate timelines for adoption, first, for listed companies and universal and commercial banks, and subsequently, for large corporations and other types of banks.

While the SEC is represented in the PSRC, it appears that the roll out of the Revised Sustainability Reporting Guidelines will not necessarily coincide with the adoption of the ISSB Standards as part of financial reporting of covered entities.

12 Other upcoming developments / direction of travel

The roll out of the Revised Sustainability Reporting Guidelines and the adoption of the ISSB Standards need to be carefully considered and coordinated in order to avoid imposing multiple requirements on covered entities and to adequately prepare them for compliance.



B. TRANSITION PLANNING

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: (i) Ecological and Environmental Stability; (ii) Climate-Smart Industries and Services; (iii) Sustainable Energy; and (iv) 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.

The STFG (discussed in section A.10) seeks to operationalize the Philippine Sustainable Finance Roadmap.

2 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

There is currently no carbon trading market in the Philippines. However, a [bill](#) has been filed in the Philippine Senate (the upper house of Congress) for a domestic cap and trade system, with provisions on emission reduction measures and targets, cap on GHG, allowances, and the establishment of a carbon trading system. A counterpart bill has also been filed in the House of Representatives (the lower house of Congress). Based on available reports, it is undergoing refinement by a Technical Working Group. Under the bills, annual emission/avoidance targets, including the sectors and levels to be covered, will be determined annually by the President of the Philippines through the recommendation of a steering committee.

Earlier this year, the Secretary of Finance acknowledged, during the Technical Working Group Meeting for Preparing Carbon Pricing Instruments for the Philippines, the need for a study of carbon pricing instruments (including a

carbon tax and an emissions trading system) and the optimal mix thereof.

3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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.

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.

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 (i) the organization's governance around climate-related risks and opportunities; (ii) the actual potential impacts of these climate-related risks and opportunities;; (iii) how the organization identifies, assesses, and manages climate-related risks; and (iv) the metrics and targets used to assess and manage relevant climate-related risks and opportunities.

5 Other upcoming developments / direction of travel

Please refer to the response to section A.12.



C. GREENWASHING RISKS

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

A group of consumers filed a case before the Department of Trade's Fair Trade Enforcement Bureau against certain manufacturers of fast-

moving consumer goods, alleging false or misleading recyclability claims on the plastic packaging of the respondents. One respondent has agreed to settle the case. In news reports on the settlement, said respondent stated that it is compliant with applicable laws and regulations, but recognized opportunities to improve labelling to comply with the Extended Producer Responsibility Act of 2022 (**EPR Act**), the Consumer Act and other relevant guidelines. The case is still pending as to the other respondents.

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, blue, 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, actions 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 name 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 EPR Act, 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.

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**
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?

Mandatory ESG disclosure requirements apply to listed companies, large non-listed companies, funds with an ESG focus, and financial institutions in Singapore:

- (a) **Issuers listed on the Singapore Exchange (SGX).** SGX-listed issuers are required to prepare an annual sustainability report containing the following primary components on a “comply or explain” basis:
 - (i) material environmental, social and governance factors, (ii) climate-related disclosures (which are mandatory for certain

issuers; please see further details in section A.3); (iii) setting out sustainability policies, practices, performance and targets in relation to material ESG factors; (iv) sustainability reporting framework; and (v) a board statement.

Issuers are also required 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 progress in their annual reports.¹

Aside from mandatory disclosures, 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.²

Pursuant to recommendations by the Sustainability Reporting Advisory Committee (**SRAC**), which was formed by the

¹ Please refer to SGX Listing Rule 710A of the Mainboard Rules and the Catalist Rules, read together with Practice Note 7.6 on the Sustainability Reporting Guide.

² “Starting with a Common Set of Core ESG Metrics” (SGX, April 2023).

Accounting and Corporate Regulatory Authority (**ACRA**) and Singapore Exchange Regulation (**SGX RegCo**)³:

- (i) From FY2025 onwards, all listed issuers will be required to make annual ISSB-aligned climate disclosures.
- (ii) Large non-listed companies (**NLCos**), i.e. companies with an annual revenue of at least S\$1 billion and total assets of at least S\$500 million, are also required to make annual ISSB-aligned climate disclosures from FY2027 onwards.

Additionally, effective from FY2026, these climate disclosures must be made either as part of the annual report, or included in a separate report published at the same time. In FY2027, ACRA will further review whether to mandate climate reporting by smaller NLCos limited by shares with annual revenue of at least S\$100 million to less than S\$1 billion.

- (b) **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.

Under the Circular, a scheme whose name includes or uses ESG-related or similar terms such as "sustainable" or "green" should reflect such an ESG focus in its investment portfolio and/or strategy in a sustainable manner, and comply with the guidelines in the Circular.

- (c) **Financial institutions (FIs).** Under [MAS' Guidelines on Environmental Risk Management \(Guidelines on Environmental Risk Management\)](#) 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 framework, so as to enhance market discipline by investors. FIs are to implement the Guidelines in a manner commensurate with the size and nature of its activities as well as its risk profile.

The Guidelines also sets out MAS' supervisory expectations for FIs, including 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.

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

- (a) **Climate-related disclosures.** Climate reporting is presently required on a "comply or explain" basis for all SGX-listed issuers, and is mandatory from FY2024 for issuers in the (i) financial industry; (ii) agriculture, food and forest products industry; (iii) energy industry; (iv) materials and buildings industry; and (v) transportation industry. Climate reporting will be mandatory for all listed

³ "Climate reporting to help companies ride the green transition" (SGX Group, 28 February 2024).

issuers by FY2025 and for large NLCos by FY2027.⁴

- (b) **Sustainability reporting for issuers listed on SGX.** SGX RegCo has proposed to enhance the requirement for issuers to describe the issuer’s sustainability practices with reference to six primary components from a “comply or explain” basis to a mandatory basis in the [Sustainability Reporting: Enhancing Consistency and Comparability consultation paper \(SGX Consultation Paper\)](#) dated 7 March 2024.
- (c) **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.
- (d) **FIs.** The Guidelines on Environmental Risk Management set out MAS’ 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.

- (e) **Sector-specific entities.** 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’ requirements on retail ESG funds also include other ESG factors.

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

- (a) **Transition from TCFD to ISSB standards.** At present, SGX-listed issuers are required to report climate-related disclosures in accordance with the recommendations of the TCFD. SGX RegCo announced in the SGX Consultation Paper that it will incorporate the ISSB Standards for climate-related disclosures into the SGX Listing Rules. SGX-listed issuers will hence be required (from FY2025) to progress from reporting in accordance with the recommendations of the TCFD to reporting in accordance with the ISSB Standards to the extent practicable. It is proposed that issuers also apply the requirements in IFRS S1 insofar as they relate to the disclosure of information on climate-related risks and opportunities.
- (b) **FIs.** MAS further intends to set out a roadmap for mandatory disclosure requirements by financial institutions based on the ISSB Standards.
- (c) **ESG metrics for reporting.** SGX also recommends a [list of 27 core ESG metrics](#) for

⁴ Page 4, “Turning Climate Ambition into Action in Singapore—Response to the Public Consultation on Sustainability Reporting Advisory Committee’s Recommendations” (February 2024).

issuers to use as a starting point for sustainability reporting, with each metric mapped against globally accepted reporting frameworks such as the GRI; SASB; the TCFD recommendations; and the World Economic Forum’s recommended set of metrics and disclosures.

6 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

The disclosure requirements applicable to SGX-listed companies adopt a single materiality approach in line with the TCFD recommendations. However, issuers may choose to adopt an additional standard of materiality, including a double materiality approach, if they consider that it serves their stakeholders’ needs.⁵ This position is likely to remain the same following the transition to the ISSB Standards. Similarly, the requirements applicable to financial institutions follow a single materiality approach in line with ISSB Standards.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

There are currently no mandatory requirements for the disclosure of GHG emissions. However, under the [SRAC Climate Reporting Roadmap](#):

- (a) **Scope 1 and 2 GHG emissions.** SGX-listed issuers and large NLCos must disclose both Scope 1 and Scope 2 GHG emissions under ISSB-aligned standards from FY2025 and FY2027 onwards, respectively. Some exemptions in respect of ISSB-aligned disclosures apply to NLCos whose parent company already makes climate disclosures. Around 2027, ACRA will review the need to mandate Scope 1 and 2 GHG emissions disclosures for smaller NLCos.
- (b) **Scope 3 GHG emissions.** It is currently not mandatory for companies to report Scope 3 GHG emissions in Singapore.

However, under the [SRAC Climate Reporting Roadmap](#), SGX-listed issuers and in-scope large NLCos will be required to report Scope 3 GHG

emissions from FY2026 and at least FY2029 onwards, respectively.

The required measurement methodology is in line with IFRS S2.

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?

There are currently no external/ third-party assurance requirements for ESG reporting in Singapore. However, there are some [internal assurance requirements](#) by SGX for issuers.

SGX and ACRA have accepted the [SRAC Climate Reporting Roadmap](#) recommendation to require SGX-listed issuers and large NLCos to conduct external limited assurance on their Scope 1 and 2 GHG emissions. However, SGX does not propose to mandate external assurance until details on assurance standards and registration criteria for climate auditors are finalised.

9 For companies not subject to mandatory or comply-or-explain ESG reporting, are voluntary ESG disclosures customary?

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

⁵ See [Practice Note 7.6 on the Sustainability Reporting Guide](#).

Where they do make voluntary disclosures, non-publicly listed companies tend to refer to sustainability reports published by listed companies.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? Is it mandatory and what is its scope of application?

In 2023, the Green Finance Industry Taskforce (GFIT), convened by MAS, published the [Singapore-Asia Taxonomy for Sustainable Finance \(Taxonomy\)](#), which guides financial institutions in Singapore to identify and transition towards green activities across eight focus sectors. It has introduced a “traffic light system” to classify the degree of environmental damage that certain activities pose, as well as a “measures-based approach” that seeks to encourage capital investments into decarbonisation measures or processes to reduce emissions intensity of activities.

The MAS has stated that investing in Taxonomy-eligible activities is not mandatory, nor is the Taxonomy an exhaustive list. It 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.⁶

11 Are there plans to adopt or incorporate the ISSB’s IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

Yes, both IFRS S1 and S2 will be adopted. As of 28 February 2024, SGX RegCo has affirmed that it will incorporate IFRS S1 and IFRS S2 into the SGX Listing Rules. Issuers may also make reference to other reports published by the same entity, in alignment with the ISSB Standards. The section on balanced reporting in the Sustainability Reporting Guide, as set out in Practice Note 7.6 of the Mainboard Rules and Practice Note 7F of the Catalist Rules, will be aligned with ISSB Standards. The proposed amendments to the reporting regime are undergoing consultation and is expected to be finalised before the end of the year.

SGX RegCo will not mandate the use of ISSB Standards for sustainability-related disclosures beyond climate-related disclosures at this stage. SGX [proposes](#) to review the application of the

ISSB Standards for disclosure of sustainability-related information beyond climate-related disclosures (e.g. biodiversity, human capital, etc.) a few years later.

MAS intends to set out a roadmap for mandatory disclosure requirements by FIs based on both IFRS S1 and S2 standards.

12 Other upcoming developments / direction of travel

(a) **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.⁷ 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) **Sustainable finance taxonomy.** Following four taxonomy consultation papers, GFIT launched the [Taxonomy](#) for FIs in December

⁶ “Green Finance Industry Taskforce: Identifying a Green Taxonomy and Relevant Standards for Singapore and ASEAN” consultation paper.

⁷ See “Green FinTech” by the MAS.

2023. The taxonomy’s applicability and scope are still in the works.

(c) **Green Skills Committee.** In February 2023, the Ministry of Trade and Industry, in partnership with SkillsFuture Singapore, set up a Green Skills Committee to build the training framework and programmes for sustainability reporting and assurance. One of the programmes, the Enterprise Sustainability Programme by Enterprise Singapore, supports small and medium enterprises (SMEs) to build their sustainability capabilities, and provide workshops and a playbook for sustainability reporting for SMEs.⁸

(d) **Code of Conduct for ESG rating agencies.** On 6 December 2023, MAS issued the finalised [Singapore Code of Conduct for ESG Rating and Data Product Providers](#), and an accompanying [checklist](#) for ESG rating and data product providers to self-attest their compliance to the Code of Conduct.⁹ This Code of Conduct aims to establish baseline industry standards for transparency in methodologies and data sources, governance, and management of conflicts of interest that

may compromise the reliability and independence of ESG ratings and data products.



B. TRANSITION PLANNING

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.¹⁰

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.

The Singapore Government is concurrently developing Singapore’s 2035 Nationally Determined Contribution, including plans to consult stakeholders.¹¹

2 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

Singapore has been engaging likeminded countries in carbon trading on a bilateral basis under Article 6 of the Paris Agreement. This is underpinned by legally binding Implementation Agreements, which will require carbon credit developers to make a monetary contribution equivalent to 5% share of proceeds towards the host countries’ adaptation actions and/or UNFCCC Adaptation Fund.

Singapore has a carbon tax. As of 2024, the [carbon tax rate](#) is at S\$25 per tonne, with a view to be raised to S\$45 per tonne in 2026 and 2027, and eventually S\$50 to S\$80 per tonne by 2030.

⁸ “MTI COS 2023 – Supporting businesses and workers in our journey to a green economy” (Ministry of Trade and Industry, 28 February 2023).

⁹ “MAS Publishes Code of Conduct for Providers of Environmental, Social, and Governance Rating and Data Products” (MAS, 6 December 2023).

¹⁰ “Singapore Commits to Achieve Net Zero Emissions by 2050 and to a Revised 2030 Nationally Determined Contribution; Public Sector and Jurong Lake District to Lead The Way with Net Zero Targets” (Ministry of Sustainability and the Environment, 25 October 2022).

¹¹ “Written Reply to Parliamentary Question on Public Consultation on Singapore’s Nationally Determined Contribution” (Ministry of Sustainability and the Environment, 3 April 2024)

Additionally, from 2024 onwards, eligible taxable facilities can now use high quality International Carbon Credits to offset up to 5% of their taxable emissions.

The National Climate Change Secretariat Singapore has **identified** Singapore as a potentially attractive carbon credits trading destination for international sectoral carbon trading schemes, such as the Carbon Offsetting and Reduction Scheme for International Aviation. The Secretariat is hence studying opportunities arising from Singapore's development as a carbon services and trading hub, encouraging incumbent firms and entrants alike to use Singapore as a regional gateway for carbon services.

3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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

climate-related disclosures in line with TCFD recommendations, and subsequently based on the ISSB Standards (please see response to section A.2 above).

On 8 September 2023, SGX RegCo **affirmed** that the disclosure of transition plans by issuers is important to fulfil the growing interest from investors and other stakeholders on how the issuer intends to meet its climate ambitions. SGX RegCo has provided guidance on its expectations for credible climate transition plans. However, this has not been made mandatory.

FIs can voluntarily put in place transition plans. In 2023, MAS issued a set of consultation papers proposing **guidelines on transition planning for FIs (Proposed Transition Planning Guidelines)**. The Proposed Transition Planning guidelines is intended to provide further guidance on additional granularity in relation to the transition planning processes of FIs. These consultation papers focus on FIs' internal strategic planning and risk management processes to prepare for risks and potential changes in business models associated with the 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?

Please see section B.3. There is no mandatory requirement to set climate-related targets. Nevertheless, the ISSB Standards, and **TCFD Recommendations**, include disclosing targets used by the organisation to manage climate-related risks and opportunities and performance against such targets.

5 Other upcoming developments / direction of travel

(a) **Green Plan 2030.**¹² 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 outlined in section B.2 above.

(b) **Guidelines on transition planning for FIs.** Given the urgency to fulfil net zero

¹² "Charting Singapore's Low-carbon and Climate Resilient Future" (National Climate Change Secretariat, Strategy Group, Prime Minister's Office).

commitments amidst the worsening effects of climate change, Singapore has placed greater emphasis on adapting business models to rising temperatures. MAS has expressed that FIs have both the means and motive to do so. It released the [Proposed Transition Planning Guidelines](#) in 2023 to communicate its supervisory expectations for FIs to allocate appropriate resources and commence adaptive action as soon as possible.

- (c) **Transition Credits.** In September 2023, MAS and McKinsey & Company jointly published a [working paper](#) setting out how high-integrity carbon credits (**Transition Credits**) may be utilised as a complementary financing instrument to accelerate and scale the early retirement of coal-fired power plants. MAS has since [announced](#) two pilot projects to facilitate the retirement of coal plants.



C. GREENWASHING RISKS

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

In December 2023, the Advertising Standards Authority of Singapore (**ASAS**) made the nation's first ruling against a company for making misleading environmental claims about a product.

The advertisement in question involved an electronics retailer advertising its air-conditioner as a “best tip” to “save Earth”, depicting an influencer setting the air-conditioner to 23 degrees Celsius to do so.

ASAS requested that the retailer remove the advertisement as it breached the Singapore Code of Advertising Practice (**SCAP**) guidelines. The SCAP guidelines require advertisements not to mislead by “inaccuracy, ambiguity, exaggeration or omission”, and not to misrepresent any matter likely to influence consumers’ attitudes to the product. The retailer maintained that it did not violate said guidelines, but nonetheless complied with the request in furtherance of its “cooperative stance towards ASAS”. Although the SCAP guidelines are not legally binding, this ruling signals a move towards greater greenwashing accountability for companies in Singapore.

On 15 February 2023, Market Forces, a climate activist group in Australia, filed a complaint to the SGX against a power generator for not fully disclosing risks related to its US\$300 million bond issue on SGX in 2022, notably of:

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

In March 2022, the Competition and Consumer Commission of Singapore (**CCCS**) awarded a grant to researchers from the Centre for Governance and Sustainability at the National University of Singapore Business School to look into greenwashing on e-commerce websites in Singapore. The [research survey](#) indicated that there may be a need to update and clarify existing laws and regulations to protect consumers.

Following the publication of findings from the CCCS-funded study, in November 2023, the CCCS advised suppliers on the making of environmental claims on e-commerce websites which found the use of vague environmental claims and confusing technical jargon on such websites. Please see the response in section C.2 below.

The CCCS is developing a set of guidelines to provide greater clarity to suppliers on the environmental claims that could amount to unfair practices under the Consumer Protection (Fair Trading) Act and will seek public feedback on the guidelines in due course.

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 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 abovementioned [Singapore Code of Advertising Practice](#) requires all advertisements to be legal, decent, honest, and truthful. Although this is not legally enforceable, it may be used by the ASAS against unsubstantiated environmental product claims.
- The CCCS has also issued [non-binding advice](#) to suppliers to:
- (a) Be specific in their environmental claims presenting any qualifying or supporting information accurately and clearly alongside such claims;
 - (b) Avoid making claims that would imply or convey an overall impression that the environmental benefit of the product is more than it is; and
 - (c) Ensure that all environmental claims can be substantiated with valid and credible evidence.

On 16 November 2023, the CCCS [announced](#) that it is currently developing a set of guidelines to help companies make fair and accurate claims about the “green” credentials of their products. In the meantime, it has expressed that the onus is on businesses to be transparent and abstain from misleading consumers using technical jargon and vague claims.

The CCCS has created a set of [guidelines](#) to raise awareness among consumers of greenwashing and other false environmental claims when buying products.

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

Please see the response in section 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.

Separately, the CCCS has released a [Guidance Note on Business Collaborations Pursuing Environmental Sustainability Objectives](#). This Guidance Note clarifies that certain agreements pursuing collaboration on environmental sustainability objectives may be found anti-competitive and hence prohibited under the Competition Act, such as those involving market-sharing or imposing output limitations. The

CCCS has adopted a streamlined two-phase approach to assess and identify such agreements.

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.

Please see the response in section C.1 on the development of guidelines by the CCCS to help companies make fair and accurate claims about the “green” credentials of their products.



SOUTH KOREA

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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 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. 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. In 2021, KRX released the “ESG Disclosure Guidelines” to encourage companies to voluntarily disclose ESG information.

Korea Composite Stock Price Index (**KOSPI**) constituents are required to issue corporate governance reports covering 10 core principles of corporate governance.

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

As major economies enhance their ESG disclosure requirements, the South Korean government is also developing disclosure requirements to assist domestic companies in complying with the escalating global ESG standards.

Although the announcement of details of the ESG disclosure system and the timeline for its introduction have been delayed, the Korea Sustainability Standards Board (**KSSB**) released draft ESG disclosure standards (**KSSB Disclosure Standards**) in April 2024. The final KSSB Disclosure Standards will be released by the end of the year and are expected to be implemented after 2026.

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

The corporate governance report mentioned above adopts a comply-or-explain approach. Other than this, there are currently no ESG-related disclosure requirements that apply on a mandatory or comply-or-explain basis.

4 Which aspects of ESG do the requirements focus upon?

The “ESG Disclosure Guidelines” released by KRX require disclosure of environmental, social and governance aspects.

The draft KSSB Disclosure Standards consist of three parts:

- (a) No. 1 (General Requirements for Sustainability-related Financial Information Disclosures);
- (b) No. 2 (Climate-related Disclosures); and
- (c) No. 101 (Additional Disclosures for Policy Purposes).

The first two standards are mandatory for companies, while the third is optional. Under standard No. 2, companies are required to prioritize and disclose climate-related information among ESG factors.

Companies may select and disclose information about sustainability-related risks and opportunities other than climate-related information.

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

The “ESG Disclosure Guidelines” published by KRX summarize and provide companies with key ESG factors based on GRI.

The draft KSSB Disclosure Standards are based on IFRS S1 and S2 and have been modified to reflect the circumstances of domestic companies. The KSSB has stated that it established these disclosure standards to provide useful information to investors, considering international harmonization and acceptability to companies.

In addition, many companies voluntarily adopt a variety of international reporting standards, such as GRI, SASB, TCFD, and others.

6 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

The draft KSSB Disclosure Standards are based on the ISSB Standards and therefore adopt a single materiality approach, requiring disclosure of information for investors.

The definition of “material information” in the KSSB Disclosure Standards is consistent with the definition in K-IFRS, the accounting standards aligned with IFRS by the Korea Accounting Standards Board. Accordingly, the KSSB Disclosure Standards state that information is material if omitting, misstating or obscuring that information could reasonably be expected to influence decisions that primary users of reports make on the basis of those reports.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

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

Additionally, in accordance with Article 16, Paragraph 8 of the [Development of and Support for Environmental Technology Act](#), all central administrative agencies, local governments, public institutions, national and public universities, local public corporations, regional public corporations, local medical centers, management companies under Article 27, Paragraph 1 of the [Framework Act on Low Carbon, Green Growth](#), listed companies with total assets of KRW 2 trillion or more on a consolidated basis, and green companies (as designated by the Minister of Environment for their efforts in reducing pollutants, saving resources and energy, and improving environmental performance) are required to register and submit environmental information through the Environmental Information Disclosure System. The system categorizes disclosures into mandatory and voluntary topics, and disclosure of GHG emissions (Scope 1, 2, and 3) is voluntary.

However, according to an announcement in October 2023, Scope 1 and 2 will become mandatory disclosures in the future, whilst Scope 3 will be phased in gradually. See expected enhancements to the system mentioned in section A.12 below.

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?

There are no national laws or regulations that directly require third-party verification or assurance of the content of ESG disclosures; however, most companies choose to pay for third-party assurance at their own expense.

9 For companies not subject to mandatory or comply-or-explain ESG reporting, are voluntary ESG disclosures customary?

Yes, many companies voluntarily disclose their ESG information using various global initiatives and guidelines (GRI, SASB, TCFD, etc.), and the number of companies publishing sustainability reports has increased significantly. According to the KRX ESG portal, 131 companies had published sustainability reports in 2022, and this number increased to 161 in 2023.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? Is it mandatory and what is its scope of application?

In April 2021, the Ministry of Environment established the Korean Green Taxonomy (**K-taxonomy**) under the Environmental Technology and Environmental Industry Support Act. In December 2021, the Ministry released the “The Korean Green Taxonomy (K-Taxonomy) Guideline”, which outlines principles and criteria for categorizing green economic activities within the K-taxonomy framework. Whilst this guideline is not legally binding, it sets out the standards for identifying green economic activities.

The guidelines were revised in December 2022, adding nuclear power and climate change adaptation-related economic activities to the list of green economic activities, and a detailed K-Taxonomy explanation document was released.

11 Are there plans to adopt or incorporate the ISSB’s IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

As mentioned above, the draft KSSB Disclosure Standards are based on IFRS S1 and S2 and are currently in draft form.

Regarding the scope and timeline, in January 2021, the Financial Services Commission announced plans to implement ESG disclosure requirements in a phased manner. Specifically, it stated that these requirements would apply to listed companies of a certain size (e.g., more than KRW 2 trillion in assets) starting in 2025, and to all listed companies on the KOSPI from 2030. However, in October 2023, mandatory ESG disclosure requirements under the KSSB Disclosure Standards were postponed to 2026 onward, and the asset size classification of applicable companies and the specific timing of the introduction will be determined later.

12 Other upcoming developments / direction of travel

(a) KSSB Disclosure Standards Exposure Draft Released (April 2024)

KSSB is currently conducting a consultation to collect opinions from various stakeholders till August 2024.

(b) Environmental Information Disclosure System Reorganization (scheduled to be released in October 2023, but has been delayed)

Key revisions include:

- (i) changing the reporting entity from a site-by-site basis to a corporate entity to align with global ESG standards;

- (ii) enhancing the provision of environmentally responsible investment information based on the K-taxonomy; and
- (iii) mandatory disclosure of essential items such as GHG emissions (Scope 1 and 2 only; Scope 3 will be phased in), with non-core information excluded or consolidated.



B. TRANSITION PLANNING

1 Has your jurisdiction set decarbonisation targets and strategies?

Yes – to reduce [Korea’s carbon emissions by 40% before 2030](#) (compared to levels in 2018).

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

2 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

In May 2012, the Emissions Trading Act was enacted, and in January 2015, the KRX launched

the emission trading market (**K-ETS**). Based on the Emissions Trading Act, the K-ETS is a mandatory compliance market applicable to “business entities eligible for allocation”.

The Korean government has issued its GHG emission reduction targets roadmap, and accordingly allocates mandatory GHG reductions targets and emissions allowance for trading to companies whose GHG emissions exceed a certain scale, that can be traded through the emission exchange. In short, there is a mandatory compliance market for certain companies whose average total GHG emissions produced during the preceding three years are not less than 125,000 tons of comparable CO2 equivalents (CO2-eq) or with at least one place of business that has produced 25,000 tons of comparable CO2 equivalents (CO2-eq) during the preceding three years.

K-ETS’ participants are government-designated companies and market makers designated by the government. They are Korea Development Bank, Industrial Bank of Korea, Hana Financial Investment, Korea Investment & Securities, SK Securities, KB Securities, Shinhan Securities, and NH Investment & Securities.

There are also voluntary carbon markets in Korea, including a voluntary carbon market opened by the Korea Chamber of Commerce and Industry (**KCCI**), which is a leading organization in the voluntary carbon market in Korea. KCCI

opened a carbon emission verification and evaluation service in March 2023. Currently, KCCI is working to ensure the reliability of credits by registering with the international standard of ICAO CORSIA.

3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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 to have or disclose a climate-related transition plan.

The draft KSSB Disclosure Standards contemplate disclosure of any climate-related transition plans, including information on the key assumptions and the factors on which the company’s transition plan relies. The transition policy disclosure method and details have not yet been finalized.

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 plans to enact the KSSB Disclosure Standards with respect to mandatory disclosure based on the ISSB Standards after 2026. As noted above, the draft version, which is based on IFRS S1 and S2, was released by the KSSB earlier this year and require the disclosure of any climate-related targets which the entity has set and is required to set under law.

5 Other upcoming developments / direction of travel

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



C. GREENWASHING RISKS

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

(a) In March 2024, Climate Solutions filed a complaint against eight companies (SK Corporation, SK Siltron, SKC, SK i-Technology, SK Telecom, SK hynix, POSCO, and POSCO Holdings) for violations of the Labelling and Advertising Act and the Environmental Technology Industry Act. The

complaint alleges that these companies falsely advertised that by paying the Green Premium, a system that verifies the use of renewable energy by charging an additional fee on top of the electricity bill, they had reduced GHG emissions. Climate Solutions claims that the Green Premium does not actually reduce GHG emissions and that advertising it as such is misleading. The complaint was submitted to the Korea Fair Trade Commission and the Korea Environmental Industry and Technology Institute.

(b) In February 2023, the Ministry of Environment issued an administrative guidance against SK Enmove's advertisement of carbon-neutral lubricants. SK Enmove had 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. However, given that the advertisement and product sales had already been suspended, it was ultimately merely administrative guidance, which is not enforceable and merely serves as a recommendation to be careful about the

use of related terms in the future. The Korea Fair Trade Commission had decided not to prosecute.

(c) In March 2022, the Korea Fair Trade Commission decided not to prosecute SK E&S for an advertisement that claimed to “usher in the era of eco-friendly LNG” after an environmental organization filed a complaint. The KFTC ruled that the advertisement was not false or exaggerated because it was about future plans.

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” stipulate specific examination criteria for unfair labels and advertisements related to the environment, including greenwashing.

The “Guidelines for Labelling and Advertising of Eco-friendly Business Activities” provide examples on greenwashing.

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

Relevant grounds include:

- (a) breaches of “Guidelines for Labelling and Advertising of Eco-friendly Business Activities” – e.g. by providing false or exaggerated information about the environmental performance of a product and firm’s disclosure;
- (b) breaches of the Act on Fair Labelling and Advertising and Guidelines for Examination of

Environmentally Related Labels and Advertisements – e.g. by providing false or exaggerated information about the environmental performance of a product; and

- (c) liability under the Financial Investment Services and Capital Markets Act– e.g. by providing materially false or misleading

information in listing documents or other corporate disclosure documents.

4 Other upcoming developments / direction of travel

There are no significant developments at this time.



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 Ministry of Environment (**MOE**) (formerly the Environmental Protection Administration) are required to report their GHG emissions each year by submitting relevant data to the registry of the MOE, and the data submitted must be verified by a certified verification institute. The MOE has announced the businesses which are in-scope: [Businesses Subject to Accounting and Registration of Greenhouse Gases Emission Sources \(List of Regulated GHG Emission Sources\)](#), - see section A.7 below for more detail.

Previously, the CCRA provided for the implementation of the accounting and reporting of GHG emissions in two phases, in which specific fields of businesses were regulated in turn. With the amendment of the List of Regulated GHG Emission Sources on 31 May 2023, all businesses stipulated in the List of Regulated GHG Emission Sources that meet the relevant threshold (i.e., 25k tonnes of GHG emissions) are subject to accounting, reporting, and verification requirements. Under the [Regulations for Management of Inventory, and Registration of Greenhouse Gases](#) amended on 14 September 2023, the regulated businesses are required to submit GHG emissions accounting report by 31 March of each year and the verification of the GHG accounting results by 31 October of each year. The reported data is publicly accessible on the [MOE's Platform on GHG Emission Amount](#).

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 (by 31 August of each year starting in 2024) 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 NT\$10,000 to NT\$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 the climate change on the company, and 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.

Based on the Roadmap for Taiwan Listed Companies to Align with IFRS Sustainability Disclosure Standards released by FSC on 17 August 2023, starting in 2026, listed companies that reach a certain threshold of paid-in capital will be required to apply the ISSB Standards for the preparation of their annual reports. Such required disclosure will be based on both IFRS S1 and IFRS S2. See section A.11 below for more detail.

6 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

The FSC guidelines adopt a single materiality approach.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

Further to section A.2 above, in the case of entities subject to the List of Regulated GHG Emission Sources, mandatory disclosure of GHG emissions applies to Scope 1 and Scope 2 emissions, whereas disclosure of Scope 3 emissions is encouraged but not mandatory. Entities subject to the List of Regulated GHG Emission Sources include the following: (i) all businesses in Taiwan whose Scope 1 GHG emissions reach 25k tonnes per year, and (ii) all manufacturing businesses in Taiwan whose Scope 1 and Scope 2 GHG emissions altogether reach 25k tonnes per year.

The accepted measurement methodologies under the [Regulations for Management of Inventory, and Registration of Greenhouse Gases](#) include emission factors method, mass balance method, direct measurement, and any other measurement methods approved by the MOE.



8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?

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

9 For companies not subject to mandatory or comply-or-explain ESG reporting, 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 realise that ESG investing is able to boost their portfolios and profitability.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? 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 include 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 labelled as “sustainable”.

11 Are there plans to adopt or incorporate the ISSB’s IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

In July 2023, the FSC announced that the government plans to adopt the ISSB Standards in the annual reporting requirements applicable to listed companies.

Starting from 2026, listed companies that reach a certain threshold in paid-in capital will be required to prepare reports based on both IFRS S1 and IFRS S2. The FSC proposes to apply the requirements in three phases starting in 2026 (for listed companies with a paid-in capital of NT\$10 billion or more), 2027 (for listed companies with a paid-in capital of at least NT\$5 billion but no more than NT\$10 billion), and 2028 (all listed companies). The specific dates for the requirement to take effect have not been confirmed by the FSC.

12 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

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 four main strategies in energy, industry, lifestyle, and social transition. Similarly, the CCRA codifies this commitment of decarbonisation and sets out the net-zero emissions as Taiwan's long-term goal to be attained by 2050.

2 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

There is currently no mandatory carbon trading market in Taiwan. To facilitate a voluntary carbon exchange scheme, the MOE announced on 1 July 2024, the Regulations on Carbon Credit Trading, Auction, and Transfer, which will take effect on 15 August 2024.

Pursuant to the CCRA, it is also expected that a trading market for voluntary reduction quotas will be established soon. According to the CCRA,

businesses may propose voluntary reduction projects to implement GHG reduction measures, and apply to the MOE for approval to obtain emission credits (**GHG Credits**), which should be used in accordance with the requirements and time period set by the MOE. The MOE promulgated on 12 October 2023 the [Greenhouse Gas Voluntary Emission Reduction Projects Regulations](#) (for the implementation of the scheme on GHG Credits) and the [Regulations for the Management of Offsetting the Increased Greenhouse Gas Emissions](#) (for the implementation of the GHG offset scheme described above).

On 1 July 2024, the MOE published drafts of the: (a) Regulations Governing the Collection of Carbon Fees; (b) Designated Greenhouse Gas Reduction Goal for Entities Subject to Carbon Fees; and (c) Regulations for Administration of Self-Determined Reduction Plan. The MOE expects to officially promulgate the three drafts by August 2024. A carbon fee scheme will apply to electricity businesses and manufacturing businesses that emit over 25k tonnes of Scope 1 and Scope 2 GHG emissions per year.

3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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.

The draft Designated Greenhouse Gas Reduction Goal for Entities Subject to Carbon Fees and Regulations for Administration of Self-Determined Reduction Plan do not require the regulated businesses to set climate targets or have a transition plan in place. However, the drafts encourage the regulated businesses to propose voluntary emission reduction projects to apply for a reduction in carbon fees based on the Science Based Targets Initiative standard. The MOE expects to officially launch the carbon fee scheme by August 2024.

As noted in section A.11 above, listed companies will be required to adopt the IFRS S2, which covers climate-related disclosures, including any transition plans.

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 disclose, set or meet climate-related targets.

However, to reduce the impact of climate change caused by new or changed “GHG Sources” (i.e., businesses on the List of Regulated GHG Emission Sources), under the CCRA, businesses with new or changed GHG Sources that reach a certain scale are required to carry out incremental GHG offsets by a certain percentage. For the implementation of the GHG offset scheme described above, the MOE promulgated the [Regulations for the Management of Offsetting the Increased Greenhouse Gas Emissions](#) on 12 October 2023. See section B.2 above for details.

5 Other upcoming developments / direction of travel

Based on the 2050 Net Zero Pathway and [12 Key Strategies](#), to achieve the 2050 net zero emission goal, it is expected that high emitting sectors (e.g., cement, steel and petrochemicals) would start to transition 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 conducts are 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, actions 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 the meaning of 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 will be introduced following the enhancement of the disclosure requirement.

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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 (**SEC**) 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, Principles for Responsible Investment and the Equator Principles.

At the end of 2023, the BOT issued an **industry handbook** to assist financial institutions in implementing their environmental and climate change risk policies. The BOT will begin monitoring and assessing the adoption of the policy by financial institutions in 2024, with this process continuing thereafter. In the initial phase, financial institutions will conduct self-assessments

in accordance with the policy and the industry handbook.¹

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

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.

The disclosure guidelines for SRI Funds contain mandatory disclosures in relation to ESG.

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, and 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 Standards.

6 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

The disclosure requirements under the SEC Reporting Guide adhere to a double materiality approach, while the disclosure guidelines for SRI Funds focuses on impact materiality.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

Yes. The SEC Reporting Guide requires disclosure of direct and indirect GHG emissions with a measurement standard that is internationally recognized (e.g., ISO 14064-1:2018). At present, the disclosure requirements only apply to Scope 1 and Scope 2 GHG emissions.

¹ Financial institutions should establish an evaluation process to measure the success of implementation plans within the organization’s risk appetite framework. This includes setting clear targets and key performance indicators for effective assessment and monitoring. Examples include setting targets for environmentally

friendly funding within a specified timeframe or establishing science-based emission reduction targets (Item 3.2.2 (2), BOT Policy).

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?

There are no mandatory assurance requirements.

9 For companies not subject to mandatory or comply-or-explain ESG reporting, 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.

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? Is it mandatory and what is its scope of application?

Thailand Taxonomy, Phase 1 was 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.

Thailand Taxonomy, Phase 2 is currently under development and will be applicable on a voluntary basis to the manufacturing, agriculture, real estate, construction and waste management sectors. A public hearing **will be conducted** in the fourth quarter of 2024.

11 Are there plans to adopt or incorporate the ISSB's IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

No, we are not aware of any plans from Thai regulators to officially adopt the ISSB Standards at the policy or regulatory level.

However, the SEC has issued a guide on best practices for managing and disclosing climate-related risk management for asset managers, which aligns with the TCFD recommendations. Additionally, the SEC has **supported** the Chartered Financial Analyst (**CFA**) Institute in issuing the Guidance for Integrating ESG Information into Equity Analysis and Research Report. This suggests that the SEC may adopt the ISSB Standards in the near future.

12 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 have been used as the main reference guide.



B. TRANSITION PLANNING

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.

Currently, under the draft of the new Alternative Energy Development Plan for 2024 and the new Energy Efficiency Plan for 2024, [the target for renewable energy is set to increase 36% by 2037](#).

2 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

Yes. Thailand has a voluntary carbon trading market. The Thailand Voluntary Emission Reduction 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 companies to have in place and/or disclose climate-related transition plans? 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 a requirement for listed companies to disclose plans (if any) to achieve any environmental targets (including GHG emission targets) and social targets they have set. This disclosure requirement is voluntary.

Furthermore, listed companies may voluntarily align with the Thailand taxonomy to demonstrate their commitment 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?


There are mandatory requirements, though their applicability is somewhat piecemeal:

- (a) The SEC Reporting Guide does not require listed companies to set or meet climate-related targets, except that the listed companies are recommended to disclose their GHG emission targets.
- (b) 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 the 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, there is a draft climate change bill which aims to provide stakeholders with certainty



regarding GHG emission mitigation and adaptation plans through a national GHG inventory, including mandatory reporting for certain state agencies, designated private sector actors and providing guidelines on buying and selling carbon credits. Specifically, the draft bill introduces the following mechanisms in relation to carbon pricing:

- (a) **Emission trading system:** The Department of Climate Change and Environment, under the Ministry of National Resources and Environment, will prepare an emission allocation plan. Regulated entities can request an allocation of the GHG emission allowances to be traded in accordance with Thailand's securities and stock exchange laws.
- (b) **Carbon tax system:** This system will require industrial manufacturers, producers or importers of goods to pay a carbon tax levied on goods. The carbon tax amount will be based on the assessed quantity of GHG emissions over the goods' lifecycle.

The draft bill has passed a public hearing and is under consideration by the Cabinet.

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, Thailand Taxonomy Phase 1 provides clear and standardized criteria for classifying and labelling sustainable economic activities. Also, the SEC's

disclosure guidelines for SRI Funds set out measures to prevent greenwashing.

3 What are the likely grounds on which such proceedings, actions 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 a 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?

Circular 96 requires that certain companies make public disclosures in respect of the environment and society, including in connection with GHG emissions, resource management, energy consumption, water consumption, compliance with laws on environmental protection, policies related to employees and responsibility to the local community.¹

These disclosures are essentially imposed on public companies (whether listed or not), companies that publicly offer or have corporate bonds listed and securities companies.

Decree 47 requires state-owned enterprises to publicly report on the 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 of employees in the enterprise.

Decree 08 requires companies that issue green bonds to make annual public disclosures on the assessment results of environmental benefits of projects that use capital raised from the issuance of green bonds.³

¹ Circular No. 96/2020/TT-BTC (Ministry of Finance, 11 November 2020) provides guidelines on disclosure of information on securities market (Circular 96), Appendix IV.

² Decree No. 47/2021/ND-CP (Government, 1 April 2021) elaborates on some articles of the law on enterprises (Decree 47), Form No. 4 in Appendix II.

³ Decree No. 08/2022/ND-CP (Government, 10 January 2022) (Decree 08), Article 157.6(a).

Moreover, there are voluntary tools, such as the Vietnam Sustainability Index (whose constituents are the 20 listed companies with the highest 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, with specific categories skewed more towards environmental than social aspects. Decree 47 has a significant focus on social responsibility.

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

The following international standards are common frameworks that have influenced Vietnam's sustainability reporting requirements as well as relevant guiding documents to varying degrees (though IFRS S1 and IFRS S2 are not featured):

- (a) GRI Standards;
- (b) International Finance Corporation;
- (c) International Integrated Reporting Council;
- (d) ISO 26000:2010; and
- (e) SASB standards.

6 How do the disclosure requirements approach materiality (e.g. single or double materiality)?

The current regulations of Vietnam, through Circular 96 and Decree 47, can be viewed as adopting an impact materiality approach with certain elements of double materiality.

7 Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.

GHG-emitting establishments are specified in lists issued by the Prime Minister (**Specified Establishments**) and categorised by sector. These establishments are heavy emitters subject to GHG inventory (every two years) and, in this way, make GHG disclosures (inventory method,

operation figures and emissions). Although the lists of Specified Establishments are publicly available, this is not the case for GHG inventory which is disclosed to the Ministry of Natural Resources and Environment (**MONRE**). The Government is meant to report GHG inventory at national and sector level through the websites of climate change and sector authorities,⁴ though these announcements have not yet been made.

Circular 96 (described in section A.2 above) imposes disclosure requirements in respect of GHG emissions, being total direct and indirect GHG emissions and measures and initiatives to reduce GHG emissions (which are public).

8 Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?

No.

9 For companies not subject to mandatory or comply-or-explain ESG reporting, are voluntary ESG disclosures customary?

No.

⁴ Decree No. 06/2022/ND-CP (Government, 7 January 2022) providing regulations on greenhouse gas emission reduction and ozone layer protection (Decree 06), Article 11.1(dd).

10 Has your jurisdiction issued or adopted a taxonomy on sustainable activities? 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 have been motivating the implementation of such classification. The ASEAN Taxonomy for Sustainable Finance may form a suitable basis and enterprises may adopt this for their voluntary disclosures.

11 Are there plans to adopt or incorporate the ISSB's IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.

Vietnam currently follows Vietnam Accounting Standards and not IFRS. The Ministry of Finance plans to apply, on a compulsory basis, IFRS from 2025 in respect of (a) parents of State-owned enterprises, (b) listed companies, (c) large-scale and unlisted public companies, and (d) other large-scale companies.⁵

In so far as IFRS S1 and IFRS S2 are concerned, there is no indication that this will be applied when IFRS is adopted. There has been no formal indication by regulators that reports prepared in compliance with IFRS S1 and IFRS S2 will result in compliance with local disclosure requirements. It is anticipated that guidance would be given at the time.

12 Other upcoming developments / direction of travel

It is expected that reporting will be impacted by the general trajectory of Vietnam towards achieving ESG goals as this would encourage broader ESG participation and disclosure.

External influences include Vietnam's foreign trade and investment partners. An example of this, from a trade perspective, is the fairly recent EU-Vietnam Free Trade Agreement (**EU-VFTA**), which encourages trade between the EU and Vietnam and, therefore, disclosure requirements imposed on EU entities would be expected to have an impact on disclosures by their Vietnamese trading partners / exporters, at least to the relevant EU company if not publicly or to any authority.

The EU Carbon Border Adjustment Mechanism is expected to have a similar effect.

Similarly, foreign investors and financiers may have certain requirements imposed on them that would require disclosure by investee companies to these investors and financiers.



B. TRANSITION PLANNING

1 Has your jurisdiction set decarbonisation targets and strategies?

Yes. At the 26th United Nations Climate Change Conference of the Parties in December 2021, Vietnam set a goal of achieving net zero emissions by 2050.

Various efforts have been undertaken by the Government to achieve this and, notably, in July 2022 the Government issued the National Climate Change Strategy to 2050, under Decision No. 896/QD-TTg dated 26 July 2022 of the Prime Minister, which sets out as a general target that Vietnam will reduce GHG emissions under the goal of net zero emissions by 2050. The specific goals include ensuring that:

- (a) by 2030, total national GHG emissions are reduced by 43.5%;
- (b) by 2035, emissions peak will be reached; and
- (c) by 2050, total national GHG emissions reach a net zero emissions increase.

⁵ Decision No. 345/QD-BTC (Ministry of Finance, 16 March 2020).

The National Climate Change Strategy to 2050 sets out the strategies for reducing GHG emissions for each sector. For example, the energy sector promotes clean energy development, economical and efficient energy usage and the use of breakthrough technology solutions.

The Vietnamese Government has also developed Power Development Plan 8 (**PDP8**) which aims to foster renewable energy projects and reduce GHG emissions. Under PDP8, Vietnam sets a goal, among others, of reducing GHGs caused by electricity production to about 204 - 254 million tonnes from 2030, and to about 27 - 31 million tonnes from 2050. Further, the electricity generation sector must prioritize the construction of projects contributing to reducing GHGs (e.g., biomass, electricity produced from trash, solid waste, cogeneration).⁶

In respect of GHG emissions, in 2023 the Ministry of Industry and Trade also issued Decision No. 947/QD-BCT on approving the Annual Plan for Implementation of Vietnam's Low Emission Energy Program II, aiming to, among other objectives, reduce GHG emissions in the energy and industrial sectors.⁷

2 Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?

Recently, Vietnam has issued Resolution No. 98/2023/QH15 (National Assembly, 24 June 2023) on the “pilot implementation of particular policies for the development of Ho Chi Minh City” (**Resolution 98**). Under the pilot scheme, carbon credits from projects funded by the Ho Chi Minh City competent authority can be traded with domestic and international investors. All revenue from these transactions will be allocated to the budget of the relevant competent authority and will be utilised to assist with responses to climate change and sustainable economic development.⁸

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 and Kon Tum Province have each sought approval for similar pilot projects.

Additionally, Vietnam has adopted plans to develop a carbon credit trading market, which

will encompass a mandatory ETS together with quality management programs, cleaner production programs and environmental protection programs. Commencing from 2025, Vietnam will pilot a carbon credit exchange with the aim of, by the end of 2027, establishing regulations on carbon credit management, the exchange of GHG emission quotas and carbon credits, and the operational framework for carbon credits. From 2028 onwards, the carbon credit exchange should officially operate with regulations in place to connect the domestic carbon market with regional and global carbon markets.⁹ There are no regulations on the mandatory ETS as yet and given that enterprises in (i) industry and trade, (ii) transport, (iii) construction, and (iv) natural resources are subject to GHG inventory,¹⁰ we assume that these may be subject to the mandatory ETS.

Furthermore, Vietnam has joined the following in relation to carbon exchange schemes:

- (a) **Clean Development Mechanism (CDM):** Vietnam has joined the Kyoto Protocol, thereby implementing the CDM and on a gradual basis through various projects. CDM allows countries to sell certified emissions

⁶ PDP8, Sections II.2(b) and V.1.

⁷ Decision No. 947/QD-BCT (the Ministry of Industry and Trade, 18 April 2023) on approving Annual Plan (October 2022 – September 2023) for Implementation of Vietnam Low Emission Energy Program II.

⁸ Resolution 98, Article 5.10.

⁹ Decree 06, Article 17.

¹⁰ Decision No. 01/2022/QD-TTg (Prime Minister, 18 January 2022) on sectors and establishment subject to GHG inventory.

reduction (**CER**) credits to other countries in order to meet reduction targets set out in the Kyoto Protocol. As of October 2023, Vietnam has 262 CDM projects;

(b) **Bilateral Clearing Credit Mechanism (JCM):**

This is a bilateral arrangement between Vietnam and Japan entered into on July 2013 through a memorandum of understanding on “Low-carbon Growth and Building JCM Joint Credit Mechanism.” Under the JCM, Japanese enterprises consult and transfer energy-saving and emission-reducing technologies to Vietnamese enterprises, and then the amount of CO₂ reductions will be calculated for benefit the Japanese enterprises; and

(c) **Partners for the Implementation of Carbon Markets (PMI):** From 2021–2030, Vietnam will continue to participate in the PMI initiated by the World Bank to form and develop a carbon market.

There has been no development in respect of carbon taxes, which currently do not apply in Vietnam.

3 Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? 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?

The Law on Environment Protection¹¹ requires Specified Establishments (as mentioned in section A.7) to (a) formulate and implement annual GHG emission reduction plans set by MONRE (though these have not yet been developed), and (b) integrate GHG emission reduction activities with quality management programs, cleaner production programs and environmental protection programs. There are applicable standards and guidance (not requiring social impact assessments). The reduction plan regime includes a reporting mechanism to MONRE, other related ministries and ministerial-level agencies and the provincial People’s Committee, with annual reporting thereafter (which is not public). There are currently no penalties promulgated for failure to meet emission reduction.

For public (and certain other) companies, the annual report required under Circular 96 (see section A.2 above) contains certain disclosure requirements on initiatives to reduce GHG emissions.

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).¹²

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, see section B.3 above for mandatory requirements for transition and mitigation planning. From 2026 onwards there will be specific quotas for this mitigation planning.

5 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

¹¹ Law on Environment Protection No. 72/2020/QH14 (National Assembly, 17 November 2020), as amended on 14 November 2022 (Law on Environment Protection), Article 91.7.

¹² Law on Environment Protection, Articles 92.3(b) and 92.5.

sustainable business” with (a) general objectives relating to 17 sustainable development goals by 2030 and (b) specific objectives relating to sustainability awareness. Other notable directives include Decision No. 2068/QD-TTg approving “the development strategy of renewable energy of Vietnam by 2030 with a vision to 2050” and Decision No. 1266/QD-TTg approving “the development strategy of construction materials in Vietnam for the period of 2021 – 2030, with a vision to 2050”. These broader decisions encourage corporate transition planning by impacting the economy as a whole.

Vietnam’s approach is to encourage investment into greenfield and brownfield projects that are in transformative technologies resulting in low GHG emissions as well as encouraging participation in mechanisms and modes of cooperation on lowering GHG emissions.

For private enterprises specializing in sustainable development (i.e., circular economy model, inclusive business model), Vietnam has developed a program of mechanisms and support in terms of technology, intellectual property, digital transformation solutions, finance and similar

areas.¹³ Specifically, regarding financial support, competent Vietnamese authorities must research and develop financial and credit products and services for these enterprises as well as launch an information platform connecting sustainable enterprises with credit institutions and investors.¹⁴ It is expected that sustainable enterprises will be entitled to certain incentives in raising capital for their sustainable projects and business activities, though financial support has only been planned for the initial period of 2022 – 2025 with further support subject to future policy. Although there is, admittedly, a lack of clarity in practice this illustrates a positive intention.

Apart from the State, market participants have been placing increased focus on ESG with media attention on those companies making positive strides. There is a growing corporate culture of setting ESG goals.

External influence by way of Vietnam’s trading and investment partners will increasingly affect the local market, driven by requirements of their home jurisdiction as well as voluntary positions adopted. Foreign investors are placing greater

emphasis on investee companies transitioning. As described in section A.5 above, the EU-VFTA is an example in connection with trade.



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 Competition,¹⁵ Law on Advertising,¹⁶ Law on Protection of Consumer’s Benefits,¹⁷ Law on Securities¹⁸ and the Penal Code¹⁹ regulate false information about products or the enterprise

¹³ Circular No. 13/2023/TT-BKHDT (Ministry of Planning and Investment, 12 December 2023) guiding the Program to support private enterprise for sustainable business in the period 2022 – 2025 (Circular 13), Articles 12, 13 and 14.

¹⁴ Circular 13, Article 11.

¹⁵ Law on Competition No. 23/2018/QH14 (National Assembly, 12 June 2018).

¹⁶ Law on Advertising No. 16/2012/QH13 (National Assembly, 21 June 2012), as amended on 20 November 2018.

¹⁷ Law on Protection of Consumer’s Benefits No. 59/2010/QH12 (National Assembly, 17 November 2010), as amended on 20 November 2018.

¹⁸ Law on Securities No. 54/2019/QH14 (National Assembly, 26 November 2019).

¹⁹ Penal Code No. 100/2015/QH13 (National Assembly, 10 July 2017), as amended on 20 June 2017.

itself. The Civil Code²⁰ allows for claims by those suffering harm.

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

The above-mentioned principal laws would allow for proceedings, actions or investigations to be instituted based on 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 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. The needs of trade partners and foreign investors are also expected to play a role.

²⁰ Civil Code No. 100/2015/QH13 (National Assembly, 24 November 2015).

GLOSSARY

Term	Description
Carbon credits	Tradable credits (representing 1 ton of carbon dioxide equivalent) generated through voluntary emissions reduction activities. Carbon credits can represent emissions reductions achieved through either avoidance (preventing GHG emissions from entering the atmosphere) or removal (taking GHGs from the atmosphere). Carbon crediting mechanisms include those administered by international organisations (e.g. Kyoto Protocol (including the Clean Development Mechanism)), non-governmental organisations (e.g. Verra and Gold Standard) and governments.
Carbon tax	A fee levied by a government on covered entities for their GHG emissions, with the government setting the price of emissions (the tax rate).
Comply-or-explain	An approach to disclosure whereby a company must either report on a provision or, if it does not, provide considered reasons for not doing so.
Double materiality	An approach to disclosure which assesses materiality by reference to information that is necessary to understand the reporting entity's impacts on sustainability matters (impact materiality) and sustainability matters that could reasonably be expected to affect its financial prospects (financial materiality).
ESG	Environmental, social and governance.
ETS or emissions trading system	In an ETS, the government places a limit on the amount of GHG emissions from covered entities. Typically, entities must surrender emission units (or allowances) to cover their emissions within a compliance period. Each emission unit represents the right to emit a certain volume of emissions and can be traded between covered entities or sometimes with other traders. The carbon price in these systems is usually a function of supply and demand for emission units.
FY	Financial year.

Term	Description
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 Protocol	Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard (2004).
GRI	Global Reporting Initiative, an international independent standards organisation founded by, amongst others, the United Nations Environmental Programme, to develop sustainability reporting standards.
GRI Standards	A set of interrelated sustainability reporting standards that enable organisations to report publicly on their economic, environmental and social impacts and contribution towards sustainable development developed by the Global Sustainability Standards Board of the GRI.
IFRS S1	General Requirements for Disclosure of Sustainability-related Financial Information published by the ISSB in June 2023.
IFRS S2	Climate-related Disclosures published by the ISSB in June 2023.
IOSCO	International Organization of Securities Commissions.
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.
ISSB Standards	IFRS S1 and IFRS S2.
SASB	Sustainability Accounting Standards Board, a non-profit organisation, founded in 2011 to develop sustainability accounting standards. In August 2022, the ISSB assumed responsibility for the SASB standards.
Scope 1 emissions	Direct GHG emissions that occur from sources that are owned or controlled by the reporting entity.
Scope 2 emissions	Indirect GHG emissions from the generation of purchased or acquired electricity, steam, heating or cooling consumed by the reporting entity.

Term	Description
Scope 3 emissions	All indirect GHG emissions (not included in Scope 2) that occur in the value chain of the reporting entity, including both upstream and downstream emissions.
Single materiality	An approach to disclosure which assesses materiality by reference to sustainability matters that could reasonably be expected to affect the reporting entity's prospects (financial materiality).
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. On October 12, 2023, the TCFD fulfilled its remit and disbanded, passing responsibility for monitoring the progress of companies' climate-related disclosures to the International Financial Reporting Standards Foundation.
TCFD Recommendations	The recommendations of the Task Force on Climate-related Financial Disclosures issued by the TCFD in June 2017.
Transition plan	A transition plan is 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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