



WHITE PAPER

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The impact of ESG (environmental, social & governance) laws, regulations, and obligations has increased in recent times at an almost incomprehensible rate. This is particularly true in the Asia-Pacific (“APAC”) region. Within APAC, the breadth and extent of recently introduced requirements and obligations are catching some companies off guard, and many are now expending significant resources to “catch up” with their obligations, which often differ country by country.

Enforcement actions and proceedings involving ESG elements are also increasing substantially throughout APAC, with regulators, stakeholders, and nontraditional claimants (including environmental groups) bringing extensive and demanding claims before decision-makers, often publicly, with devastating reputational and financial impact. Unfortunately, the superlatives here are not overused, particularly within APAC jurisdictions where substantial activities by legislatures, regulators, and courts mean that entities are faced with diverse obligations across a number of jurisdictions. Keeping up to date is a noble and unrelenting endeavor.

In this inaugural Jones Day quarterly *APAC ESG Update*, our extensive team of lawyers across the APAC region set the ESG scene by country (in alphabetical order) with an overview of current requirements and obligations and follow with recent and notable activities, including in the areas of litigation and disputes, legislative and regulatory developments, and policy developments.

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Overview

In Australia, there is heightened enforcement activity (including public, private, and activists/stakeholders), with substantial proposed regulatory regimes focused on ESG matters and other market developments that are influencing the ESG risks and priorities for organizations operating in or with Australia.

Greenwashing continues to be an enforcement priority for both the Australian Securities and Investments Commission (“ASIC”) and the Australian Competition and Consumer Commission (“ACCC”). To date, ASIC has issued 11 infringement notices targeting greenwashing. It has also commenced three civil penalty proceedings—two against retail superannuation funds and one against a global investment management company, including for representations about the application of ethical exclusions.

The ACCC has announced that it will investigate several organizations for potential greenwashing in response to a greenwashing internet sweep of 247 businesses. The ACCC found that 57% of businesses it surveyed had made “concerning claims about their environmental credentials.” Key concerns the ACCC identified included vague, unqualified, and aspirational claims; a lack of substantiating information; and the use of absolute claims and comparisons.

Both regulators have issued guidance on avoiding greenwashing. ASIC’s chairman has also cautioned against organizations keeping quiet on those commitments (known as “greenhushing”), characterizing greenhushing as another form of greenwashing.

Australia is also well-progressed in its implementation of the government’s sustainable finance strategy on which it is currently consulting. Part of the strategy includes:

- The phased introduction of a mandatory climate-related financial disclosure regime, with the first group of reporting entities required to publish disclosures for the financial year 2024–2025. While it is proposed that disclosure requirements will align closely with the International Sustainability Standards Board’s (“ISSB”) new global standard for climate-

related financial disclosures (IFRS S2 Climate-related disclosures), the disclosure framework may expand over time to include other sustainability topics, such as biodiversity.

- A sustainable finance taxonomy, which will be focused initially on climate change. The taxonomy will assist investors to target climate change objectives when allocating capital. Key design features are likely to include internationally recognized principles such as “do no significant harm” and “minimum social safeguards.”
- A sovereign green bonds program to enable investors to back public projects contributing to decarbonizing Australia’s economy.

Another significant development in Australia has been the report on the statutory review of the federal Modern Slavery Act 2018 (Cth). The report made 30 recommendations to improve and strengthen the Modern Slavery Act. Key recommendations include introducing penalties for specific noncompliance, a requirement that entities implement a due diligence system to identify and assess modern slavery risks, and lowering the threshold for reporting entities to A\$50 million.

Litigation and Complaints

Activist shareholder seeks climate- and biodiversity-related documents from major Australian bank. In November 2023, activist shareholder Catherine Rossiter brought an [application](#) in the federal court for preliminary discovery from a major Australian bank, seeking copies of the bank’s internal risk-management documents relating to climate change and biodiversity loss, citing the bank’s loans of A\$18.6 billion to fossil fuel projects since 2016, and loans of A\$52.1 billion to the agriculture, forestry, fishing, and mining sectors. Equity Generation Lawyers, the firm representing Rossiter, claims that the bank and its shareholders are “[significantly exposed](#)” to risks stemming from fossil fuel and biodiversity loss as a result of such loans.

Class action against Queensland government accused of a “modern stolen generation.” [Two landmark class action lawsuits](#) were launched in the federal court in Queensland, with actions in other states expected to follow. The class actions—one brought for First Nations parents and another for the children—allege racial discrimination by state governments that removed children from their care. The Queensland

class action, which seeks compensation, a formal apology, and change within the system, will be heard again in the federal court in April 2024.

Claim against EnergyAustralia regarding marketing of products involving a carbon offset scheme as “carbon neutral.” In August, Australian Parents for Climate Action, represented by Equity Generation Lawyers, filed a claim against [EnergyAustralia](#) arguing that EnergyAustralia is misleading consumers in contravention of Australian Consumer Law by marketing Go Neutral electricity and gas products as “carbon neutral” and “hav(ing) a positive impact on the environment” when these products involve the purchase of carbon offset credits to “cancel out” harmful emissions. EnergyAustralia’s defense says that the offsets meet recognized standards and that the claims are therefore valid.

Legislative and Regulatory Developments

Australian Accounting Standards Board (“AASB”) releases draft Australian climate reporting standards. On October 23, 2023, the [AASB released Exposure Draft ED SR1 Australian Sustainability Reporting Standards—Disclosure of Climate-related Financial Information](#) to propose climate-related financial disclosure requirements. ED SR1 includes three draft Australian Sustainability Reporting Standards, being:

- **ASRS 1 General Requirements for Disclosure of Climate-related Financial Information**, developed using IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information as the baseline but with a scope limitation to climate-related financial disclosure;
- **ASRS 2 Climate-related Financial Disclosures**, developed using IFRS S2 *Climate-related Disclosures* as the baseline; and
- **ASRS 101 References in Australian Sustainability Reporting Standards**, developed as a service standard that would be updated periodically to list the relevant versions of any nonlegislative documents published in Australia and foreign documents that are referenced in ASRS Standards.

Details regarding which entities will be subject to the above draft standards are still yet to be released by the federal government. While the reporting framework is still being developed, the first cohort of disclosing entities will be required to

report for reporting periods beginning on or after July 1, 2024. Disclosing entities that fulfil two of the following three thresholds will be required to report:

- More than 500 employees;
- A\$1 billion+ in consolidated gross assets; and
- A\$500 million+ consolidated annual revenue.

This is expected to capture a number of public companies, registered schemes, and large private companies.

Australian Institute of Company Directors (“AICD”) releases detailed guide for directors ahead of mandatory climate reporting. In advance of the shift to mandatory climate-related disclosure issued on October 3, 2023, AICD has released a [joint publication aimed at preparing directors and boards](#) for this major reform. The guide provides an overview of the Australian current climate-reporting landscape, sets out the legal duties and responsibilities of directors in respect of climate reporting, and provides practical steps that directors can take to meet their obligations to report on climate-related risks and opportunities.

Federal modern slavery legislation amendments. On November 30, 2023, [Attorney General Mark Dreyfus](#) introduced the [Modern Slavery Amendment \(Australian Anti-Slavery Commissioner\) Bill 2023](#), which, if passed, will amend the [Modern Slavery Act 2018 \(Cth\)](#) to facilitate the establishment of a federal anti-slavery commissioner. The commissioner will be appointed for a five-year term, and the role will include “engaging and supporting victims and survivors of modern slavery and supporting business[es] to address risks of modern slavery practices in their operations and supply chains.” The federal government has also announced an A\$8 million commitment over four years to support the commissioner’s establishment and operations.

Policy Developments

Australian businesses required to proactively prevent sexual harassment in the workplace. On December 12, 2023, the 12-month grace period for businesses to prepare for the enforcement of the new positive duty under the [Sex Discrimination Act 1984 \(Cth\)](#) came to an end. The Australian Human Rights Commission (“AHRC”) now has the power to

investigate and enforce compliance with the positive duty, which requires companies to take “reasonable and proportionate measures” to eliminate sexual harassment, sex-based harassment, sex discrimination, hostile workplace environments, and victimization in the workplace. While breach of the positive duty does not attract a civil penalty, the AHRC has the power to issue a compliance notice and apply to the federal courts for an order to comply. Sex Discrimination Commissioner Anna Cody has [announced](#) that the mining, retail, and legal industries will be the focus of scrutiny.

The Governance Institute of Australia has released a new anti-greenwashing guide for governance professionals. [The guide provides grounding in what greenwashing is](#), the many forms it can take, and the risks associated, and offers practical insights into how these risks can be managed.

Commonwealth decarbonization plan for agriculture and land sectors. As part of its development of a net zero strategy, the federal government is formulating six sector-specific decarbonization plans for electricity and energy, transport, industry, agriculture and land, resources, and the “built environment” (i.e., buildings and infrastructure). The plans will examine emission reduction strategies in each sector and identify collective actions to support decarbonization. A consultation process for the [Agriculture and Land Sectoral Plan](#) has been underway since November 2023.

New draft wind and solar energy policy in NSW. On November 14, 2023, the NSW Department of Planning and Environment released a [Draft Energy Policy Framework](#) introducing guidelines that, if implemented, could significantly impact the establishment of new wind and solar energy projects. The framework aims to support NSW’s transition to renewable energy by providing clearer guidance on how the impacts of renewable projects and transmission infrastructure will be assessed and managed. According to the NSW government, the new framework will facilitate faster and more consistent decisions and support the state’s clean energy transition. However, initial industry feedback suggests that aspects of the framework may hinder project development, in particular the ability to obtain approval for new wind energy projects.

The Australian federal government has announced a range of measures to increase support for sustainability efforts/climate adaption in the Pacific. The government has [announced](#) it will:

- Contribute “a foundational \$100 million to the Pacific Resilience Facility”—a Pacific-led financing facility to support small-scale climate projects across the Pacific region, for example disaster preparedness; and
- Rejoin and contribute \$50 million to the Green Climate Fund (“GCF”), a global climate fund established as part of the Paris Agreement to “effectively advocate for GCF funding to meet Pacific needs.”



CHINA

Overview

While ESG is not a concept defined in Chinese laws or regulations, China has established the legislative framework together with regulatory rules and cases covering environmental protection, promotion of labor interests, social responsibility, and corporate governance. In September 2020, in the 75th United Nations General Assembly, the government announced its intention of reaching the peak of carbon dioxide emissions by 2030, and achieving carbon neutrality by 2060 (also known as China’s “30-60” carbon neutral goal). Reforms focusing on environmental and natural resource protection laws has begun. The Civil Code now includes “green principles” and stipulates “green development” obligations. The Securities Law, amended on March 1, 2020, introduced information disclosure obligations focused on investor protections. The China Securities Regulatory Commission (“CSRC”) has also issued regulations on environmental information disclosure for listed companies. China’s first regulation on green finance, the Green Finance Regulation of Shenzhen Green Special Zone, requires that listed financial companies registered in Shenzhen must disclose their environmental information.

Litigation and Complaints

On February 17, 2023, the Supreme People's Court published Guidelines for Providing Judicial Services to Promote Carbon Peaking and Carbon Neutralization and 11 supporting model cases. This is the first time that the Supreme People's Court has issued model cases in the “dual-carbon” field. The model cases not only cover scenarios directly involving carbon emissions trading and energy development in the dual-carbon field, but also some atypical scenarios, such as those involving hazardous waste disposal, or tampering with air pollution monitoring system parameters. The “green principles” and green development concepts in the Civil Code have served as the basis for judicial decisions made in some of these cases.

On August 15, 2023, the Supreme People's Court and the Supreme People's Procuratorate jointly released 10 typical cases of environmental public interest litigation. These typical cases are released to encourage public interest litigation in the field of ecological environment and resource protection. The Environmental Protection Law of the PRC, together with other special environmental protection laws and regulations in various fields—such as the Animal Epidemic Prevention Law of the PRC, the Grassland Law of the PRC, the Forest Law of the PRC, and the Soil Pollution Prevention and Control Law of the PRC—are the legal basis for these cases.

On February 23, 2022, the Supreme People's Court released typical cases related to equal employment rights. In one employment case, an applicant submitted a job application resume to a company and indicated his hometown on the resume. However, the company rejected this applicant because he was from a certain province. The People's Court ordered the company to pay moral damages to the jobseeker for geographic discrimination during recruitment.

On May 27, 2023, the Ministry of Human Resources and Social Security and the Supreme People's Court jointly released typical cases of employment protection. [These cases](#) are released to better protect employees' rights and interests, especially when the platform economy develops at a high speed. For instance, in one case, the arbitration committee held that although the contract stipulated that the employee and the company were in a cooperative relationship only, a labor relationship was still established between the parties; thus, the company should be held to the higher employer obligations provided in the relevant PRC labor laws.

Despite that there are no specific Chinese regulations targeting greenwashing, certain regulations aim at prohibiting false or misleading promotion, and two relevant cases are listed below:

- **In October 2021, the Shanghai Administration of Market Regulation imposed fines on IKEA's misleading advertisement.** [The case](#) involved an advertisement claiming that a curtain product had an “air purification” function, which was demonstrated for specific target pollutants under limited test conditions, but was not available in actual living conditions. The Shanghai Administration for Market Regulation ordered IKEA (China) to stop publishing illegal advertisements and make public announcements correcting the advertisements, in addition to imposing a fine of RMB 1.725 million.
- **On April 22, 2021, the court ruled to enforce the fine in the administrative penalty decision issued by the Administration for Market Regulation on Xianghong's false advertisement.** The case involved the printer company Xianghong's use of the “China Environmental Label” pattern and “Green Printing Products” without obtaining such certification. According to Article 8 of the PRC's Anti-Unfair Competition Law, Zhanhe District People's Court, Pingdingshan City, Henan Province, ruled to enforce the Administration for Market Regulation's administrative penalty fine of RMB 200,000 on Xianghong.

Significant Legislative and Regulatory Developments

Environmental disclosure rules from China's Ministry of Ecology and Environment. [The rules](#) require domestic entities to disclose a range of environmental information on an annual basis according to the relevant general principles provided by the Environmental Protection Law. The applicable subjects focus on listed companies and bond issuers that are high polluters.

Plastic pollution control action plan from the National Development and Reform Commission and the Ministry of Ecology and Environment (“MEE”). [The action plan](#) sets the target that by 2025, key sectors such as retail, e-commerce, and express delivery are expected to drastically cut the unreasonable use of disposable plastics. According to the action plan, local government authorities at all levels will be responsible for the control of plastic pollution in their administrative areas, and it has been observed that more than 20 provinces

have published their local action plan regarding plastic pollution control.

State Post Bureau issues implementation opinions on promoting green and carbon reduction development of the postal express delivery industry. The new policy re-emphasizes the green governance of mail and express packaging, with the purpose to realize the China “30-60” carbon neutral goal.

Policy Developments

The CSRC is considering publishing guidance on sustainable development disclosure for listed companies in China.

Guo Jun, deputy director of the Listed Company Supervision Department, explained the principle and main concerns for the drafting of such guidance at a forum on September 7, 2023. The regulator is expected to adopt a voluntary reporting approach with minimum requirements that comply with relevant capital market rules.

MEE issues potential updated rules on regulating the carbon emission trading market.

China’s unified carbon emissions trading market was launched in February 2021 with trading commencing in July of the same year. On February 1, 2021, the MEE issued the *Measures for the Administration of Carbon Emissions Trading (for Trial Implementation)* (the “2021 Measures”). On March 30, 2021, the MEE issued the draft *Interim Regulations on the Management of Carbon Emissions Trading Management (Revised Draft)* (the “Interim Regulations”) for public opinion. If officially promulgated, the Interim Regulations will replace the 2021 Measures to regulate the nationwide carbon emissions trading market in China. The Interim Regulations is added into the State Council 2023 Legislative Work Program but has not yet been finalized. At the local level, eight pilot provinces (or cities), including Beijing and Shanghai, have issued carbon emissions trading rules and other normative documents.

Opinions on accelerating the establishment of product carbon footprint management system (the “Opinions”).

On November 22, 2023, the National Development and Reform Commission, the Ministry of Industry and Information Technology, the General Administration of Market Supervision, the Ministry of Housing and Urban-Rural Development, the Ministry of Transportation, and other departments jointly

issued the Opinions. The Opinions propose to promote the establishment of a product carbon footprint management system in line with the actual national situation, improve the carbon footprint accounting method rules and standard system for key products, establish a product carbon footprint background database, promote the construction of a product carbon labeling certification system, and expand and enrich the application scenarios.



HONG KONG

Overview

In Hong Kong, ESG obligations are stipulated in various statutes that form the legislative framework applicable to domestic, industrial, and commercial activities. These statutes address various ESG issues such as air and water pollution, waste disposal, occupational safety and health, equal opportunities, anticorruption, and bribery. Several statutes concerning each aspect of ESG have undergone amendments in recent years, demonstrating Hong Kong’s approach to enhancing its ESG legislative framework.

Other ESG initiatives have been focused on the financial services industry in Hong Kong, with new regulatory developments implemented by the Stock Exchange of Hong Kong Limited (“HKEX”), the Securities and Futures Commission (“SFC”), and the Hong Kong Monetary Authority (“HKMA”).

In particular, the Environmental, Social and Governance Reporting Guide (the “ESG Reporting Guide”) and Corporate Governance Code (the “CG Code”) under the Hong Kong listing rules establish the ESG disclosure framework for companies listed on the HKEX. The ESG Reporting Guide focuses on environmental and social aspects, while the CG Code specifically addresses corporate governance. The ESG Reporting Guide comprises two levels of disclosure obligations: (i) mandatory disclosure requirements; and (ii) “comply or explain” provisions. Similarly, the CG Code also includes mandatory disclosure requirements and code provisions on a “comply or explain” basis. Additionally, the CG Code provides recommended best practices that listed companies are encouraged to adopt on a voluntary basis. Recent developments in these guidelines are further detailed below.

To date, there have been no reported instances of ESG-related litigation or enforcement actions in Hong Kong. However, owing to its status as an international financial hub, many Hong Kong-based conglomerates with international operations are looking to align their ESG practices with international standards, in addition to complying with local ESG requirements. Hence, in view of Hong Kong's approach to enhancing its ESG legislative framework, it is expected that there could be ESG-related litigation or enforcement actions in the coming year.

Legislative Developments

Amendments to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) took effect on June 1, 2023. The amendments include, among other things, ensuring alignment with the latest international standards set by the Financial Action Task Force.

There have been extensive other legislative developments, including:

- The Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570) was amended in October 2023 to increase the amount of fixed penalty for offenses including illegal disposal of waste.
- Amendments to the Environmental Impact Assessment Ordinance (Cap. 499) came into effect on June 30, 2023.
- Amendments to the Occupational Safety and Health Ordinance (Cap. 509) came into effect on April 28, 2023.
- The amounts of a total of 18 compensation items under the Employees' Compensation Ordinance (Cap. 282), Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360), and Occupational Deafness (Compensation) Ordinance (Cap. 469) have been adjusted upward. These include compensation relating to permanent total incapacity, bereavement, and death. The new rules came into effect on April 13, 2023.
- The Product Eco-responsibility Ordinance (Cap. 603) and the Product Eco-responsibility (Plastic Shopping Bags) Regulation (Cap. 603A) were amended to enhance the Plastic Shopping Bag Charging Scheme.
- The Air Pollution Control Ordinance (Cap. 311) was amended to tighten three air quality objectives.

Regulatory Developments

In April 2023, the HKEX published a consultation paper on the enhancement of climate disclosure under its ESG framework. The consultation paper sets out proposals including mandating that all companies listed on the HKEX make climate-related disclosures in their ESG reports (i.e., any change from the current "comply or explain" provisions), and introducing climate-related disclosures based on the ISSB Climate Standard. The ISSB Climate Standard builds on the recommendations of the Task Force on Climate-related Financial Disclosures ("TCFD"), making this proposal a significant milestone in achieving the commitment to mandate TCFD-aligned disclosures by 2025 that was announced by the Hong Kong Green and Sustainable Finance Cross-Agency Steering Group. The HKEX announced in November 2023 that the Listing Rule amendments will be implemented on January 1, 2025, providing issuers with more time to familiarize themselves with the new climate-related disclosure requirements.

Amendments to the CG Code as set out in Appendix 14 of the Listing Rules. The new measures under the amended CG Code are to enhance corporate governance standards among listed issuers in Hong Kong, including in the areas of corporate culture, board independence, diversity, and shareholders communication, among others.

SFC-authorized funds that incorporate ESG factors as their key investment focus are required to comply with enhanced disclosure requirements. The new requirements include ESG-related disclosure in offering documents, periodic assessment and reporting on how the ESG fund has attained its ESG focus, and disclosure of additional information to enable investors to understand how an ESG focus is measured, verified, and maintained.

The Fund Manager Code of Conduct ("FMCC") has been amended pursuant to the consultation conclusions on management and disclosure of climate-related risks by fund managers. The new requirements under the amended FMCC applies to fund managers that manage collective investment schemes and cover four key elements: governance, investment management, risk management, and disclosure. The changes were implemented in phases from August 2022 to November 2022.

The SFC has introduced green initiatives to reduce the carbon footprint associated with dissemination of documents. Following the publication of [consultation conclusions](#) on the proposed amendments to the Hong Kong Codes on Takeovers and Mergers and Share Buybacks (the “Takeovers Code”) in September 2023, a new rule in support of electronic dissemination of documents required under the Takeovers Code will be added.

Following the Pilot Climate Risk Stress Test (“CRST”) exercise in 2021, the HKMA has enhanced the framework for the second round of CRST, which will run from June 2023 to June 2024. Drawing on the experience gained from the pilot CRST and industry’s feedback, [the major enhancements](#) incorporated in the second round of CRST include:

- Introduction of a new five-year scenario to assess the potential impacts on participating banks arising from simultaneous economic and climate-related shocks;
- Exposures that are considered less susceptible to climate change will also be covered in addition to the exposures that are considered highly vulnerable; and
- More detailed reporting standards than those adopted in the pilot exercise.

In May 2023, HKMA published a Discussion Paper seeking market feedback on developing and adopting a green classification framework (i.e., taxonomy) for Hong Kong. The HKMA aims to [develop a local green taxonomy](#) that takes into account of local circumstances and common industry standards, while at the same time facilitating easy navigation among other major taxonomies. A green taxonomy provides a standardized framework for classifying and labelling financial products and investments based on their environmental sustainability, thereby allowing investors to make more informed investment decisions. The taxonomy framework is proposed to be developed in phases.

Policy Developments

Launch of Hong Kong’s first “Climate Change Framework for Built Environment.” [The framework was launched](#) in June 2023 by the Hong Kong Green Building Council and serves as a reference tool to facilitate the building sector’s zero carbon target, manage climate risk, and contribute to Hong Kong’s

carbon neutrality roadmap. It sets out the definitions related to carbon neutrality in Hong Kong, calculation methods of energy and carbon based on those definitions, benchmarking schemes, and reference data for managing climate risks.

The Green Technology and Finance Development Committee was established and convened its first meeting in June 2023. [The committee’s aim is to assist in the formation of an action agenda](#) for promoting the development of Hong Kong into an international green technology and financial center.

On August 7, 2023, the Steering Group announced priorities to further strengthen Hong Kong’s sustainable finance ecosystem. [The key priorities](#) identified are:

- Establish world-class regulation through alignment with global standards. This includes developing a comprehensive roadmap on adopting the IFRS Sustainability Disclosure Standards, taking into account local regulatory expectations and circumstances.
- Boost Hong Kong’s vibrancy and competitiveness through capacity building, data enhancement, and technology innovation in the finance ecosystem to support the net-zero transition across the economy.
- Grow dynamic, trusted markets with diverse products to mobilize capital at larger scale to support the net-zero transition.

In November 2023, the HKEX signed a Memorandum of Understanding (“MOU”) with the China Beijing Green Exchange (“CBGEX”). Under [the MOU](#), HKEX and CBGEX will explore cooperation in areas including building an ESG ecosystem, promoting green and sustainable finance, and contributing to the green development of the Belt and Road Initiative.

In December 2023, the Dubai Financial Services Authority and the HKMA formed a partnership to accelerate sustainable finance across the Middle East and Asia. This [new partnership](#) aims to bolster cross-border collaboration to advance sustainable finance across the two regions and contribute to the net-zero transition. A Joint Climate Finance Conference is planned for autumn 2024, which will explore common opportunities and challenges in accelerating the flow of transition financing in the Middle East and Asia.



Overview

In Japan, the Corporate Governance Code (“CG Code”), Stewardship Code (“SS Code”), and Guidelines on Discussion between a Company and Investors (“Guidelines”) are principles and guidelines (i.e., not legislation or regulations) that play an important role in corporate governance practice in Japan.

The CG Code, SS Code, and Guidelines were all amended in the last four years to provide some guidance on ESG issues for Japanese companies. For example, the CG Code addresses environmental and social matters on a “comply or explain” basis, including in its General Principle 2-3: “Companies should take appropriate measures to address sustainability issues, including social and environmental matters.” The Supplemental Principle relating to General Principle 2-3 of the CG Code provides that a board of directors should: “(i) acknowledge that addressing sustainability issues (e.g., environmental matters including climate change-related issues, human rights-related issues, and issues relating to welfare of employees, fair and proper transactions with counterparties and crisis management in respect of natural disasters) is one of the important business challenges that could lead to profitable business opportunities; and (ii) address such issues properly and carry out studies to actively deal with them.”

A reference to the TCFD recommendations appeared in the latest amendment to the CG Code in June 2021. The Supplemental Principle 3.1.3 reads: “companies listed on the Prime Market should collect and analyze 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 based on the TCFD recommendations, which are an internationally well-established disclosure framework, or an equivalent framework.”

In 2023, the Cabinet Office Order on Disclosure of Corporate Affairs (“Disclosure Order”) was amended to require that listed companies annually disclose: (i) governance; (ii) risk management; (iii) strategy; and (iv) metrics and targets regarding (a) human resources and diversity and (b) climate change. The

Disclosure Order not only adopted the same framework as the TCFD recommendations but also extended it to human resources and diversity matters. This amendment codified ESG-related requirements into Japanese law.

Adoption of the IFRS standards is not currently mandatory in Japan. However, the Sustainability Standards Board of Japan, an organization developing Japanese versions of IFRS S1 and S2, plans to release draft and final versions of these standards by March 31, 2024 and 2025, respectively, and make adoption of the final versions (or adoption of the IFRS standards) mandatory after a transitional period.

Regulatory Developments

The Financial Services Agency of Japan revised the Comprehensive Supervisory Guidelines for Financial Instruments Business Operators, etc. to address “greenwashing” concerns with ESG investment trusts. Under [the Guidelines](#), publicly offered ESG investment trusts need to comply with the following requirements:

- (1) The delivery prospectus needs to describe the following (not exclusive):
 - (a) Investment strategy
 - Details of key ESG factors
 - How key ESG factors are considered in the investment process (e.g., explanation of relevant criteria and indicators, evaluation methods)
 - (b) Portfolio construction
 - A target or guideline ratio of its portfolio assets selected using key ESG factors
- (2) Periodic delivery of investment reports need to describe (not exclusive):
 - The actual ratio of investment assets selected using key ESG factors (as opposed to the set target or guideline).

The Tokyo Stock Exchange (“TSE”) opened a carbon credit market on October 11, 2023. On July 3, 2023, the TSE publicly disclosed its rules on usage of [the carbon credit market](#) and started accepting applications for carbon credit market participants. The carbon credit market is being opened as part of the Japanese government’s carbon pricing system, which is expected to be introduced in the near future.



Overview

In Malaysia, there are a number of existing ESG laws and obligations that will impact both domestic Malaysian companies and global firms operating in Malaysia. The most significant are noted here.

Environment-Related Laws

Three Acts comprise the fundamentals of environmental law in Malaysia: The Environmental Quality Act 1974 (“EQA 1974”) and its respective amendment acts in 2007 and 2012.

The EQA 1974 provides for a system of licensing (including with conditions) to regulate premises that may be producing emissions. Certain prescribed premises (including waste or land treatment facilities) must be licensed, and failure to do so is an offense attracting a maximum penalty of RM 50,000 or two years’ prison or both. In addition a license is required for activities that could cause certain types of serious pollution (including air, noise, and soil).

Social-Related Laws

Malaysia has several pieces of legislation aimed at regulating channels of communication between companies and consumers as well as the impact of those companies on their consumers. Prime among these is the Consumer Protection Act 1999 (“CPA 1999”), which protects consumers against (among others):

- Misleading and deceptive conduct, false representation, and unfair practices;
- Safety of goods and services;
- Unfair contract terms; and
- Defective products.

The Companies Act 2016 obliges company directors to consider ESG in the exercise of their powers. Section 213(1) of the Companies Act 2016 requires company directors to exercise their powers in good faith and for a proper purpose, i.e., in the best interests of their respective companies. As ESG becomes an increasingly important concern, it is likely that

directors who fail to take ESG principles into account may fall afoul of Section 213(1) of the Companies Act 2016 in the future.

In respect of climate change, the Commonwealth Climate and Law Initiative stated in [an opinion](#) that “it is apparent from legal and regulatory developments that directors are duty bound to proactively and urgently apprise themselves of all aspects of climate change that can affect their companies, take action to manage the full spectrum of climate related risks by integrating them into their corporate strategies, plans and actions, and ensure proper disclosure of such risks.”

Malaysia has also passed several pieces of legislation to protect employees in the workplace in various circumstances, such as the Employment Act 1955, Occupational Safety and Health Act 1994, and the Anti-Sexual Harassment Act 2022. These Acts, among others, provide a robust framework for various facets of employee protection in Malaysia, such as employment contracts, employee health and safety, and protection from sexual harassment, respectively.

Governance-related laws. In Malaysia, the corporate governance framework comprises legislation, as well as requirements and guidelines issued by authorities to cover listed and unlisted companies. The emphasis is on encouraging listed companies to adopt best governance practices by using a “comply or explain” approach. The following are the key legislations that govern corporate governance in Malaysia.

- **Companies Act 2016** imposes obligations of good governance of companies, such as directors’ duties, the rights of shareholders, and accountability to shareholders and stakeholders. It regulates, among others, the management, duties, and accountability of directors; the rights of shareholders; and the reporting and disclosure requirements for private, public, and listed companies and corporations.

The Companies Act 2016 also provides certain offenses, whereby companies may be fined, and the company’s directors and officers may incur personal liability and be subjected to imprisonment. For instance, section 540(1) provides for personal responsibility of the directors or officers of the company if the court finds that any business of the company has been carried on with intent to defraud the creditors of the company

or creditors of any other person, or for any fraudulent purpose such as through misleading ESG statements.

- **Malaysian Anti-Corruption Commission Act 2009** sets out the liability for companies and individuals who provide or attempt to provide “gratification” or engage in corrupt practices. The Act also provides that a commercial organization can be considered guilty if any of its employees and/or associates commits corruption for the benefit of the organization.
- **Whistleblower Protection Act 2010** is intended to contribute to improving the accountability and transparency of organizations. The Act encourages and gives protection to persons making disclosures of improper conduct in the public and private sectors.
- **Capital Markets and Services Act 2007** contains provisions that regulate the activities of the markets and intermediaries in the Malaysian capital markets and regulates activities that are not consistent with investor and shareholder protection, such as prohibitions on insider trading, as well as rules on takeovers, mergers, and acquisitions of listed and unlisted public companies.
- **Financial Services Act 2013** sets out governance controls, duties, and obligations to be observed by financial institutions and other businesses within the financial sector, such as money broking and payment systems. The Act also provides for the powers of the Central Bank of Malaysia regarding the regulation and supervision of financial institutions sector businesses and the oversight of the money market and foreign exchange market.
- **The Islamic Financial Services Act 2013** contains similar provisions to those found in the Financial Services Act 2013, granting the Central Bank of Malaysia the powers to regulate and supervise, but in respect of Islamic financial institutions, takaful insurance, and other businesses within the Islamic banking sector.

Legislative and Regulatory Developments

In December 2023, Malaysia’s stock exchange launched an **ESG reporting platform** for listed issuers to submit disclosures under the [bourse’s enhanced sustainability reporting requirements](#). It aligns with the revised [Main Market Listing Requirements](#) and ACE Market listing requirements, which were updated on September 26, 2022, to include more comprehensive sustainability reporting guidelines.

Policy Developments

The Malaysian government announced that [the 2024 budget is to integrate sustainability](#) into economic policies through and increased ESG focus, including incentives and initiatives:

- To encourage industries in Malaysia to transition to a low-carbon economy;
- For the Corporate Green Power Programme—where participants producing renewable energy are able to sell a specific portion of the energy produced to their off-takers via the national electricity grid;
- Tax deductions for ESG-related expenditures. Such expenditures include enhancing companies’ sustainability reporting framework, preparation of transfer pricing documentation, e-Invoicing implementation, and costs in adhering to any reporting requirements related to ESG as approved by the Minister of Finance;
- Extension of tax exemptions for fund management companies managing socially responsible investments (“SRI”). SRIs are generally referred to as investments or investment strategies that consider and incorporate ESG consciousness and principles; and
- Companies that incur costs relating to the development of carbon off-setting projects can benefit from a tax exemption.

The Ministry of International Trade and Industry (“MITI”) has **launched the National Industry ESG Framework**. [The i-ESG Framework](#) is intended to assist companies (particularly in the manufacturing sector) in commencing and enhancing their adherence to ESG principles. With an overarching objective to promote and nurture green manufacturing, companies’ participation and adherence to the i-ESG Framework is currently on a voluntary basis, with mandatory compliance being planned in the next decade. The i-ESG Framework is currently in Phase 1 of its implementation, called “Just Transition” (running from 2024–2026). This phase aims to assist companies in their implementation of ESG principles within their organizations.

Initiatives set out in Phase 1 of the i-ESG Framework include an outreach program—the Kenal ESG—aimed to raise and enhance ESG awareness and introduce the i-ESG Framework to industries across Malaysia.

The i-ESG Framework also aims to assist companies embark on their sustainability journey via the following resources: (i) an ESG readiness assessment to assist companies in

understanding and evaluating their current ESG adoption level; (ii) an ESG starter kit, i-ESGStart, to serve as a step-by-step guide with practical examples, as well as calculation methods and templates that companies can tap into to facilitate their sustainability reporting; and (iii) MITI will also conduct clinical sessions to empower and guide companies on producing their first sustainability report.

In October 2023, a Simplified ESG Disclosure Guide (“SEDG”) for small to medium enterprises in supply chains was issued by Capital Markets Malaysia, a council set up by the Securities Commission of Malaysia. [The SEDG is intended as a guide to SMEs](#) in preparing to disclose ESG data to their stakeholders, aligned with international standards.



NEW ZEALAND

Overview

New Zealand is a jurisdiction with a significantly developed ESG regime, including climate-related regulatory regimes, including New Zealand’s Emissions Reduction Plan, the Emissions Trading Scheme, and the climate-related financial disclosures regime. In addition, for New Zealand, sustainability has moved from niche interest to mainstream demand among an environmentally and socially conscious community, with policy and activism fueling this new challenge for borrowers and lenders.

In 2021, New Zealand became the first country to pass a law forcing financial institutions to disclose and act on climate-related risks and opportunities.

In terms of human rights, the current New Zealand policy proposals for modern slavery and worker exploitation due diligence and reporting is continually developing and focuses on governance of human rights issues, including those arising from global supply chain, development of human rights policies, business and supplier codes of conduct and internal training, human rights due diligence, and risk identification and assessment.

The regime for the New Zealand Emissions Trading Scheme, extensive legislative and regulatory regimes, and approval processes are in place. The regime is significantly impacting

energy (transmission and generation), emissions trading schemes, climate change, farming, fisheries, infrastructure, transportation (airports, ports, road, and rail), water, and urban planning.

Unique to New Zealand is *Te ao M ori*, which is included in many aspects of New Zealand laws and regulations. These laws and regulations recognize and provide the interpretation and application of laws that refer to *Te Tiriti o Waitangi* and the principles of the treaty.

Regulatory Developments

The External Reporting Board (“XRB”) of New Zealand published its finalized guidance for fund managers on its approach for making its mandatory climate disclosure reports under the XRB’s disclosure requirements. [The guidance](#) sets out specific guidance on the record-keeping requirements in Part 7A of the Financial Markets Conduct Regulations 2014 (the “Regulations”). With monitoring, a company may be asked to supply for inspection the underlying records that support climate statements to verify that the records comply with the record-keeping requirements in Part 7A of the FMC Act and the Regulations. These records also provide evidence that climate statements comply with the climate-related disclosure (“CRD”) framework generally. The guide also provides a CRD monitoring plan and monitoring reports relating to climate statements to be relied upon to achieve the purpose of the CRD regime (referred to above).

The Commerce Commission of New Zealand has issued Collaboration and Sustainability Guidelines. [The Guidelines](#) set out the factors that the regulator will consider when looking at competitor collaboration when that collaboration has sustainability objectives. The Guidelines seek to encourage helpful forms of collective action between competing entities by summarizing the key concepts contained in the Commerce Act 1986 and setting out how businesses can mitigate competition law risk in their course of collaboration.

Policy Developments

Decarbonizing New Zealand. The government is currently [seeking feedback on the gas industry](#), the role of hydrogen in New Zealand, offshore renewable energy development, reliable and affordable electricity, and banning new fossil fuel baseload electricity generation.

Proposed mandatory modern slavery reporting. New Zealand does not yet have modern slavery legislation. In July 2023, the government announced that work will start on drafting legislation to require companies with more than NZ\$20 million revenue to report and outline the actions they take to address exploitation risks in their operations and supply chains.

Mandatory gender pay gap reporting. The government recently has proposed [mandatory gender pay gap reporting](#) for organizations with more than 250 employees, in efforts to identify and address the drivers of gender pay gaps and encourage pay transparency.



SINGAPORE

Overview

Singapore has both general and industry-specific regimes governing ESG-related issues applying to sectors such as energy and finance.

Environmental legislation includes the Environmental Protection and Management Act, the Energy Conservation Act, the Resource Sustainability Act (regulating electronic, food, and packaging waste), and the Carbon Pricing Act. Social regimes include Workplace Safety and Health Act and Employment Act. The main regulatory framework relating to corporate governance includes the Companies Act, the Prevention of Corruption Act, the Securities and Futures Act, the Listing Rules of the Singapore Exchange (“SGX”) (Listing Rules), and the Code of Corporate Governance.

Litigation and Complaints

Human rights complaints filed against 12 banks, including Singapore’s DBS Bank. A group of indigenous Australians [filed human rights complaints](#) on April 4, 2023, against a consortium of banks, including Singapore’s DBS Bank, with respect to a US\$1 billion loan to Santos (an Australian energy firm) over the building of a controversial gas project that they allege threatens their traditional lands and sea, as well as the future of their culture. Environmental groups have also criticized the project, saying it will fuel climate change by releasing huge amounts of planet-warming greenhouse gases.

As of March 22, 2023, no complaints of “greenwashing” had been reported in Singapore, but a recent study finds more than half of environmental claims for online products lack supporting evidence. The Singapore Minister of State for Trade and Industry has stated that the Consumers Association of Singapore and the Competition and Consumer Commission of Singapore (“CCCS”) [has not received any specific complaints of greenwashing](#). However, in March 2022, the 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. In a press release on 16 November 2023, the CCCS explained that, based on samples surveyed, 51% of online product claims were found to be vague with insufficient elaboration or details to support the claims. 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.

Legislative and Regulatory Developments

Climate reporting becomes mandatory for more issuers. The SGX introduced a [phased approach](#) to mandatory climate reporting based on the recommendations of the Task Force on Climate-related Financial Disclosures. For financial year commencing during 2022, climate reporting is mandatory for all issuers on a “comply or explain” basis. For financial year commencing during 2023, climate reporting is mandatory for issuers in the financial, agriculture/food/forest, and energy industries (with all others remaining on a “comply or explain” basis). For financial year commencing during 2024, reporting is now mandatory for companies in the materials/buildings and transportation industries (which will be reported in 2025).

The consultation period on an industry code of conduct for providers of ESG ratings and data products has closed. On June 28, 2023, the Monetary Authority of Singapore launched a public consultation seeking feedback on a [proposed code of conduct](#), which establishes minimum industry standards of transparency in methodologies and data sources, governance, and management of conflicts of interest. The industry code of conduct is intended to give greater confidence to financial market participants using ESG ratings and data products. The consultation period for interested parties to provide comments ended on August 22, 2023.

The consultation period on requiring ISSB-aligned climate-related disclosures has closed. On June 6, 2023, the Accounting and Corporate Regulatory Authority and the Singapore Exchange Regulation launched a public consultation seeking feedback on the recommendations by the Sustainability Reporting Advisory Committee to require certain companies to report ISSB-aligned climate-related disclosures. The reporting requirements would first apply to listed issues starting from financial year 2025, and thereafter apply to large non-listed companies (i.e., with annual revenue of at least SG\$1 billion) from financial year 2027. The consultation period for interested parties to provide comments ended on September 30, 2023.

The Monetary Authority of Singapore (“MAS”) is to set supervisory expectations on financial institutions’ transition planning for decarbonization efforts by their clients. On June 8, 2023, [MAS highlighted](#) upcoming developments aimed at incentivizing financial institutions and their customers to bring forward their actions to support longer-term climate-positive outcomes. Key developments include:

- Guidance to be issued by MAS on transition planning, which will cover financial institutions’ governance frameworks and client engagement processes to manage climate-related financial risks and enable transition in the real economy toward net-zero.
- Together with the financial industry, MAS will establish the Singapore Sustainable Finance Association (“SSFA”) to build a vibrant ecosystem for green and transition finance, with an initial focus on initiatives to scale voluntary carbon markets, transition finance, and blended finance. The SSFA will include representatives from financial institutions, financial industry associations, relevant corporations, and service providers such as ESG rating agencies. The Association of Banks in Singapore will lead the coordination and setting up of the SSFA.

The Competition and Consumer Commission of Singapore (“CCCS”) undertook a public consultation on its proposed Guidance Note on Business Collaborations Pursuing Environmental Sustainability Objectives. [The consultation](#) closed on August 17, 2023. The proposed Guidelines reflect the CCCS’s growing focus on the interaction between competition

law and environmental sustainability and is in line with the initiatives taken by many other competition regulators around the world. The Guidelines focus on cooperation between competitors and industry-wide initiatives.

Policy Developments

MAS launched a digital platform for ESG data. On November 16, 2023, MAS launched a digital platform (called Gprnt) to enable companies to automate their ESG reporting process and allow end users (such as financial institutions, regulators, and large corporates) to access relevant data. The platform is currently undergoing live testing and will be progressively rolled out from Q1 2024 onward.

MAS announced a S\$150 million commitment over three years under the renewed Financial Sector Technology and Innovation Scheme (“FSTI 3.0”) on August 7, 2023. [The FSTI 3.0](#) will include a new ESG fintech track to facilitate the adoption of ESG fintech solutions. The track aims to support the development and deployment of projects that address ESG data, reporting, and analytic needs of the financial sector. Under the track, MAS will provide funding support of up to 50% of qualifying expenses, capped at S\$500,000 per project.

The United Nations Development Programme, Global Legal Entity Identifier Foundation, and MAS signed a statement of intent on June 22, 2023, to embark on a collaboration initiative to [digitize basic ESG credentials](#) for micro, small, and medium-sized enterprises (“MSMEs”) worldwide. The initiative seeks to simplify the ESG reporting process for MSMEs, which require greater support to build up their sustainability capabilities and expertise. The initiative aims to lower those barriers by establishing a common framework of ESG metrics for MSMEs to generate their basic sustainability credentials and work toward meeting the UN Sustainable Development Goals.

Singapore and Indonesia signed an MOU to strengthen low-carbon energy projects and cross-border electricity trade. Under [the MOU signed on September 8, 2023](#), both countries will cooperate to support the development of commercial projects for cross-border trading of low-carbon electricity, facilitate such projects according to their respective laws and regulations, and collaborate on interconnections for cross-border electricity trading.



Overview

As part of the climate-related actions envisaged under the Taiwan's Pathway to Net-Zero Emissions in 2050, the Greenhouse Gases Reduction and Management Act was amended into the Climate Change Response Act this year, which explicitly set the national long-term greenhouse gas ("GHG") reduction target to achieve net-zero by the year 2050. Additionally, a key aspect of this legislation is the initiation of carbon fee collection based on the GHG emissions of enterprises. This approach aligns with international trends and aims to increase the carbon emission costs for businesses.

The Financial Supervisory Commission ("FSC") has promulgated the "Sustainable Development Action Plans for Taiwan Stock Exchange (TWSE)- and Taipei Stock Exchange (TPEX)-Listed Companies (2023)," an enhancement to the "Sustainable Development Roadmap for Listed Companies" initiated in 2022. This directive incrementally broadens the scope of ESG responsibility for listed companies, encompassing measures such as the augmentation of female board representation and the proactive disclosure of Scope 3 GHG emissions. This initiative is designed to further fortify the corporate governance structures and advance the net-zero emission objectives of Taiwanese corporations. Noncompliance with the above policies may lead to criminal and administrative liabilities. TWSE and TPEX may also impose civil penalties on companies for such violations.

Litigation and Complaints

In 2021, Greenpeace, along with several individuals, initiated Taiwan's first climate lawsuit against the Ministry of Economic Affairs. The plaintiffs argued that the current regulations for the management of setting up renewable energy power generation equipment for power users above a certain contract capacity (commonly known as the "Terms for Large Power Users") set the renewable energy requirements too low, causing companies to neglect their carbon reduction obligations and violate the Basic Environment Act, thereby jeopardizing the fundamental human right to life. On April 12, 2023, two years after the lawsuit was filed, the first court hearing took place. The plaintiffs allege that the current terms of the law will not enable Taiwan to achieve the 2050 net-zero emissions

target, and that administrative authorities should proactively fulfill their obligations to combat climate change as mandated by legislation.

Legislative and Regulatory Developments

In response to the Ministry of the Environment's initiative, the Climate Change Response Act was formally passed by Congress on January 10, 2023. The Act aims to integrate the carbon fee mechanism into the regulatory framework, combining it with the existing carbon inventory system to levy carbon fees on major carbon emitters. This approach is intended to raise the operating costs of major carbon emitters and encourage businesses to reduce their carbon emissions. The Act also introduces an incentive framework that rewards companies for implementing voluntary reduction plans by granting them emission allowances, which can be used to lower their carbon fee rates. The government plans to commence the collection of carbon fees from enterprises in 2025, based on their GHG emissions in 2024.

Congress amended the Renewable Energy Development Act on May 29, 2023, to expedite the development of domestic renewable energy and contribute to the net-zero carbon emission target advocated by the Ministry of the Environment. The law stipulates that government institutions, public schools, and state-owned enterprises meeting certain conditions must install renewable energy generation equipment when constructing new buildings, expanding existing ones, or undertaking reconstruction projects involving public or government-owned structures. Moreover, the law also requires private-sector entities to install solar photovoltaic power generation facilities when constructing new buildings or renovating existing ones; however, due to potential impacts, the enforcement date will be determined by the Executive Yuan, the highest administrative body in the country.

Policy Development

On March 28, 2023, the FSC issued the "Sustainable Development Action Plans for TWSE- and TPEX-Listed Companies (2023)" to facilitate the implementation of corporate governance and net-zero progress among listed companies. Key developments of the Action Plan include:

- On the environmental front, the FSC will progressively require TWSE- and TPEX-listed companies to establish annual

carbon reduction targets, strategies, and specific action plans over the next five years. The FSC also encourages listed companies to proactively disclose information related to GHG Scope 3 emissions.

- In terms of corporate governance, the FSC has mandated that companies increase the representation of female directors. By 2025, if female directors comprise less than one-third of the board, companies are required to disclose the reasons in their annual reports. Additionally, the FSC aims to enhance communication with stakeholders by offering

institutional investors a platform for automatically preparing due diligence reports or by revising the Stewardship Code for Institutional Investors.

This policy is jointly implemented by the FSC, TWSE, and TPEX. Therefore, some objectives will be realized through legislative amendments to enforce criminal and administrative legal responsibilities, while others will be achieved through the penalty mechanisms of TWSE and TPEX.

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