

ESG IN APAC

Jurisdictional overview on ESG reporting,
transition planning and greenwashing

This is an interactive publication

Please use the buttons on each page to navigate

CONTENTS

INTRODUCTION

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

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

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

Lisa Chung, Partner
Slaughter and May

KEY THEMES AND OBSERVATIONS ACROSS APAC



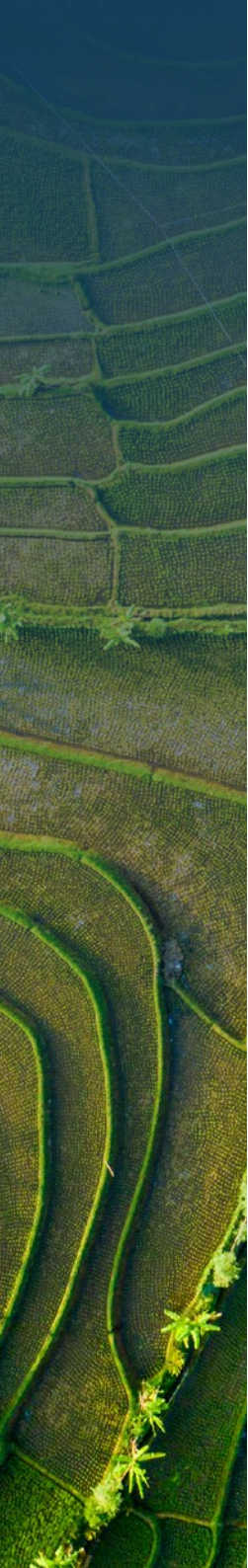
ESG REPORTING REQUIREMENTS

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

Observations across APAC

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

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



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



TRANSITION PLANS

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

Observations across APAC

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

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

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



GREENWASHING

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

Observations across APAC

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

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

INDONESIA

Contributing law firm:
SSEK Law Firm

Contact:
Michael S. Carl, Foreign Counsel
Aldilla S. Suwana, Senior Associate

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

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



A. ESG REPORTING

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

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

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

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

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

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

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

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

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

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

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

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

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

4 Which aspects of ESG do the requirements focus upon?

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

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

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

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

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

7 Are there assurance requirements?

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

8 Are voluntary ESG disclosures customary?

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

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

No.

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

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

11 Other upcoming developments / direction of travel

None other than the above.



B. TRANSITION PLANNING AND NET ZERO

1 Has your jurisdiction set decarbonisation targets and strategies?

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

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

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


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

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

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

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

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



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

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

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

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

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

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

5 Other upcoming developments / direction of travel

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

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

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



C. GREENWASHING RISKS

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

No.

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

No.

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

Likely grounds include:

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

- 4** Other upcoming developments / direction of travel

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

GLOSSARY

GHG or greenhouse gas	The seven greenhouse gases listed in the Kyoto Protocol: carbon dioxide; methane; nitrous oxide; hydrofluorocarbons; nitrogen trifluoride; perfluorocarbons; and sulphur hexafluoride. GHG emissions of reporting entities are commonly categorised into Scope 1, Scope 2 and Scope 3 (see below)
GRI	Global Reporting Initiative, an international independent standards organisation founded by, amongst others, the United Nations Environmental Programme, to develop sustainability reporting standards
ISSB	International Sustainability Standards Board, an independent, private-sector body that was established by the International Financial Reporting Standards Foundation to develop globally consistent sustainability-related financial reporting standards
SASB	Sustainability Accounting Standards Board, a non-profit organisation, founded in 2011 to develop sustainability accounting standards
Scope 1 emissions	Direct emissions from owned or controlled sources
Scope 2 emissions	Indirect emissions from the generation of purchased energy
Scope 3 emissions	All indirect emissions (not included in Scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions
TCFD	Task Force on Climate-related Financial Disclosures, a task force created by the Financial Stability Board to improve and increase reporting of climate-related financial information
Transition plan	Generally understood to be an aspect of a company's overall business strategy that outlines its action plan to mitigate or adapt to climate-related risks for its transition towards a lower carbon economy, including actions such as reducing its GHG emissions



© Slaughter and May

The content of this publication represents the position as at 30 June 2023. This publication is provided for general information only. It does not constitute legal or other professional advice.

For further information, please speak to your usual Slaughter and May contact.