



## **ESG Compliance in the Asia-Pacific Region**

**Compliance and Ethics**

**Environmental**

**Corporate, Securities, and Governance**

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## Cheat Sheet

- **Policy risk.** Counsel needs to monitor and manage an expanding array of standards and regulatory reforms that sit within ESG, from climate change (particularly the IFRS standards that have been incorporated into local instruments such as the impending HKEX ESG Code) to modern slavery and corporate governance.
- **Reputational risk.** ESG issues pose reputational risks even before they become legislated concerns for counsel and other functions to navigate.
- **Supply chain risk.** Counsel must ensure that companies perform due diligence beyond their own internal operations to include suppliers and contractors. Supply chain risk management is needed on multiple fronts, from tracking greenhouse emissions to monitoring modern slavery risk.
- **Stakeholder engagement.** Counsel should ensure that all necessary stakeholders, from the board down, are engaged to develop and execute the ESG strategy and continually review their performance.

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It is time to demystify ESG and empower companies and counsel to act on it.

ESG is too voluminous in ambition and scope to cover all topics under a single standard, but that does not mean we can afford to dismiss it. To understand its importance and why it is here to stay, we need to understand what exactly ESG is and how we got here in the first place.

## ESG originated in 2004

The term “ESG” (Environment, Social, and Governance) originated in 2004 in a United Nations (UN) Global Compact report entitled “[Who Cares Wins](#).” More broadly, it evolved out of the longstanding corporate social responsibility (CSR) movement, a tradition with roots dating back to the 1950s.

But unlike previous iterations of CSR, it places greater focus on measurable outcomes. For example, Hong Kong has enacted a [Climate Action Plan 2050](#), having committed to achieving NetZero emissions (that is, achieving a balance between the amount of greenhouse gases emitted into the atmosphere and the amount removed from it). This aligns with the global effort to limit global warming to 1.5°C above pre-industrial levels, as outlined in the Paris Agreement — the much-discussed UN treaty that was inaugurated in 2015 and which has since been signed by 197 parties. Hong Kong aims to reduce its carbon emissions by 50 percent before 2035 compared to its 2005 levels.

ESG is a set of standards that environmentally and socially conscious investors and consumers use to measure and track company performance. It comprises a medley of topics housed under a three-letter roof, including:

- Climate change (long-term weather patterns caused primarily by human activities such as the burning of fossil fuels, deforestation, and industrial processes which increase the concentration of greenhouse gases in the atmosphere, which in turn warms the planet), waste management, and use of natural resources;
- Working conditions, including workplace health and safety, belonging, diversity, equity, and inclusion (BDEI), indigenous ownership, and social impacts of company operations on communities; and
- Corporate governance, anti-bribery and corruption, privacy, data protection, cybersecurity, and the rights of shareholders.

## Governance should come first

Of the three components that sit within ESG, governance is the least understood, yet it underpins everything. Without sound governance, it is impossible to respond to environmental and social challenges effectively. ESG begins with the board of directors. Directors must instigate the ESG strategy that will eventually be found throughout the business. After all, they bear ultimate accountability. They set the tone from the top that the rest of the business sings in tune with each other.

If several of the topics above seem familiar, it's because counsel and risk managers already talk about these things routinely; that they are indeed business as usual. Significantly, many of these topics are heavily regulated, with more topics becoming subject to litigation. Now that they sit under

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the catch-all term of “ESG,” they carry the added intensity of environmentally and socially conscious investor and consumer scrutiny.

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Companies are facing increased risk of climate change litigation. Activists are generally less preoccupied with seeking financial redress than with changing corporate conduct, such as how products are made and marketed. Legislators worldwide are seeking to tighten regulations over [greenwashing](#) (a type of misleading conduct whereby companies exaggerate, overstate or outright fabricate their environmental commitments).

In November 2023, [69 judges](#) from China, India, Singapore, and across Southeast Asia met in Indonesia to upskill their ESG knowledge through a training course that was intended to help them preside over matters with a strong grounding in the latest caselaw and climate science.

## Where do we start?

It is a useful exercise for companies to map their mission, values, operations and processes to international frameworks such as the UN’s 17 [Sustainable Development Goals](#). While not every goal applies to every entity, the adoption of three or four relevant goals can help to sharpen our collective sense of key ESG risks and how each company can make their most effective contribution to the environment and society.

## The cycle of reputational loss and regulatory burden

ESG is a regulatory feast, evolving at a pace that makes it challenging for companies to adapt.

But even before ESG issues are legislated, they pose reputational risks for counsel and other functions to navigate. A company can be held reputationally liable without breaching the law for committing activities that transgress social expectations.

Consider the Australian case involving Juukan Gorge, a 46,000-year-old Aboriginal rock shelter that mining company Rio Tinto was given ministerial consent to blast in 2013. In the following year, an archaeological excavation [uncovered](#) treasures, including a 4,000-year-old plait of human hair, that evidenced the fact that the site was much older and held a more enduring value to the local indigenous community than previously known. Nonetheless, the state-sanctioned detonation went ahead, and Rio Tinto suffered heavy reputational loss for failing to take account of the site’s ancient significance.

## ESG supply chain due diligence

The rapid expansion of ESG issues puts pressure on companies — and counsel in particular — to perform due diligence beyond their own internal operations to include their suppliers and contractors. Supply chain risk management is needed on multiple fronts, from tracking greenhouse emissions to monitoring modern slavery risk.

## Greenhouse emissions

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International standards such as the International Sustainability Standards Board's (ISSB) International Financial Reporting Standards (IFRS) S1 and S2 require entities to distinguish the emissions for which they are responsible, including Scope 1 emissions (the energy owned and burned directly by the company), Scope 2 (energy purchased from elsewhere, such as electricity bought from an electricity grid) and Scope 3 (energy used upstream and downstream within the wider supply chain).

## Modern slavery risk

In 2018, the world's largest latex glove manufacturer, Top Glove, became subject to an [investigation](#) of working conditions in its Malaysian factories, which employs many Nepali and Bangladeshi workers. Top Glove was accused of having systemic problems in its recruitment processes, including debt bondage (whereby migrants give up their passports as security for their employment and incur a debt they can never repay, in effect trapping them in work against their will) and excessive work conditions (such as forcing workers to work up to 30 consecutive days without respite). The company was forced to [reimburse](#) its migrant workforce US\$36 million. Its reputational fallout led to the US imposing an import ban in 2020 and its share prices dropping 60 percent over the following year before the United States lifted its ban. Plans to list on the HKEX were delayed, compounded by the advent of COVID-19 among other factors.

Top Glove's troubles put a spotlight on the wider network that relied on its products. This included Ansell, the Australian manufacturer of personal protection equipment for healthcare and industrial workplaces. Ansell was publicly named and shamed for the factory working conditions of its suppliers, including Top Glove and its subsidiary Brightway, and was accused of knowingly profiting from modern slavery.

## Managing increased regulatory burden of ESG compliance

Far from being an unregulated space, ESG presents an increasingly complex set of regulatory burdens for companies to manage and for counsel to address.

For example, IFRS S1 sets out identify sustainability-related financial disclosures, including both risks and opportunities, backed by "reasonable and supportable information." IFRS S2 focuses on climate-related reporting, with disclosure requirements relating to physical risks (event-driven risks or longer-term shifts in climate patterns) or transition risks associated with moving to a lower-carbon economy.

Given the influence of the IFRS on local legislative instruments worldwide, counsel should acquaint themselves with the standards. From 1 January 2025, HKEX will replace its ESG Reporting Guide with an [ESG Code](#) containing mandatory disclosure requirements with which Hang Seng Composite LargeCap Index constituents must comply. This codification strengthens existing disclosure requirements towards more measurable reporting outputs, taking inspiration from the IFRS standards. The SGX RegCo has also incorporated these standards. The Hong Kong Institute of Certified Public Accountants (HKICPA) intends to enact new sustainability and climate-related standards from August 2025 and has published exposure drafts that align with the international standards.

Under the HKEX ESG Code, initial reporting requirements for Scope 1 and Scope 2 emissions will expand the following year to encompass Scope 3 emissions. This alone should send a signal to companies about the breadth and complexity of the compliance burden that organisations will need to

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prepare for. They will need to undertake ESG materiality assessments to identify what their top ESG issues are and quantify their performance on these issues using a consistent methodology to track data. They will need to put these numbers into a narrative to ensure that data does not exist in a vacuum but rather forms the substance of a story that is accessible to their ESG report readers. And they will need to take precautions to ensure there are no omissions or selective presentation of facts that would obscure the true state of things.

Bear in mind that these climate-related disclosure requirements refer, as we have just seen, to one aspect of ESG. They are a single (if multi-faceted) component of the manifold ESG-related regulatory compulsions of which counsel must take stock.

The ISO series developed by the International Organisation for Standardisation provides further specifications for organisations to address ESG, including the ISO 14064 series (relating to greenhouse gas emissions) and ISO 26000 (which provides guidance on social responsibility, including the need to address human rights issues).

## **Reducing inefficiencies**

ESG challenges us to enact substantive, quantitative, and increasingly regulated change to address some of the major issues of our time.

Companies face pressure to promulgate large-scale impact with their ESG responses, adopting a bird's eye view to promote efficiency and a cohesive effort across divisions.

Imagine attending a celebratory banquet. Picture all the food — too much food to eat in one go. A surplus of food is a cultural tradition the Asia Pacific region; a sign of prosperity measured by excess. But so much waste results from that one-off event. What can we do to manage the excess? Could we order less in the future? Could the excess be reheated and eaten later?

Apply the same logic when fulfilling ESG obligations.

At its core ESG involves monitoring the energy and effort we expend; reviewing the underlying ethics of our actions; and managing, mitigating, or eliminating unethical, unscrupulous, or wasteful practices.

In all this, counsel must ensure that all necessary stakeholders, from the board of directors down, are engaged to develop and execute the ESG strategy and continually review their performance.

Counsel's role is vital.

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