6-2024

Sustainability and the sunlight of disclosure: ESG disclosure in three Asian financial centres

Rachel PHANG
Singapore Management University, rachelphang@smu.edu.sg

Yaru CHIA

Published in Review of European, Comparative & International Environmental Law (2024). DOI: 10.1111/reel.12554

Sustainability and the sunlight of disclosure: ESG disclosure in three Asian financial centres

Rachel Phang[1] | Yaru Chia[2,3]

[1]Yong Pung How School of Law, Singapore Management University, Singapore

[2]Centre for Banking & Finance Law, Faculty of Law, National University of Singapore, Singapore

[3]Clifford Chance, Singapore

Correspondence
Rachel Phang, Yong Pung How School of Law, Singapore Management University, Singapore.
Email: rachelphang@smu.edu.sg

Funding information
Centre of Banking & Finance Law

Abstract

The prevailing paradigm of sustainable finance places great importance on environmental, social and governance (ESG) information and, therefore, on the mechanism of reporting and disclosure. This article presents, analyses and compares the approaches to ESG disclosure in three Asian financial centres: Singapore, Hong Kong and Shanghai. The article uncovers commonalities and divergences in the drivers, dynamics, content and trends of ESG disclosure in the selected jurisdictions. In doing so, it looks forwards, seeking to anticipate and shape the development of ESG disclosure in Asia. At the same time, it looks beyond ESG disclosure, remaining mindful that the mechanism itself is only a means toward, and should not constrain, the pursuit of the ultimate goal of sustainable development in Asia.

1 | INTRODUCTION

As sustainability becomes an increasingly urgent and critical priority, demand for sustainability information has grown. Correspondingly, environmental, social and governance (ESG) disclosure has gained prominence as a means for investors to direct capital and monitor companies' progress toward sustainability outcomes. To the extent that ESG disclosure standards affect financial flows and corporate behaviour, regulatory development in this area, therefore, has the potential to impact sustainability outcomes in our economies, our societies and in nature.

The title of this article draws on Brandeis' famous statement that '[s]unlight is said to be the best of disinfectants'[1]; though his remarks were made in relation to the concentration of power among banks, in the pursuit of sustainable development, the sunlight of disclosure may well also have sanitising and facilitative effects.[2] To put it in less metaphorical terms, this article is concerned with the role of disclosure in facilitating the pursuit of sustainability goals. Specifically, this article focuses on ESG disclosure in three Asian financial centres: Singapore, Hong Kong and Shanghai. Its primary aim is to present, analyze and compare these case studies. What are the similarities and differences in their approaches to ESG disclosure, given the local market and institutional context and taking into account matters such as scope, legal effect, the concept of materiality, focus, alignment with international standards and incorporation of technology? This is the central question of this article.

The cities that are the focus of this analysis were chosen because they present interesting points of comparison and contrast. First and fundamentally, Singapore, Hong Kong and Shanghai are regarded as the top three financial centres in Asia[3] and are home to three of Asia's leading stock markets.[4] Where sustainability considerations are concerned, the prevailing paradigm, by some accounts, has been regarded as characterised by financialisation—with investors and their allocation and direction of capital being the main driving force for prioritising sustainable development.[5] To the extent that this characterisation is accurate, given the capital that is channelled through these leading financial centres to the rest of Asia, understanding their approaches is

[1]LD Brandeis, 'What Publicity Can Do' (1913) Harper's Weekly 10, 10.

[2]As Coffee noted, '[i]f disclosure was once Brandeis's best disinfectant, it is now becoming a force that can effect significant social and economic change'. JC Coffee Jr., 'The Future of Disclosure: ESG, Common Ownership, and Systematic Risk Symposium on the Future of Securities Regulation' (2021) 2021 Columbia Business Law Review 602, 603.

[3]M Wardle and M Mainelli, 'The Global Financial Centres Index 33' (2023) <https://www.longfinance.net/media/documents/GFCI_33_Report_2023.03.23_v1.1.pdf> 4.

[4]World Bank, 'Market Capitalization of Listed Domestic Companies (Current US$)' <https://data.worldbank.org/indicator/CM.MKT.LCAP.CD?most_recent_value_desc=true>; Statista, 'Leading Stock Exchanges in the Asia Pacific Region as of May 2023, by Domestic Market Capitalization' <https://www.statista.com/statistics/265236/domestic-market-capitalization-in-the-asia-pacific-region/>.

[5]See I MacNeil and IM Esser, 'From a Financial to an Entity Model of ESG' (2022) 23 European Business Organization Law Review 9.

key. Second, state-owned enterprises (SOEs) and government-linked companies (GLCs), as well as sovereign wealth funds, are significant participants in these markets.[6] The government's dual market participant and regulatory roles give rise to particular issues and dynamics of public–private interaction, which merit study. Third, despite these key similarities, these case studies also differ in important aspects, such as in their legal systems and in SOEs/GLCs' objectives, making for fruitful comparison. There are many other Asian jurisdictions that equally merit comparative study, notably, Japan, Korea and India.[7] However, constraints of space have restricted this article to the present three case studies, which we hope may nonetheless contribute to the literature on ESG disclosure in Asia.

In this regard, the secondary aim of this article is to contribute, albeit if only in a modest way, to the wider enterprise of assessing still-coalescing Asian perspectives of ESG disclosure. As the case studies demonstrate, the differing market and institutional contexts in Asian jurisdictions warrant specific study. Moreover, as compared with Europe and the United States, ESG investment in Asia is at a comparatively more nascent stage.[8] Asia's ESG disclosure standards are also still evolving, especially in comparison with the European Union (EU), which has been leading the development of disclosure regulations.[9] Given that it is at a relatively formative stage, it is especially interesting therefore to assess the view from Asia and potentially shape and anticipate its development. Even though the present case studies are by no means determinatively representative of the entire continent, they nevertheless constitute essential puzzle pieces in this endeavour of putting together a broader view of ESG disclosure in Asia. This article builds on existing comparative studies, including of ESG disclosure globally[10] and of sustainability reporting in Asian common law jurisdictions[11] by focusing attention and analysis specifically on the approaches in these selected Asian financial centres.

To give a brief roadmap of this article, Section 2 provides a conceptual overview of ESG disclosure, situating this article within its wider context. Section 3 delves into the ESG disclosure regimes in Singapore, Hong Kong and Shanghai. Thereafter, Section 4 undertakes a comparative analysis of these case studies, comparing the drivers, dynamics, content of and trends in ESG disclosure and distilling characteristics that are distinctive of the approaches taken by these Asian financial centres. Section 5 is concerned with anticipating and shaping the development of ESG disclosure in Asia. It ventures proposals for subsequent development, considers the role of technology and looks beyond ESG disclosure to alternative and complementary models. Section 6 concludes.

The overall objective of this article, therefore, is to present, analyze and compare the approaches to ESG disclosure in three Asian financial centres. Ultimately, it hopes to contribute to an Asian perspective of ESG disclosure and supplement the discourse that is often focused on European and American approaches. In this way, this article seeks to 'join the dots' between these still emergent approaches in Asia and thereby contribute to painting a more comprehensive view of ESG disclosure—one of the key mechanisms that is being employed in the pursuit of sustainable futures.

2 | A CONCEPTUAL OVERVIEW OF ESG DISCLOSURE

This section begins by providing a brief conceptual overview of ESG disclosure, to contextualise the discussion that follows. It defines key terms and addresses the development, importance, challenges and criticisms of ESG disclosure.

Preliminarily, with respect to terminology, many terms—such as 'sustainability' and 'ESG'—often appear to be used interchangeably and may even have several different proposed definitions. We therefore set out, at the outset, proposed definitions of key terms. A seminal definition of the concept of 'sustainable development' originates in the 1987 United Nations commissioned Brundtland Report, which defined sustainable development as that which 'seeks to meet the needs and aspirations of the present without compromising the ability to meet those of the future'.[12] The related term, 'sustainable finance', is not as clearly defined. The World Bank has described it as a broad and evolving concept referring to the use designated for financial resources, with one cited definition being that of '[f]inancial flows – public or private – that are allocated in a way that simultaneously promotes sustainable development'.[13]

Following the initial emergence of the concept of 'sustainable development', in a speech at the Davos World Economic Forum in 1999, Kofi Annan (the then Secretary-General of the United Nations) laid foundations for the initiative that gave rise to the term 'ESG', by challenging business leaders to join the United Nations in a 'global compact' on human rights, labour and the environment.[14] The concept of ESG now is a mainstay of sustainability, although it is somewhat broader in scope, in that the 'G'—governance—is not a focus of sustainability. A range of international frameworks address ESG

[6]See Section 4.2.

[7]For a comparison of sustainability reporting in Japan, Korea, Thailand and Singapore, see K Schumacher et al, 'Sustainability Reporting in Asia: Are the EU's Initiatives the Benchmark for ESG Disclosure in the Region?' (10 October 2022) <https://papers.ssrn.com/abstract=4244335>; and for evaluation of sustainability reporting in Singapore, Malaysia and India, see E Lim, *Sustainability and Corporate Mechanisms in Asia* (Cambridge University Press 2020) 55–102.

[8]See, for example, the differences in the value of assets in ESG funds in Europe, the United States and the rest of the world. H Agnew et al, 'How ESG Investing Came to a Reckoning' (Financial Times, 6 June 2022).

[9]See, for example, (1) Directive 2014/95/EU of 22 October 2014 amending Directive (EU) 2013/34 as regards disclosure of nonfinancial and diversity information by certain large undertakings and groups [2014] OJ L330/1 (Nonfinancial Reporting Directive [NFRD]); and, more recently, (2) Directive 2022/2464/EU of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting [2022] OJ L322/15 (Corporate Sustainability Reporting Directive [CSRD]); and (3) Regulation 2019/2088/EU of 27 November 2019 on sustainability-related disclosures in the financial services sector [2019] OJ L317/1 (Sustainable Finance Disclosure Regulation [SFDR]).

[10]V Harper Ho and SK Park, 'ESG Disclosure in Comparative Perspective: Optimizing Private Ordering in Public Reporting' (2019) 41 University of Pennsylvania Journal of International Law 249.

[11]Lim (n 7) 55–102.

[12]World Commission on Environment and Development, 'Our Common Future' (1987) <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf> para 49.

[13]UN Environment Programme (UNEP) and World Bank Group, 'Roadmap for a Sustainable Financial System' (2017) <https://sustainabledevelopment.un.org/content/documents/245112128312112017153333RoadmapforaSustainableFinancialSystem.pdf> 83–84.

[14]United Nations, 'Secretary-General Proposes Global Compact on Human Rights, Labour, Environment, in Address to World Economic Forum in Davos' (1 February 1999) <https://press.un.org/en/1999/19990201.sgsm6881.html>; E Pollman, 'The Making and Meaning of ESG' (31 October 2022) <https://law-economic-studies.law.columbia.edu/sites/default/files/content/Pollman_Making%20&%20Meaning%20of%20ESG_rev%202022%2010%2031.pdf> 8-9.

factors, or specifically environmental or social factors, and it can be difficult to pin down one definition of these factors.[15] In this regard, the European Banking Authority has described ESG factors as generally referring to '[e]nvironmental, social or governance matters that may have a positive or negative impact on the financial performance or solvency of an entity, sovereign or individual'.[16] It pinpoints five potentially interrelated commonalities of ESG factors: They are traditionally regarded as nonfinancial; there is uncertainty regarding the timing of their impacts; they give rise to negative economic externalities; they arise from activities and interactions throughout the value chain; and they are particularly sensitive to public policy changes.[17] As regards the relationship between these terms, one conception regards 'sustainability' as an overarching concept that is primarily concerned with externalities and how these are inadequately internalised under the shareholder primacy model; by contrast, 'ESG' is regarded as primarily concerned with financial risk and return and therefore with enhancing returns by mitigating risks relating to ESG factors.[18]

Like the terms 'sustainability' and 'ESG', the terms 'sustainability reporting' and 'ESG disclosure' often appear in conjunction and are sometimes even used interchangeably, such that it is difficult to delineate the precise scope of each term. 'Reporting' is often associated with the reporting of nonfinancial information at the corporate level, particularly by listed companies. For example, the Singapore Exchange (SGX) and the EU Corporate Sustainability Reporting Directive use the term 'sustainability reporting',[19] while the Stock Exchange of Hong Kong (HKEx) uses the term 'ESG reporting'.[20] This article is concerned not only with such corporate-level reporting but also with other forms of disclosure, including within the financial-sector. As the focus is on the approaches in three Asian financial centres, this article is also concerned primarily with ESG, which likewise is often conceived of as associated with financial risk and return.[21] We therefore have chosen to primarily use the term 'ESG disclosure', defining it, for the purposes of this article, as including both (1) corporate reporting of ESG information (which corporate regulatory authorities and stock exchanges may impose on listed companies and large nonlisted companies) and (2) financial sector-specific requirements relating to the disclosure of ESG information (which financial regulators may impose on financial institutions). Where the term 'sustainability reporting' is used herein, it generally refers to corporate reporting, typically by listed companies.

This article focuses specifically on ESG disclosure. There are several reasons for this choice. First, from a market perspective, there is significant investor demand for ESG products and, correspondingly, for ESG information. Around a fifth of all assets were in funds using some kind of ESG criteria,[22] and with the increasing integration of sustainability-related risks and opportunities into capital allocation decisions, financial market participants have increasingly been integrating ESG ratings[23] and data products into their investment decisions. Such demand for ESG information is also reflected, for instance, in Principle 3 of the Principles for Responsible Investment, under which signatories commit to seeking appropriate disclosure on ESG matters from entities in which they invest.[24] In the light of these market developments, scholars have also situated ESG disclosure within key theories as to the purpose of the securities disclosure regime, such as the efficient markets hypothesis and the governance theory.[25] Second, from the perspective of regulatory trends and developments, reporting and disclosure has been noted as 'the most critical priority', consisting of 27% of all green finance policy and regulatory measures according to a 2020 report by the United Nations Environment Programme.[26] Third, from a conceptual perspective, this focus on disclosure is unsurprising given the key role of information as a 'driver' of sustainable finance.[27] Sustainable finance may not be the ideal solution as compared, for example, with other means of addressing negative externalities, such as Pigouvian taxes or more coercive regulation[28] (an important consideration that will be touched on below). Yet, the present reality is that it has emerged as the prevailing model, under which the private sector takes a dominant role in directing resources toward sustainable development. In such a context, the availability of sustainability information becomes essential, and reporting and disclosure are a crucial mechanism for impelling sustainable development.[29] Indeed, some statements even go so far as 'get the reporting right and sustainability will follow' (as has notably been cited by Singapore's second minister for finance).[30]

[15]L Alessi et al, 'Sustainable Growth in the European Framework and the Role of Finance' in N Linciano et al (eds), *Information as a Driver of Sustainable Finance: The European Regulatory Framework* (Springer 2022) 7, 10.

[16]European Banking Authority (EBA), 'EBA Report on Management and Supervision of ESG Risks for Credit Institutions and Investment Firms' (2021) <https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Reports/2021/1015656/EBA%20Report%20on%20ESG%20risks%20management%20and%20supervision.pdf> 6.

[17]ibid 27–29.

[18]MacNeil and Esser (n 5) 10–11.

[19]CSRD (n 9).

[20]HKEx, 'Main Board Listing Rules' <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Listing-Rules/Consolidated-PDFs/Main-Board-Listing-Rules/consol_mb.pdf> r 13.91.

[21]MacNeil and Esser (n 5) 10–11.

[22]Monetary Authority of Singapore (MAS), '"What We Need to Do to Make Green Finance Work" - Keynote Speech by Mr Ravi Menon, Managing Director, Monetary Authority of Singapore, at Financial Times Investing for Good Asia Digital Conference on 8 September 2021' (8 September 2021) <https://www.mas.gov.sg/news/speeches/2021/what-we-need-to-do-to-make-green-finance-work>.

[23]For instance, according to a 2023 survey, nearly half of investor respondents used ESG ratings products multiple times per week and nearly all used ESG ratings products at least once a month. The SustainAbility Institute, 'Rate the Raters 2023: ESG Ratings at a Crossroads' (2023) <https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/2023/rate-the-raters-report-april-2023.pdf> 5.

[24]PRI Association, 'What Are the Principles for Responsible Investment?' <https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment>.

[25]A Saad and D Strauss, 'The New "Reasonable Investor" and Changing Frontiers of Materiality: Increasing Investor Reliance on ESG Disclosures and Implications for Securities Litigation' (2020) 17 Berkeley Business Law Journal 391, 397–402.

[26]UNEP and United Nations Development Programme, 'Nudging the Financial System: A Network Analysis Approach' (2020) <https://wedocs.unep.org/xmlui/handle/20.500.11822/34538> 28.

[27]See Linciano et al (n 15).

[28]See, for example, MacNeil and Esser (n 5) 10; M Nava, 'Foreword by Mario Nava' in Linciano et al (n 15) v, ix.

[29]Nava (n 28) v; MacNeil and Esser (n 5) 40.

[30]Ministry of Finance, 'Opening Remarks by Ms Indranee Rajah, Minister in the Prime Minister's Office, Second Minister for Finance at The Roundtable for Professional Services on Sustainability on 1 December 2022, The Treasury' (1 December 2022) <https://www.mof.gov.sg/news-publications/speeches/opening-remarks-by-ms-indranee-rajah-minister-in-the-prime-minister-s-office-second-minister-for-finance-at-the-roundtable-for-professional-services-on-sustainability-on-1-december-2022-the-treasury> para 17.

ESG disclosure and sustainability reporting make reference to certain key concepts and frameworks. In sustainability reporting, materiality is an important concept, as it determines the scope of information that should be reported.[31] In this regard, a notable distinction is between single materiality and double materiality. Single materiality typically refers to financial materiality; it regards a sustainability matter as material if it affects the company's financial position or financial performance.[32] Double materiality, which is adopted in the EU, encompasses both financial materiality and impact materiality; impact materiality regards a sustainability matter as material if it relates to the *company's* impact on people or the environment.[33] Materiality is typically assessed from the perspective of investors and other primary users of financial reports, in that information is often regarded as material, if omission or misstatement of such information would reasonably be anticipated to influence investors' decisions.[34] Additionally, with respect to frameworks and standards, though the focus of this article is on national and city-level approaches, on the international level, there are several sustainability reporting frameworks and standards that influence local disclosure requirements. Key standards and frameworks that have been cited by the Singapore, Hong Kong and Shanghai regulators include the Global Reporting Initiative (GRI) Sustainability Reporting Guidelines, the International Integrated Reporting Council (IIRC) Framework, the Sustainability Accounting Standards Board (SASB) standards, the Task Force on Climate-related Financial Disclosures (TCFD) recommendations and the International Sustainability Standards Board (ISSB) standards.[35] (In recent years, the IFRS Foundation—which formed the ISSB—has consolidated and taken over functions and roles of the SASB, IIRC and TCFD.[36] However, this article continues to reference their standards and recommendations, as some of the jurisdictions considered herein still reference these previous standard setters.) Apart from assessing the concept of materiality used, this article also briefly considers the alignment of the case study jurisdictions with such international standards.

Although this article focuses on ESG disclosure, an efficient information ecosystem has several interrelated elements, including ESG taxonomies, certifications and ratings.[37] In focusing specifically on disclosure, this article admittedly excludes other key related pillars of sustainable finance—perhaps most notably, taxonomies. This choice was made because conceptually, taxonomies can be regarded as a related but distinct foundation of the sustainable finance framework[38]; as such, it can be conceptually justifiable to focus solely on the pillar of disclosure. Moreover, practically, constraints of space unfortunately do not permit further discussion of taxonomy regulation, especially to the extent that this important topic requires.

Finally, despite this article's focus on ESG disclosure, ESG disclosure is not without its challenges, criticisms and shortcomings. One challenge is defective disclosure, also called 'greenwashing', where disclosure is 'exaggerated, selective, deceptive or false'.[39] Another challenge is lack of standardisation in definitions, terminology and standards, resulting in fragmentation and difficulty comparing disclosures.[40] Yet, another practical challenge is the costs reporting poses to firms.[41] More fundamentally, the disclosure-based approach has also itself attracted criticism, with critics questioning its sufficiency,[42] or even whether measures such as mandatory disclosure might undermine its purported goals.[43] Indeed, scholars in other disciplines have questioned the focus on ESG itself, arguing that ESG has been widely accorded disproportionate importance.[44] A discussion of ESG disclosure cannot disregard these issues, which will also be touched on herein, particularly in Section 5.

3 | CASE STUDIES OF ESG DISCLOSURE IN THREE ASIAN FINANCIAL CENTRES

Having contextualised the discussion in Section 2, this section concentrates on selected specific case studies of ESG disclosure in three Asian financial centres: Singapore, Hong Kong and Shanghai. It considers the regulators' overall objectives in implementing ESG disclosure requirements and guidance. It also considers each city's approach to ESG disclosure, to the extent relevant, in terms of the following: (1) the scope of application, that is, the types of entities and products to which disclosure requirements apply; (2) the legal effect, that is, whether these are mandatory, voluntary or 'comply or explain' provisions; (3) the concept of materiality employed; (4) the matters that should be disclosed; (5) the extent of alignment with

[31]See, for example, Commission Delegated Regulation 2023/2772/EU of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards (the European Sustainability Reporting Standards [ESRS]), app E. For an in-depth discussion of materiality, see R Jebe, 'The Convergence of Financial and ESG Materiality: Taking Sustainability Mainstream' (2019) 56 American Business Law Journal 645.

[32]See, for example, ESRS (n 31) s 3.5; Annex II, Table 2.

[33]See, for example, ibid s 3.3; Annex II, Table 2.

[34]See, for example, ISSB, IFRS Foundation, 'IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information' (June 2023) <https://www.ifrs.org/content/dam/ifrs/publications/pdf-standards-issb/english/2023/issued/part-a/issb-2023-a-ifrs-s1-general-requirements-for-disclosure-of-sustainability-related-financial-information.pdf> paras 14, 17–19, B13–B37, Appendix A.

[35]See, for example, ISSB's first two standards: ibid; and ISSB, IFRS Foundation, 'IFRS S2 Climate-related Disclosures' (June 2023) <https://www.ifrs.org/content/dam/ifrs/publications/pdf-standards-issb/english/2023/issued/part-a/issb-2023-a-ifrs-s2-climate-related-disclosures.pdf>. For an overview of other key sustainability reporting standards, see Schumacher et al (n 7) 38–40.

[36]SASB and IIRC merged to form the Value Reporting Foundation; thereafter, the Value Reporting Foundation and the Climate Disclosure Standards Board were in turn consolidated into the IFRS Foundation. TCFD has disbanded, and the Financial Stability Board has requested that the IFRS Foundation take over monitoring of disclosures. IFRS, 'Who We Are' <https://www.ifrs.org/about-us/who-we-are/#history>; TCFD, 'Task Force on Climate-Related Financial Disclosures' <https://www.fsb-tcfd.org/>.

[37]Nava (n 28) v.

[38]See, for example, Schumacher et al (n 7) 17.

[39]P Câmara, 'The Systemic Interaction Between Corporate Governance and ESG' in P Câmara and F Morais (eds), *The Palgrave Handbook of ESG and Corporate Governance* (Palgrave Macmillan 2022) 3, 24–27.

[40]ibid 26; Alessi et al (n 15) 8; MAS, '"The Future of Capital Is Green" - Keynote Address by Mr Ravi Menon, Managing Director, Monetary Authority of Singapore, at IMAS-Bloomberg Investment Conference on 9 March 2021' (9 March 2021) <https://www.mas.gov.sg/news/speeches/2021/the-future-of-capital-is-green>.

[41]A Garcia Rolo, 'ESG and EU Law: From the Cradle of Mandatory Disclosure to More Forceful Steps' in Câmara and Morais (n 39) 191, 209.

[42]Câmara (n 39) 24.

[43]S Oranburg, 'The Unintended Consequences of Mandatory ESG Disclosures' (2022) 77 Business Lawyer 697.

[44]See, for example, B Cornell and A Damodaran, 'Valuing ESG: Doing Good or Sounding Good?' (2020) 1 Journal of Impact and ESG Investing 76; A Edmans, 'The End of ESG' (2023) 52 Financial Management 3.

TABLE 1 Environmental, social and governance (ESG) disclosure in Singapore, Hong Kong and Shanghai.

	Singapore	Hong Kong	Shanghai
Scope of application	Corporate level: • Listed companies • Large nonlisted companies Financial sector: • Banks, asset managers and insurers • Retail ESG funds	Corporate level: • Listed companies Financial sector: • Banks and authorised deposit-taking institutions • Fund managers • SFC-authorised green or ESG funds	Corporate level: • Listed companies • SOEs Financial sector: • Financial institutions • Issuers of green bonds
Legal effect	• Mix of mandatory, 'comply or explain' and voluntary	• Mix of mandatory and 'comply or explain'	• Mix of mandatory and voluntary
Materiality	• Single materiality (e.g., listing rules and ENRM Guidelines)	• Primarily single materiality but incorporates double materiality in some aspects (HKEx)	• Proposed double materiality (SSE)
Content of disclosures	• Information relating to material ESG factors and climate-related disclosures (for listed companies) • Environmental risks (for financial institutions) • Information substantiating ESG label (for retail ESG funds)	• Governance, environmental and social aspects, etc. (for listed companies) • Transition plans (for authorised institutions) • Climate-related risks (for fund managers)	• Environmental and social responsibility disclosure (for listed companies) • Environmental disclosure (for financial institutions)
Alignment with international standards	• TCFD recommendations • ISSB standards • GRI, SASB and CDP standards/ frameworks (previously used by some financial institutions)	• TCFD recommendations • ISSB standards	• Incorporation of beneficial international experience
Technology and digitalisation	• Development of data infrastructure to support sustainability data flows		

Abbreviations: CDP, Carbon Disclosure Project; ENRM, Environmental Risk Management; GRI, Global Reporting Initiative; HKEx, Stock Exchange of Hong Kong; ISSB, International Sustainability Standards Board; SFC, Securities & Futures Commission; SOE, state-owned enterprise; SSE, Shanghai Stock Exchange; TCFD, Task Force on Climate-related Financial Disclosures.

international standards; and (6) the role of technology and digitalisation. Selected features of the case studies are summarised in Table 1 (at the end of this Section 3).

3.1 | Singapore

3.1.1 | Regulator's objectives

In relation to Singapore, the Singapore government has articulated a vision for the country to be 'a leading centre for green and sustainable finance in Asia and globally',[45] announcing this aim in 2019 with the launch of its Green Finance Action Plan.[46] Reporting and disclosure measures play an important role in the pursuit of this vision. Singapore's approach to ESG disclosure is primarily driven by the country's integrated financial regulator, the Monetary Authority of Singapore (MAS), and by SGX. Presently, disclosure requirements and guidelines apply to listed issuers, entities in specific sectors and financial institutions, as well as retail ESG funds. MAS is notably also endeavouring to facilitate efficient ESG disclosure through technological initiatives. Moreover, in 2022, the Accounting and Corporate Regulatory Authority and Singapore Exchange Regulation (SGX RegCo) established the Sustainability Reporting Advisory Committee (SRAC) to provide recommendations on a sustainability reporting roadmap for locally incorporated companies, as well as on the appropriateness of implementing international sustainability reporting standards in Singapore.[47] These are considered further below.

3.1.2 | ESG disclosure

First, with respect to listed entities, SGX requires issuers to produce sustainability reports.[48] Such reports must include components such as material ESG factors; policies, practices, performance and targets

[45]Ministry of Finance (n 30) para 16.

[46]MAS, 'Annual Report 2019/2020 – Greening the Financial System' (2019) <https://www.mas.gov.sg/publications/annual-report/2020/annual-report-2019-2020/greening-the-financial-system>.

[47]ACRA and SGX Group, 'ACRA and SGX RegCo Set Up a Sustainability Reporting Advisory Committee to Advance Sustainability Reporting for Singapore' (21 June 2022) <https://links.sgx.com/FileOpen/20220621_ACRA_and_SGX_RegCo_set_up_SR_advisory_committee_final.ashx?App=Announcement&FileID=721292>.

[48]SGX, 'SGX Mainboard Rules' (1 January 2022) <https://rulebook.sgx.com/rulebook/711a> r 711A.

relating to these factors; and climate-related disclosures that align with TCFD recommendations.[49] SGX has also published a guiding list of core ESG metrics that may serve as a starting point for reporting.[50] Single materiality is employed (although the concept of materiality also incorporates impact on key stakeholders)[51]; in this respect, SGX's approach somewhat diverges from an apparent trend toward double materiality in Hong Kong and Shanghai. In terms of the legal effect of the requirements, there is an ongoing shift from voluntary to mandatory disclosure. Initially, in 2011, reporting was voluntary; however, from the financial year ending on or after 31 December 2017, sustainability reporting became mandatory.[52] Moreover, SGX is introducing, in phases, mandatory climate reporting. Listed entities have been required to provide climate reporting on a 'comply or explain' basis for the financial year commencing in 2022; such reporting will be made mandatory in subsequent financial years for listed issuers in specific sectors.[53] Additionally, all listed issuers will be required to report climate-related disclosures in line with ISSB standards from the financial year commencing in 2025.[54] Further alignment with the recently issued ISSB standards is forthcoming, with SGX RegCo consulting on how the exchange's sustainability reporting rules may incorporate the ISSB standards.[55]

Second, with respect to nonlisted companies, from the financial year commencing in 2027, climate reporting will also be required of large nonlisted companies with at least S$1 billion in annual revenue and at least S$500 million in total assets.[56] At present, such companies are not required to make climate-related disclosures, unless they are subject to certain sector-specific legislation.[57]

Apart from these corporate-level disclosure measures, financial-sector-specific disclosure measures also apply. MAS has articulated its supervisory expectations regarding meaningful disclosure of environmental risks in its Guidelines on Environmental Risk Management (ENRM Guidelines), which were issued to banks, asset managers and insurers in December 2020[58]; these are supplemented by information papers issued in May 2022.[59] The ENRM Guidelines set out 'best practice standards' and are not binding; however, the extent of compliance with the guidelines may affect MAS' overall risk assessment of an institution.[60] Disclosure is one of the three core areas addressed in the ENRM Guidelines. Covered financial institutions are expected to clearly and meaningfully disclose to their stakeholders their approaches to managing environmental risk, at the minimum on an annual basis.[61] A single materiality approach is taken.[62] Such disclosures should conform with international reporting frameworks; MAS cited, in particular, the example of the TCFD recommendations.[63] Following a thematic review, MAS found that financial institutions mainly used the TCFD recommendations in their climate-related risk disclosures, although some institutions also used other frameworks by the GRI, the SASB (which has since been consolidated into the IFRS Foundation) and the Carbon Disclosure Project[64]—reflecting an alignment with international standards. MAS has also indicated that it intends to consult on mandatory disclosure requirements referencing such standards, which will be applicable to financial institutions.[65] Moving forward, MAS intends to supplement the ENRM Guidelines with additional proposed Guidelines on Transition Planning; disclosure is one of four themes addressed under the proposed guidelines.[66]

In addition to the entity-level disclosures considered above, MAS has addressed disclosure on a product level. Given increasing investor interest in ESG-related investment products and the growing number of ESG-focused retail funds being offered in Singapore, MAS issued a Circular on Disclosure and Reporting Guidelines for Retail ESG Funds directed at mitigating the risks of greenwashing.[67] Like the ENRM

[49]SGX, 'SGX Mainboard Rules', 'Practice Note 7.6 – Sustainability Reporting Guide' (1 January 2022) <https://rulebook.sgx.com/rulebook/practice-note-76-sustainability-reporting-guide> para 4.1.

[50]The 27 core ESG metrics cover environmental topics such as greenhouse gas emissions, energy and water consumption, as well as waste generation; social topics such as gender and age-based diversity, employment numbers and turnover, development and training and occupational health and safety; and governance topics such as board composition, management diversity, ethical behaviour and certification. SGX, 'Starting with a Common Set of Core ESG Metrics' (April 2023) <https://api2.sgx.com/sites/default/files/2023-05/SGX%20Core%20ESG%20Metrics_for%20website%20%28updated%20Apr2023%29.pdf> 1–4.

[51]SGX (n 49) para 4.1(a).

[52]MAS, '"Corporate Governance - A Collaborative Effort" - Opening Address by Mr Ong Chong Tee, Deputy Managing Director, Monetary Authority of Singapore, at the 7th Corporate Governance Week on 26 September 2016' (26 September 2016) <https://www.mas.gov.sg/news/speeches/2016/opening-address-at-the-7th-corporate-governance-week>.

[53]Such reporting will be mandatory for listed issuers in the financial, agriculture, food and forest products and energy industries for the financial year commencing in 2023 and for listed issuers in the materials and buildings and transportation industries for the financial year commencing in 2024. SGX, 'Sustainability Reporting' <https://www.sgx.com/sustainable-finance/sustainability-reporting>.

[54]SGX, 'Climate Reporting to Help Companies Ride the Green Transition' (28 February 2024) <https://www.sgxgroup.com/media-centre/20240228-climate-reporting-help-companies-ride-green-transition> para 3. See further SRAC, 'Turning Climate Ambition into Action in Singapore – Recommendations by the Sustainability Reporting Advisory Committee' (2023) <https://www.acra.gov.sg/docs/default-source/default-document-library/legislation/listing-of-consultation-papers/pubic-consultation-on-srac's-recommendations/consultation-paper-recommendations-by-srac.pdf> 15, 21–26.

[55]SGX, 'Consultation Paper on Sustainability Reporting: Enhancing Consistency and Comparability' (7 March 2024) <https://api2.sgx.com/sites/default/files/2024-03/Consultation%20Paper%20-%20Sustainability%20Reporting%20-%20Enhancing%20Consistency%20and%20Comparability%20%28final%29.pdf> 7–11.

[56]SGX (n 54) para 4. See further SRAC (n 54) 4 and 15.

[57]For example, the Energy Conservation Act 2012 (2020 Rev Ed Sing) and the Carbon Pricing Act 2018 (No 26 of 2018).

[58]MAS, 'Guidelines on Environmental Risk Management for Banks' (2020); MAS, 'Guidelines on Environmental Risk Management for Asset Managers' (2020); MAS, 'Guidelines on Environmental Risk Management for Insurers' (2020) (collectively, the ENRM Guidelines).

[59]MAS, 'Information Paper on Environmental Risk Management (Banks)' (2022); MAS, 'Information Paper on Environmental Risk Management (Asset Managers)' (2022); MAS, 'Information Paper on Environmental Risk Management (Insurers)' (2022).

[60]MAS, 'Supervisory Approach and Regulatory Instruments' (25 March 2024) <https://www.mas.gov.sg/regulation/mas-supervisory-approach-and-regulatory-instruments> s 4.

[61]MAS, 'ENRM Guidelines (Banks)' (n 58) para 5.1; MAS, 'ENRM Guidelines (Asset Managers)' (n 58) para 7.1; MAS, 'ENRM Guidelines (Insurers)' (n 58) para 7.1.

[62]ibid.

[63]MAS, 'ENRM Guidelines (Banks)' (n 58) para 5.2; MAS, 'ENRM Guidelines (Asset Managers)' (n 58) para 7.2; MAS, 'ENRM Guidelines (Insurers)' (n 58) para 7.2.

[64]MAS, 'ENRM Information Paper (Banks)' (n 59) s 6.2; MAS, 'ENRM Information Paper (Asset Managers)' (n 59) s 8.2; MAS, 'ENRM Information Paper (Insurers)' (n 59) s 6.2.

[65]MAS, 'Regulatory and Supervisory Approach' (28 July 2022) <https://www.mas.gov.sg/development/sustainable-finance/regulatory-and-supervisory-approach>.

[66]See MAS, 'Consultation Paper on Proposed Guidelines on Transition Planning (Banks)' (2023) P012-2023 2.1, 4.23–4.27; MAS, 'Consultation Paper on Proposed Guidelines on Transition Planning (Insurers)' (2023) P013-2023 2.1, 4.31–4.35; MAS, 'Consultation Paper on Proposed Guidelines on Transition Planning (Asset Managers)' (2023) P014-2023 para 2.1, 4.25–4.30.

[67]MAS, 'Circular No. CFC 02/2022: Disclosure and Reporting Guidelines for Retail ESG Funds' (2022) <https://www.mas.gov.sg/-/media/mas/regulations-and-financial-stability/regulations-guidance-and-licensing/securities-futures-and-fund-management/regulations-guidance-and-licensing/circulars/cfc-02-2022-disclosure-and-reporting-guidelines-for-retail-esg-funds.pdf>.

Guidelines, the Circular has no legal effect.[68] The Circular, which took effect in January 2023,[69] applies to any retail fund that 'uses or includes ESG factors as its key investment focus and strategy … and represents itself as an ESG-focused scheme'.[70] Such funds are expected to provide relevant information to better substantiate their ESG label, including details of its investment strategy; criteria and metrics used to select investments; and risks and limitations associated with the fund's strategy.[71] MAS expects such disclosures to be made on an ongoing basis, and investors can expect to receive annual updates on how well the fund has achieved its ESG focus.[72]

On a broader level, MAS has also launched various ESG-related initiatives. These include the establishment of a Sustainable Finance Advisory Panel in October 2022, which is intended to assist MAS in its approach to developing a sustainable finance ecosystem. The Panel has discussed disclosure-related issues, such as identifying incentive structures to encourage data sharing and developing ESG data technology solutions.[73] These various measures and initiatives demonstrate the financial regulator and stock exchange's commitment to ESG disclosure.

3.1.3 | Role of technology

In particular, in Singapore, ESG disclosure is also facilitated by technological initiatives. In 2020, MAS launched Project Greenprint, which aspires to facilitate sustainable finance through the use of technology and creation of a 'data-centric ecosystem'.[74] MAS identified data gaps as a critical challenge for sustainable finance, and one focus of Project Greenprint, therefore, is the development of data infrastructure to support sustainability data flows between the real economy and the financial sector.[75] The aspiration is that addressing such informational deficiencies should help financial institutions to channel resources toward sustainability projects in a more scalable manner, better monitor their sustainability commitments and assess portfolio risks and impacts.[76] Several platforms developed under Project Greenprint are relevant to ESG disclosure. These include the following: (1) the Greenprint Common Disclosure Portal, which seeks to facilitate reporting under and comparability across different reporting frameworks[77]; (2) ESGenome, a digital ESG data disclosure portal for SGX-listed companies[78]; (3) the Greenprint Data Orchestrator, which aggregates sustainability data and provides data analytics services[79]; and (4) the Greenprint ESG Registry, which aims to provide a common access point for ESG certifications and verified sustainability data.[80] Moreover, in 2023, MAS launched the ESG FinTech grant, which is intended to encourage the adoption of ESG technology solutions in the financial sector, including solutions targeted at tackling ESG data issues.[81] Such technological initiatives are intended to, among others, improve the accessibility of disclosures, facilitate the use of disclosed data in investment decisions and improve monitoring of corporates' sustainability commitments[82]—in pursuit of the country's overall goal of becoming a leading green and sustainable finance centre.

3.2 | Hong Kong

3.2.1 | Regulator's objectives

Like in Singapore, there has been support and impetus in Hong Kong, from both the Central Government and the Hong Kong Government, to develop, promote and consolidate the city as a 'green finance hub'.[83] In particular, Hong Kong is seen as well-positioned to support mainland China's sustainable development aspirations and to facilitate sustainable financial flows between mainland China and the world.[84] Reporting and disclosure are framed as central to this agenda. The development and implementation of disclosure and reporting standards has been identified as a key enabler of Hong Kong's development into a green finance centre[85]; and when the Securities & Futures Commission (SFC) of Hong Kong formulated its green finance agenda in 2018, its first-listed priority was to improve listed companies' reporting of environmental information, with a focus on climate-related disclosure.[86] Hong Kong's approach is considered separately

[68] MAS (n 60) s 7.
[69] MAS (n 67) para 17.
[70] ibid para 4.
[71] ibid para 11.
[72] ibid para 13.
[73] MAS, 'MAS Establishes Sustainable Finance Advisory Panel' (5 October 2022) <https://www.mas.gov.sg/news/media-releases/2022/mas-establishes-sustainable-finance-advisory-panel>.
[74] MAS, 'Sustainability Report 2021/2022' (2022) <https://www.mas.gov.sg/-/media/MAS-Media-Library/publications/sustainability-report/2022/MAS-Sustainability-Report-2021_2022.pdf> 38; MAS, 'MAS and Industry to Pilot Digital Platforms for Better Data to Support Green Finance' (9 November 2021) <https://www.mas.gov.sg/news/media-releases/2021/mas-and-industry-to-pilot-digital-platforms-for-better-data-to-support-green-finance> para 1.
[75] MAS, 'Sustainability Report 2021/2022' (n 74) 38; MAS, 'Pilot Digital Platforms' (n 74) para 2.
[76] MAS, 'Pilot Digital Platforms' (n 74) para 2.
[77] MAS, 'Sustainability Report 2021/2022' (n 74) 39; MAS, 'Pilot Digital Platforms' (n 74) para 4(a).
[78] MAS, 'MAS and SGX Group Launch ESGenome Disclosure Portal to Streamline Sustainability Reporting and Enhance Investor Access to ESG Data' (12 September 2022) <https://www.mas.gov.sg/news/media-releases/2022/mas-and-sgx-group-launch-esgenome-disclosure-portal-to-streamline-sustainability-reporting-and-enhance-investor-access-to-esg-data>.
[79] MAS, 'Pilot Digital Platforms' (n 74).
[80] ibid.
[81] MAS, 'ESG FinTech Grant' (7 August 2023) <https://www.mas.gov.sg/schemes-and-initiatives/fsti-esg-fintech-grant>; MAS, 'MAS Commits Up To S$150 Million for Technology and Innovation in Financial Sector' (7 August 2023) <https://www.mas.gov.sg/news/media-releases/2023/mas-commits-up-to-s$150-million-for-technology-and-innovation-in-financial-sector> paras 1–2.
[82] MAS, 'Pilot Digital Platforms' (n 74).
[83] Hong Kong Monetary Authority (HKMA), 'Cross-Agency Steering Group Announces Priorities to Further Strengthen Hong Kong's Sustainable Finance Ecosystem' (7 August 2023) <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2023/08/20230807-3/>; Financial Services Development Council, 'The State of ESG in Hong Kong' (2022) <https://www.fsdc.org.hk/media/fdsi0lso/20221222the-present-state-of-esg-in-hk_en.pdf> 4; SFC, 'Strategic Framework for Green Finance' (2018) <https://www.sfc.hk/-/media/EN/files/ER/PDF/SFCs-Strategic-Framework-for-Green-Finance---Final-Report-21-Sept-2018.pdf> 8.
[84] Financial Services Development Council (n 83) 2.
[85] ibid 4–5.
[86] SFC, 'Strategic Framework for Green Finance' (n 83) 1.

from Shanghai's, given the fundamental 'one country, two systems' principle that applies in Hong Kong following its reunification with the People's Republic of China.[87]

3.2.2 | ESG disclosure

On a corporate level, with respect to listed companies, HKEx has issued, as an appendix to its listing rules, an ESG Reporting Guide. The Guide contains two types of disclosure obligations: (1) mandatory disclosures and (2) 'comply or explain' provisions.[88] Issuers are required to comply with these obligations either in their annual reports or in separate ESG reports.[89] Mandatory disclosure requirements cover governance structure, a description or explanation of the reporting principles applied in preparing the ESG report and the ESG report's reporting boundaries. 'Comply or explain' provisions include environmental aspects such as emissions, use of resources and climate change, as well as social aspects such as employment, labour standards, supply chain management, product responsibility, anticorruption and community investment.[90] Governance is addressed in the Corporate Governance Code.[91] Additionally, HKEx has issued Guidance on Climate Disclosures to help listed companies to make disclosures that are aligned with the TCFD recommendations.[92] The disclosure framework has developed over time from voluntary ESG disclosure guidance in 2011 to making selected environmental and social disclosures mandatory on a 'comply or explain' basis in 2015[93] and to the introduction of further mandatory and nonmandatory ESG disclosure requirements in 2019.[94] Moreover, there has been movement toward alignment with international recommendations and standards: Hong Kong's Green and Sustainable Finance Cross-Agency Steering Group announced that climate-related disclosures aligned with TCFD recommendations will be made mandatory for certain sectors by 2025[95] and later expressed its support for ISSB's development of new standards built on the TCFD framework.[96] In line with this commitment, HKEx will be enhancing climate disclosures under its ESG reporting framework, by imposing certain mandatory climate disclosures on listed issuers and introducing disclosures in line with the ISSB standards.[97] In both Singapore and Hong Kong, therefore, there have been shifts from voluntary to mandatory disclosure and greater alignment with international frameworks and standards.

In the financial sector, disclosure requirements and guidance apply to banks and other authorised deposit-taking institutions, fund managers and green or ESG funds. For example, in August 2023, the Hong Kong Monetary Authority (HKMA) issued a circular on planning for the net-zero transition, encouraging authorised institutions to consider improving the transparency of their transition plans.[98] Additionally, with respect to fund managers, SFC in August 2021 stated that it would amend the Fund Manager Code of Conduct to require fund managers managing collective investment schemes to take into account climate-related risks in their investment and risk management processes and make appropriate disclosures.[99] The requirements apply to fund managers who have investment management discretion.[100] Such fund managers must make adequate disclosures to their fund investors, taking a proportionate approach.[101] They must also review such disclosures on at least an annual basis, updating these where appropriate and informing investors of material changes as soon as practicable.[102] The baseline entity-level disclosure requirements include governance-related disclosures, as well as investment management and risk management-related disclosures.[103] Large fund managers with collective investment schemes under management equal to or exceeding HK$8 billion in fund assets for any 3 months in the previous reporting year are further required to meet enhanced disclosure requirements.[104]

Relatedly, in relation to funds, SFC in April 2019 issued a Circular to Management Companies of SFC-authorised Unit Trusts and Mutual Funds—Green or ESG Funds, as an 'initial step' to 'enhance the disclosure standard of ESG funds and with an aim to improve their comparability, transparency and visibility',[105] and subsequently in June 2021 issued a revised circular to give additional guidance to ESG funds on enhanced disclosure, including periodic assessment and reporting.[106] The focus is on SFC-authorised funds that have ESG factors as their key investment focus and express such in their

[87]See, generally, R Ash et al, *Hong Kong in Transition: One Country, Two Systems* (Routledge 2003).
[88]HKEx (n 20) Appendix C2 (previously Appendix 27), para 1.
[89]ibid r 13.91(2).
[90]Mandatory disclosure requirements and 'comply or explain' provisions are addressed in ibid, Appendix C2, Parts B and C, respectively.
[91]ibid para 5.
[92]HKEx, 'Guidance on Climate Disclosures' (November 2021) <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/Exchanges-guidance-materials-on-ESG/guidance_climate_disclosures.pdf?la=en> 2.
[93]Harper Ho and Park (n 10) 310.
[94]SFC, 'Agenda for Green and Sustainable Finance' (August 2022) <https://www.sfc.hk/-/media/EN/files/COM/Reports-and-surveys/SFC-Agenda-for-Green-and-Sustainable-Finance_en.pdf> 13.
[95]SFC, 'Cross-Agency Steering Group Launches Its Strategic Plan to Strengthen Hong Kong's Financial Ecosystem to Support a Greener and More Sustainable Future' (17 December 2020) <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR128>.
[96]SFC, 'Cross-Agency Steering Group Announces Next Steps to Advance Hong Kong's Green and Sustainable Finance Strategy' (15 July 2021) <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=21PR75>.
[97]HKEx, 'Consultation Conclusions – Enhancement of Climate-Related Disclosures Under the Environmental, Social and Governance Framework' (April 2024) <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/April-2023-Climate-related-Disclosures/Conclusions-Apr-2024/cp202304cc.pdf> 8–14.
[98]HKMA, 'Planning for Net-Zero Transition' (29 August 2023) <https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2023/20230829e1.pdf> 3–4.
[99]SFC, 'Circular to Licensed Corporations – Management and Disclosure of Climate-Related Risks by Fund Managers' (20 August 2021) <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=21EC31> para 1.
[100]ibid paras 6–7.
[101]ibid para 22(i)–(ii).
[102]ibid para 22(iii).
[103]ibid paras 23–24.
[104]ibid para 26.
[105]SFC, 'Circular to Management Companies of SFC-authorized Unit Trusts and Mutual Funds – Green or ESG Funds' (11 April 2019) <https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=19EC18>.
[106]SFC, 'Circular to Management Companies of SFC-authorized Unit Trusts and Mutual Funds – Green or ESG Funds' (29 June 2021) <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/products/product-authorization/doc?refNo=21EC27>.

investment objective and/or strategy.[107] The Circular sets out SFC's expectations for how requirements under the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products would apply to such ESG funds.[108] This includes SFC's expectations that an ESG fund's primary investments and/or strategy should reflect the particular ESG focus as represented in its name, that funds should not overstate or overemphasise their ESG features[109] and the content that ESG funds should disclose in their offering documents.[110] These disclosure-related measures form part of Hong Kong's larger aim of developing the city as a 'leading sustainable finance hub'.[111]

3.3 | Shanghai

3.3.1 | Regulator's objectives

Like Singapore and Hong Kong, Shanghai launched, in 2023, its Green Finance Action Plan to facilitate its low-carbon economic transition. Shanghai's ESG disclosure framework is primarily regulator-led; yet, it also depends on private regulation, enforcement and determinations on the form of disclosure.[112] The majority of the ESG disclosure measures discussed here are applicable across China, apart from those that originate with the Shanghai Stock Exchange (SSE). Applicable ESG disclosures measures have been issued by various regulators in relation to certain categories of entities: (1) by SSE and the China Securities Regulatory Commission (CSRC) in relation to listed companies; (2) by the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) in relation to SOEs; and (3) by the People's Bank of China and SSE in relation to financial institutions and issuers of green bonds.[113] For completeness, certain disclosures are also mandated by environmental protection agencies, for instance, with respect to key pollutant-discharging enterprises[114]; however, these are not the focus of this section and are not further elaborated on.

3.3.2 | ESG disclosure

First, with respect to listed companies, CSRC imposes certain mandatory ESG disclosure requirements on listed companies under its Code of Corporate Governance for Listed Companies, with 2018 amendments requiring the disclosure of environmental information and information relating to the performance of social responsibilities (such as poverty alleviation efforts).[115] Additionally, in June 2021, CSRC issued revised standards for the semi-annual reports of companies that offer securities to the public, under which environmental and social responsibility disclosure would be consolidated under a new independent chapter. Specific environmental disclosure requirements are applicable where companies or their main subsidiaries have been classified as key pollutant dischargers. The standards also encourage environmental and social responsibility disclosures by all companies that offer securities to the public (such as information relating to ecological protection and pollution prevention, as well as companies' work in the areas of poverty alleviation and rural revitalisation).[116] Moreover, in April 2022, CSRC issued guidelines on managing the investor relations of listed companies, which provide that listed companies' communications with investors should include ESG information.[117]

Where stock exchange requirements are concerned, SSE has previously taken a pioneering role in China (e.g., in 1997, it introduced concepts and practices that contributed to CSRC's 2001 Code of Corporate Governance for Listed Companies).[118] SSE differs from SGX in that sustainability reporting is not mandatory for all listed companies. Mandatory environment-related disclosure is required of companies involved in specified industries that have significant environmental impact,[119] while annual social responsibility reports are required of companies in the SSE Corporate Governance Index, companies cross-listed on an overseas market and financial companies.[120] For other listed companies, ESG disclosure, such as of information relating to social responsibility practices or environmental protection policies, is encouraged but voluntary.[121] SSE first issued these requirements and

[107]ibid para 6.
[108]ibid para 4.
[109]ibid paras 10–11.
[110]ibid, para 14.
[111]HKMA (n 83).
[112]See further Harper Ho and Park (n 10) 312.
[113]For an overview of CSR reporting in China generally, see J Liao, 'Corporate Social Responsibility Reporting System in China' in CT Foo (ed), *Handbook of Chinese Management* (Springer Nature 2023) 393.
[114]See, for example, Ministry of Ecology and Environment of the People's Republic of China, '企业环境信息依法披露管理办法' (11 December 2021) <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk02/202112/t20211221_964837.html>.

[115]CSRC, 'Code of Corporate Governance for Listed Companies' [上市公司治理准则] <http://www.csrc.gov.cn/csrc_en/c102034/c1372459/1372459/files/P020190415336431477120.pdf> art 95; see also CSRC, 'Code of Corporate Governance of Listed Companies (2018 Revision) (CSRC Announcement No. 29 [2018])" [中国证券监督管理委员会公告 ([2018]29号)] (available on Chinalawinfo.com, CLI Code: CLI.4.322372[EN]).
[116]CSRC, 'Standards for the Content and Format of Information Disclosure by Companies Offering Securities to the Public No. 3 – Content and Format of Semi-Annual Reports' (2021 Revision) (CSRC Announcement No. 16 [2021]) [公开发行证券的公司信息披露内容与格式准则第3号 – 半年度报告的内容与格式 (2021年修订) ([202]16号)] arts 29–30 (available on Chinalawinfo.com, CLI Code: CLI.4.5016085[EN]).
[117]CSRC, 'CSRC Announcement No. 29 [2022]' [上市公司投资者关系管理工作指引([2022] 29号)] (2022) <https://www.gov.cn/zhengce/zhengceku/2022-04/16/content_5685513.htm> art 7(4).
[118]J Fu, *Corporate Disclosure and Corporate Governance in China* (Kluwer Law International 2010) 5, 12; V Harper Ho, 'Capital Market Disclosure Regimes: Advancing Accountability for Chinese TNCs' in A De Jonge and R Tomasic (eds), *Research Handbook on Transnational Corporations* (Edward Elgar 2017) 321.
[119]SSE, 'Guidelines on Listed Companies' Environmental Information Disclosure' [上海证券交易所上市公司环境信息披露指引], cls 4–6, 8. The guidelines are available at SSE, '关于加强上市公司社会责任承担工作暨发布《上海证券交易所上市公司环境信息披露指引》的通知' (14 May 2008) <http://www.sse.com.cn/lawandrules/sserules/listing/stock/c/c_20150912_3985851.shtml>.
[120]SSE, 'Notice on Preparation of Listed Companies' 2008 Annual Reports' [关于做好上市公司2008年年度报告工作的通知] (30 December 2008) <https://www.sse.com.cn/services/information/xbrl/mediareports/c/c_20150912_3987388.shtml> para 10. See also Liao (n 113) 398–399; YC Chen et al, 'The Effect of Mandatory CSR Disclosure on Firm Profitability and Social Externalities: Evidence from China' (2018) 65 Journal of Accounting and Economics 169, 170–171, 187; Harper Ho (n 118) 324.
[121]SSE, 'Notice on Strengthening Listed Companies' Assumption of Social Responsibility' [关于加强上市公司社会责任承担工作的通知], cls 3, 6–7; SSE (n 119) cls 3, 7.

guidance in 2008.[122] Notably, China has indicated previously that it intends to introduce mandatory ESG disclosures for all domestically listed firms.[123] In February 2024, SSE (as well as the Shenzhen and Beijing Stock Exchanges[124]) issued for public consultation draft guidelines on sustainability reporting.[125] The guidelines are proposed to apply to companies in the SSE 180 Index and the SSE Science and Technology Innovation Board 50 Index, as well as companies listed simultaneously both within and outside China.[126] Notably, the guidelines propose a double materiality approach to sustainability reports, expressly referencing both financial and impact materiality.[127] The drafting notes also indicate that the guidelines reflect China-specific characteristics—taking into account the realities of the country's capital market, specific issues like rural revitalisation and the country's values and priorities in the area of sustainable development—while also incorporating beneficial international experience.[128] This reflects a notable shift in approach, and developments in this area should be monitored.

Apart from the standards applicable to listed companies, since 2012, SASAC has imposed mandatory corporate social responsibility (CSR) reporting on the largest state-sector firms.[129] Certain voluntary disclosure measures also apply to SOEs under the purview of the SASAC, as well as the listed companies controlled by such SOEs. For example, in May 2022, SASAC published a work plan for improving the quality of listed companies controlled by central enterprises, which promotes voluntary ESG disclosure.[130]

Additionally, in the financial sector, the People's Bank of China issued, in 2021, Guidelines on Environmental Information Disclosure for Financial Institutions, which encourage annual disclosure of environmental information by financial institutions such as banks, asset management companies and insurance companies.[131] Moreover, on the product level, the People's Bank of China and SSE have both introduced disclosure requirements and guidance that are applicable to issuers of green bonds.[132]

Similar features and trends can be discerned in Shanghai's approach as in Singapore and Hong Kong, including a relative focus on environmental information and an intention to shift from voluntary to mandatory disclosure, albeit at a somewhat slower pace. Shanghai notably differs both these jurisdictions, however, in its recent shift toward a proposed double materiality approach.

Selected features of the three case studies are summarised in Table 1.

4 | COMPARATIVE ANALYSIS OF ESG DISCLOSURE IN THREE ASIAN FINANCIAL CENTRES

Having examined above the ESG disclosure landscape in Singapore, Hong Kong and Shanghai, this section now undertakes a comparative analysis of these three case studies. It considers the drivers, dynamics, content of and trends in ESG disclosure across these jurisdictions.

4.1 | Drivers of ESG disclosure: International consensus and competitiveness

The driving forces for ESG disclosure have an international dimension. On the one hand, impetus to develop ESG disclosure regulation arises from the international consensus and commitments regarding the need for a more sustainable model of development facilitated by sustainable finance, which correspondingly requires ESG information. For example, China, Hong Kong and Singapore (or their respective regulators and central banks) are members of common international political initiatives directed at facilitating sustainable finance, such as the Network for Greening the Financial System[133] and the International Platform for Sustainable Finance.[134] MAS and the People's Bank of China also established, in April 2023, the China–Singapore Green Finance Taskforce, to deepen bilateral cooperation in sustainable finance.[135]

On the other hand, international competitiveness also appears to be a key driver in the development of ESG disclosure frameworks, particularly in Singapore and Hong Kong, which expressly aspire to become sustainable finance centres for Asia and even the world.[136] Hong Kong's Green and Sustainable Finance Cross-Agency Steering Group, for instance, has identified one of its priorities as 'boost[ing]

[122]For those issued in May 2008, see ibid; and see also SSE, '上交所推动上市公司履行社会责任' (14 May 2008) <http://www.sse.com.cn/aboutus/mediacenter/hotandd/c/c_20150912_3988192.shtml>. For those issued in December 2008, see SSE (n 120) para 10.

[123]See, for example, IOSCO, 'Sustainable Finance in Emerging Markets and the Role of Securities Regulators - Final Report' (2019) <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD652.pdf> 5; D Cao, 'China Mulls Mandatory ESG Disclosures for Domestic Public Firms' (Bloomberg, 22 February 2023) <https://www.bloomberg.com/news/articles/2023-02-22/china-mulls-mandatory-esg-disclosures-for-domestic-public-firms>.

[124]Shenzhen Stock Exchange, '深交所就可持续发展报告指引公开征求意见促进夯实上市公司高质量发展基础' (8 February 2024) <https://www.szse.cn/aboutus/trends/news/t20240208_606059.html>; Beijing Stock Exchange, '北交所就可持续发展披露指引公开征求意见' (8 February 2024) <https://www.bse.cn/important_news/200020878.html>.

[125]SSE, 'Announcement of the Public Consultation on the "Shanghai Stock Exchange Self-Regulatory Guidelines for Listed Companies No. 14 – Sustainability Report"' [关于就《上海证券交易所上市公司自律监管指引第14号 – 可持续发展报告(试行)(征求意见稿)》公开征求意见的通知] (8 February 2024) <http://www.sse.com.cn/lawandrules/publicadvice/c/c_20240208_5735507.shtml>.

[126]SSE, 'Shanghai Stock Exchange Self-Regulatory Guidelines for Listed Companies No. 14 – Sustainability Report (Draft for Consultation)' [上海证券交易所上市公司自律监管指引第14号 – 可持续发展报告(试行)(征求意见稿)] art 3.

[127]ibid art 5.

[128]SSE, Drafting Notes on the 'Shanghai Stock Exchange Self-Regulatory Guidelines for Listed Companies No. 14 – Sustainability Report (Draft for Consultation)' [上海证券交易所上市公司自律监管指引第14号——可持续发展报告(试行)(征求意见稿)] (8 February 2024) 2.

[129]Harper Ho and Park (n 10) 313.

[130]SASAC, 'Work Plan for Improving the Quality of Listed Companies Controlled by Central Enterprises' [提高央企控股上市公司质量工作方案] (27 May 2022) <http://www.sasac.gov.cn/n2588030/n2588944/c24789613/content.html>.

[131]People's Bank of China, '2022年 "金融标准 为民利企" 重点宣传推广金融标准之《金融机构环境信息披露指南》' (9 September 2022) <http://tianjin.pbc.gov.cn/fzhtianjin/2927296/3872243/4654952/index.html>.

[132]See, for example, People's Bank of China, 'Code on Information Disclosure During the Term of the Green Bond' [绿色金融债券存续期 信息披露规范] (2018); and SSE, 'Guideline No. 2 on the Application of Rules Governing the Examination and Listing of Corporate Bonds on the Shanghai Stock Exchange – Special Types of Corporate Bonds' [上海证券交易所公司债券发行上市审核规则适用指引第2号——专项品种公司债券] (20 October 2023) art 5. See further L Lin and Y Hong, 'Developing a Green Bonds Market: Lessons from China' (2022) 23 European Business Organization Law Review 143.

[133]Network for Greening the Financial System, 'Membership' (14 June 2023) <https://www.ngfs.net/en/about-us/membership>.

[134]European Commission, 'International Platform on Sustainable Finance' <https://finance.ec.europa.eu/sustainable-finance/international-platform-sustainable-finance_en>.

[135]MAS, 'Singapore and China Establish Green Finance Taskforce to Strengthen Collaboration in Green and Transition Finance' (21 April 2023) <https://www.mas.gov.sg/news/media-releases/2023/singapore-and-china-establish-green-finance-taskforce>.

[136]See, for example, Ministry of Finance (n 30) para 16.

Hong Kong's vibrancy and competitiveness'.[137] Given these priorities, as well as trends of alignment with international standards (rather than an entirely locally and organically developed conception of ESG disclosure), it appears that international competitiveness is an especially strong driver of ESG disclosure in the context of these case studies. Here, one concern may be how far ESG disclosure developments are driven not only by international competitiveness considerations but also by a genuine commitment to sustainability. Still, to the extent that similar outcomes are achieved, perhaps, it could be argued that the precise drivers of ESG disclosure need not necessarily be crucial.

4.2 | Dynamics of ESG disclosure: Public–private dimensions

In addition to international pressures, within national borders, there are dynamics of public–private interaction in ESG disclosure. This public–private interaction is common across different jurisdictions[138]; yet, the nuances of this dynamic appear even more colourful in the Asian context. Fundamentally, sustainable finance involves the private sector channelling resources toward sustainable development activity. Yet, in the Asian context, there is an additional public overlay: There is comparatively greater prevalence and involvement of sovereign wealth funds (on the investor side) as well as SOEs and GLCs (on the investee side). In Hong Kong, for instance, SOEs consisted of approximately one fifth of all listed companies; in Shanghai, SSE-listed SOEs and central SOEs number 775, with a total market capitalisation of RMB 35.89 trillion; and in Singapore, GLCs made up 37% of the total stock market capitalisation.[139] There is hence additional complexity to the government's role in these jurisdictions, as it acts not only as policymaker and regulator but potentially also as key market participant. The precise nuances of these dynamics are beyond the scope of this article.[140] Nevertheless, even drawing only preliminary inferences, on the one hand, given this context, it appears that government commitment to and demand for ESG disclosure may be especially impactful in such markets (applying the same logic of the argument, albeit in the US context and predominantly in relation to private institutional investors, that high common ownership gives such institutions power to take collective action on the basis of ESG information[141]). In Singapore, for example, Temasek Holdings describes ESG considerations as 'embed[ded] … into our core business'[142]; the company was incorporated to manage investments previously held by Singapore's government and is the controlling shareholder of many GLCs.[143] Similarly, in China, SOEs, which form a significant proportion of market capitalisation, are subject to CSR and ESG reporting obligations.[144] On the other hand, paradoxically, ESG disclosure may not be as essential or as potent a mechanism in such jurisdictions, to the extent that (1) the government is able and minded to directly intervene and point SOEs and GLCs toward the pursuit of sustainability goals or (2) conversely, conflicts of interest, which arise from the government's dual roles as regulator and shareholder, make it more difficult to hold SOEs accountable for inadequate ESG disclosures.[145] As ESG disclosure standards continue to develop, it may be interesting to examine their operation in these SOE- and GLC-dominant markets.

Moreover, even apart from these market contexts, ESG disclosure frameworks typically involve a mix of public regulation and private ordering, for instance, where private initiatives are endorsed by public regulation.[146] In Asia, the regulator's role tends to be especially dominant. This is seen in the extremely active roles taken by regulators in each of the three jurisdictions, where the regulator, more often than not, is the entity taking the initiative in developing ESG disclosure. Yet, even so, there is a surprising degree of private sector involvement, as Harper Ho and Park insightfully highlight, for instance, in the context of China.[147] Regulators in Hong Kong and Singapore have also been very open to disclosing entities aligning their reporting with those of international frameworks issued by private organisations, especially for the purpose of ensuring harmony in disclosure standards across jurisdictions (as will be touched on further in the next section). The interplay of public sector–private sector dynamics is especially nuanced, therefore, in the Asian context, particularly insofar as the appearance of a strongly regulator-led approach belies what is in actuality notable private sector latitude and discretion. This contrasts with other regions where the framework is either predominantly private or public sector-led, or where, if a more hybrid approach is taken, this is more overtly clear and immediate apparent than it is in the case studies considered here. For example, the US model has been described as one that primarily defers to private ordering for the development of ESG reporting, where, for instance, the Securities and Exchange Commission had until recently deferred to private shareholder proposals to shape ESG disclosure practice.[148] It has been argued that a public–private hybrid approach toward ESG disclosures is inevitable and beneficial: While private standards are flexible and nimble, suiting investors' needs, regulators are in a good position to ensure that disclosure requirements uphold public goals of sustainable development.[149] The case studies support this view; despite less immediately evident private sector involvement in these jurisdictions, there is still a public–private interplay that brings advantages from both sectors.

[137]HKMA (n 83).
[138]See Harper Ho and Park (n 10).
[139]E Lim, *A Case for Shareholders' Fiduciary Duties in Common Law Asia* (Cambridge University Press 2019) 50, 62; SSE, 'Three-Year SOE Reform Reaps Rewards' (22 January 2024) <http://english.sse.com.cn/news/newsrelease/voice/c/c_20240122_10747699.shtml>; T Cheng-Han et al, 'State-Owned Enterprises in Singapore: Historical Insights into a Potential Model for Reform' (2015) 28 Columbia Journal of Asian Law 61, 67.
[140]For a discussion of some issues that arise in the context of Singapore and Hong Kong, see further Lim (n 7) 59–63, 84, 86–87, 92–95, 97–102.
[141]Coffee (n 2) 637.
[142]Temasek, 'Sustainability in Our Investments' <https://www.temasek.com.sg/en/sustainability/sustainability-in-our-investments#embedding-esg>.
[143]Cheng-Han et al (n 139) 89–91.
[144]See Section 3.3.2.
[145]For a discussion of issues associated with SOEs, particularly in relation to 'comply or explain' provisions, see Lim (n 7) 59–63.
[146]MacNeil and Esser (n 5) 18.
[147]Harper Ho and Park (n 10) 312, 317.
[148]ibid 293.
[149]ibid 257, 317.

4.3 | Content of ESG disclosure: Environmental focus and single versus double materiality

Next, with respect to the content of ESG disclosure, it appears that these jurisdictions are very much focused on the 'E' component of 'ESG'. MAS' ENRM Guidelines, for instance, are focused on environmental risks.[150] Similarly, notable disclosure requirements and guidance in Shanghai, too, are also focused specifically on environmental information, as with the People's Bank of China's Guidelines on Environmental Information Disclosure for Financial Institutions and SSE's Guidelines on Listed Companies' Environmental Information Disclosure. Even though environmental factors generally tend to be prioritised, this priority appears especially pronounced in the Asian context.

With respect to the materiality standard employed, unlike the EU's sustainability reporting standards, where double materiality is required,[151] this appears far less common in the jurisdictions considered here, especially when it comes to an express articulation of a double materiality standard; the notable exception, however, is the use of double materiality in SSE's recent proposed guidelines on sustainability reporting. At present, a single materiality approach is primarily employed. This is the case in Singapore, for instance (although the concept of materiality also incorporates impact on key stakeholders).[152] Likewise, in Hong Kong, the ESG Reporting Guide's mandatory disclosure requirements primarily take a single materiality approach, citing 'risks to the issuer's businesses' as an example of material ESG issues (although the conception of materiality also contemplates possible stakeholder engagement and is wide enough for companies to take a double materiality approach,[153] while the Guide's 'comply or explain' provisions do embed some references to double materiality).[154] In this sense, double materiality may be implicit or left open to the reporting company[155] but seems far more seldom explicit. By contrast, SSE's recent proposed guidelines on sustainability reporting include an express reference to double materiality, in the form of financial materiality (described as whether a matter has a significant impact on enterprise value) and impact materiality (described as whether the enterprise's conduct in relation to a matter will have significant impact on the economy, society and the environment).[156] This proposal represents a notable shift from single to double materiality, and it remains to be seen whether or not Singapore and Hong Kong will likewise move in the direction of expressly endorsing double materiality in the future. This is an important question, as to the extent that disclosure requirements affect the disclosing entities' conduct, the approach to the materiality standard may well have practical implications.

4.4 | Trends in ESG disclosure: Regulatory hardening and harmonisation

Finally, the case studies also reveal two notable trends in ESG disclosure in these three financial centres. First, there is a regulatory hardening from voluntary to more coercive measures. In Singapore, for example, SGX is introducing mandatory climate reporting in phases, moving from a 'comply or explain' approach for all issuers to mandatory climate reporting for issuers in selected industries.[157] MAS also has indicated that it will present a 'roadmap for mandatory climate-related disclosures', in line with international standards.[158] Likewise, in Hong Kong, HKEx's disclosure requirements shifted from voluntary to mandatory in nature from 2011 to 2015 and through to the present day and beyond.[159] Even in Shanghai, where disclosure requirements are not mandatory for all listed companies, there was a shift toward mandatory disclosure in 2008,[160] as well as further recent expressions of intent to impose mandatory ESG requirements.[161] These developments together evince a shift from voluntary to 'comply and explain' to more prescriptive approaches, which should enhance the effectiveness of the ESG disclosure regimes (though some scholars have argued to the contrary).[162] Indeed, a study of firms listed on the SSE and the Shenzhen Stock Exchange concluded that mandatory CSR disclosure changes companies' behaviour and results in positive externalities, albeit at shareholders' expense.[163]

Second, there is a trend toward harmonisation or alignment with international frameworks. MAS' ENRM Guidelines and Hong Kong's SFC, for example, both encourage alignment with international frameworks, such as the TCFD recommendations, to set the tone for internationally consistent sustainability disclosures.[164] More recently, both Hong Kong and Singapore have also taken steps toward alignment with the ISSB standards.[165] This is desirable as it addresses the issues of lack of comparability and interoperability of disclosures.

The approaches to ESG disclosure in these jurisdictions hence are characterised by several features: (1) There is an international dimension to the drivers of ESG disclosure, in the form of international commitments, a desire for international competitiveness and reputational concerns given investors' growing emphasis on ESG concerns and risk management; (2) there is rich nuance in the public–private dynamics of ESG disclosure; (3) in terms of content, there is strong

[150]MAS, 'ENRM Guidelines (Banks)' (n 58); MAS, 'ENRM Guidelines (Asset Managers)' (n 58); MAS, 'ENRM Guidelines (Insurers)' (n 58).
[151]See, for example, CSRD (n 9) preamble, para 29.
[152]SGX (n 49) para 4.1(a).
[153]HKEx (n 20) Appendix C2, paras 13(ii), 14; HKEx (n 97) para 61.
[154]For example, Aspect A3 of Part C requires description of 'the significant impacts of activities on the environment and natural resources and the actions taken to manage them', while Aspect B5 requires disclosure on the issuer's 'practices used to identify environmental and social risks along the supply chain, and how they are implemented and monitored' as well as 'practices used to promote environmentally preferable products and services when selecting suppliers': ibid part C.
[155]See Harper Ho and Park (n 10) 310.
[156]See SSE (n 126) art 5.
[157]SGX (n 53); see also SGX (n 55) 11–12.
[158]MAS, 'ENRM Information Paper (Banks)' (n 59) 35.
[159]See Section 3.2. Notably, the ESG Reporting Guide will be renamed the ESG Reporting Code in 2025, reflecting hardening requirements: HKEx (n 97) 1.
[160]SSE (n 119); SSE (n 120) para 10.
[161]See, for example, IOSCO (n 123) 5; Cao (n 123).
[162]For arguments for and against mandatory ESG disclosure (albeit in a US context), see J El-Hage, 'Fixing ESG: Are Mandatory ESG Disclosures the Solution to Misleading ESG Ratings? Notes' (2021) 26 Fordham Journal of Corporate and Financial Law 359, 376–390.
[163]Chen et al (n 120) 186.
[164]MAS, 'ENRM Guidelines (Banks)' (n 58) para 5.2; MAS, 'ENRM Guidelines (Asset Managers)' (n 58) para 7.2; MAS, 'ENRM Guidelines (Insurers)' (n 58) para 7.2.
[165]See SGX (n 55) 7–11; SFC (n 95) 13; SFC (n 96); HKEx (n 97) 8–14.

environmental focus, but (until recently) not on double materiality; and (4) there are trends of regulatory hardening and harmonisation.

5 | ANTICIPATING AND SHAPING THE DEVELOPMENT OF ESG DISCLOSURE IN ASIA

Having assessed the present state of ESG disclosure in these three financial centres, this section now takes a forward-looking view. It addresses proposals and recommendations for shaping the development of ESG disclosure; anticipates the future development of ESG disclosure, focusing on the potential role of technology; and looks beyond ESG disclosure to consider alternative and complementary models that may address the insufficiencies and deficiencies of a disclosure-based approach.

5.1 | Shaping the development of ESG disclosure: Proposals and recommendations

Several proposals emerge from the assessment of the case studies discussed above. First, there is a need for standardisation of ESG disclosure, to facilitate comparability and ensure that information is actually of utility and help to sustainability-minded investors.[166] Second and relatedly, to foster global interoperability in this hyperconnected world, such standardisation should entail or result from international coordination and alignment with international standards (such as with the TCFD recommendations and, moving forward, the ISSB standards in Singapore and Hong Kong). The emergence of truly global ESG disclosure norms requires acceptance and participation from Asia as well. The case study jurisdictions, together with other Asian jurisdictions, therefore have an important role to play in adopting—and through adoption, shaping—these international ESG disclosure frameworks and standards. Third, one consideration may be the extension of the applicability of ESG disclosure requirements, by shifting from voluntary or 'comply or explain' to mandatory disclosure and/or by expanding the applicability of ESG disclosure measures to a wider scope of organisations or sectors. These follow on from the trends discussed in Section 4. Fourth, one recommendation would be to develop more holistically the conception of ESG as it is expressed in disclosure frameworks—moving from a conception that prioritises environmental factors to one that gives greater weight and priority also to social and governance factors. Fifth, another consideration is employing and realising the potential of technology for improving the quality of ESG disclosure (as will be discussed in more detail in the next subsection).

5.2 | Anticipating the development of ESG disclosure: The role of technology

In anticipating the future development of ESG disclosure, a notable element is the role of technology. It can appear paradoxical to juxtapose technology with sustainability: The advancement and proliferation of technology can often appear to undermine the pursuit of sustainable development.[167] Yet, one theme that emerges from the case studies is the emergence of regulatory initiatives specifically focused on the use of technology to facilitate effective ESG disclosure and thereby sustainable finance more broadly. This calls for scrutiny of the role of technology in relation to ESG disclosure.

One prominent example is MAS' Project Greenprint.[168] Such initiatives demonstrate that technology can potentially promote informational efficiency, mitigate data gaps and deficiencies and thereby facilitate ESG investment. Key issues that plague ESG disclosure include the lack of transparency in ESG ratings, data product methodologies and data sources, as well as management of conflicts of interest.[169] In the face of these deficiencies, technology platforms can potentially improve access to, extract and simplify, facilitate the comparability of and provide tools for analysing and assessing the credibility of ESG disclosure information.[170] Enhancing ESG information verification would improve the quality of ESG disclosures, as 'exposing what companies are truly doing, not just what they are reporting' incentivises corporations to measure and improve their contributions to sustainable development.[171] Technology can also be used to filter through morasses of news reports and social media posts to identify and provide up-to-date alternative data beyond the ESG disclosure data that firms present.[172]

At the same time, while technology can and should play an important role in promoting robust ESG disclosures, there needs to be consideration of whether the technology being used is itself energy efficient and sustainable. The Greenprint ESG Registry, for instance, is conceived of as a 'blockchain-powered data platform'[173]; such use of blockchain technology may invite questions as to its energy consumption and carbon footprint. Hence, even as technological initiatives are employed to facilitate ESG disclosure, these endeavours entail engaging with the 'paradox' of sustainability and technology.[174] One consideration is the extent to which these technologies are themselves 'green' or integrated with sustainability considerations, even as various initiatives drive the development and deployment of technology to facilitate ESG disclosure, as well as sustainable finance more broadly.

---

[166] C Busco et al, 'Corporate Disclosure' in Linciano et al (n 15) 77, 83.

[167] See, for example, M Hazas and L Nathan, *Digital Technology and Sustainability: Engaging the Paradox* (Routledge 2017).

[168] MAS, 'Sustainability Report 2021/2022' (n 74) 38; MAS, 'Pilot Digital Platforms' (n 74) para 1.

[169] See, for example, IOSCO, 'Environmental, Social and Governance (ESG) Ratings and Data Products Providers - Final Report' (2021) <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD690.pdf> 33; MAS, 'Consultation Paper on Proposed Code of Conduct for ESG Rating and Data Product Providers' (2023) <https://www.mas.gov.sg/-/media/mas/news-and-publications/consultation-papers/consultation-paper-on-proposed-code-of-conduct-for-esg-rating-and-data-product-providers.pdf> paras 2.2, 3.2.

[170] M Antoncic, 'Uncovering Hidden Signals for Sustainable Investing Using Big Data: Artificial Intelligence, Machine Learning and Natural Language Processing' (2020) 13 Journal of Risk Management in Financial Institutions 106, 109; S Rousseau et al, 'ESG Tech: Attractions and Challenges for Fintechs in the Age of COVID-19' (2021) 37 Banking and Finance Law Review 57, 96–97; MAS, 'Pilot Digital Platforms' (n 74).

[171] Rousseau et al (n 170) 97.

[172] ibid 107.

[173] MAS, 'Green FinTech' (27 July 2022) <https://www.mas.gov.sg/development/fintech/green-fintech>.

[174] See, for example, Hazas and Nathan (n 167).

5.3 | Beyond ESG disclosure: Alternative and complementary models

Finally, as noted in Section 2, although ESG disclosure has been the focus of this article, it must be acknowledged that ESG disclosure is subject to various issues and criticism. On a fundamental level, some scholars have questioned the focus on ESG in the first instance. Some have argued, for instance, that the hype surrounding ESG far exceeds its actual effectiveness[175] or argued for 'the end of ESG', wherein it evolves into a mainstream practice where ESG factors are not given particular prominence but are regarded similarly as other long-term value drivers.[176]

Even departing from these arguments and proceeding from the premise that ESG factors should be given particular prominence, the ESG disclosure-based approach has itself attracted trenchant criticism. Disclosure has been criticised as insufficient,[177] and because its nature is such that companies may accurately report their policies but be unable to accurately report their effectiveness, it has even been criticised as simply a tool for greenwashing.[178] Yet, another criticism is that disclosure—particularly mandatory disclosure—can perpetuate a tick-the-box culture rather than genuinely focusing on practices to deliver actual positive ESG outcomes.[179] In an empirical study, Esser and colleagues, for example, found that disclosure is often undertaken for the sake of compliance, rather than out of real interest in ESG considerations.[180]

As such, there has been some movement toward alternative or complementary models that go beyond an overly disclosure-focused approach. One suggestion, for example, is to shift away from disclosure to more direct forms of intervention, such as legislating directly on governance matters.[181] Another conception by MacNeil and Esser traces a shift over the past decades from an entity mode of CSR to a financial model of ESG—and proposes, as an alternative to the current dominant model, an 'entity model of ESG' that is less dependent on disclosure and incorporates a 'procedural version of a duty of due diligence'[182]; such a duty of due diligence would give more prominence to the role of board decision-making and directors' duties of care in ensuring sustainable outcomes. Hence, although this article has focused on ESG disclosure, it is clear that ESG disclosure has its issues and criticisms, and disclosure must accompany other mechanisms (such as directors' duties to take into consideration ESG factors in their decision-making processes or even direct legislative or governmental intervention).

[175]See Cornell and Damodaran (n 44) 89–90.
[176]See Edmans (n 44) 4.
[177]Câmara (n 39) 24.
[178]MacNeil and Esser (n 5) 41.
[179]Garcia Rolo (n 41) 209–210; GA Sarfaty, 'Regulating through Numbers: A Case Study of Corporate Sustainability Reporting' (2012) 53 Virginia Journal of International Law 575, 606–609.
[180]IM Esser et al, 'Engaging Stakeholders in Corporate Decision-Making through Strategic Reporting: An Empirical Study of FTSE 100 Companies' (2018) 29 European Business Law Review 729.
[181]Garcia Rolo (n 41) 210.
[182]MacNeil and Esser (n 5) 41.

6 | CONCLUSION

The prevailing paradigm of sustainable finance, by its nature, places great importance on ESG information and, therefore, on the mechanism of reporting and disclosure. This article presents, analyzes and compares the approaches to ESG disclosure in three Asian financial centres—taking into account the local market and institutional context, as well as matters such as scope, legal effect, concept of materiality, focus, alignment with international standards and incorporation of technology. It also hopes to ultimately contribute, in small part, to an Asian perspective of ESG disclosure, supplementing the discourse that is often focused on European and American approaches. In this way, it seeks to 'join the dots' between these still emergent approaches in these selected Asian financial centres and thereby contribute to painting a more comprehensive view of ESG disclosure—one of the mechanisms that is being employed in the pursuit of sustainable futures.

The comparative analysis of ESG disclosure in these Asian jurisdictions uncovers commonalities and divergences in the drivers, dynamics, content and trends of ESG disclosure. In doing so, this article looks forwards, seeking to anticipate and shape the development of ESG disclosure in these selected Asian financial centres. Yet, at the same time, it also looks beyond ESG disclosure—remaining mindful that the mechanism itself is only a means toward, and should not constrain, the pursuit of the ultimate goal of sustainable development in Asia.

ACKNOWLEDGEMENTS

The authors are grateful to the Centre of Banking & Finance Law at the National University of Singapore for supporting the conduct of this research project. The authors are also deeply grateful to the editors and anonymous peer reviewers for their insightful and invaluable feedback.

DATA AVAILABILITY STATEMENT

Data sharing is not applicable to this article as no new data were created or analysed in this study.

ORCID

Rachel Phang https://orcid.org/0000-0002-9914-2417

AUTHOR BIOGRAPHIES

Rachel Phang is a lecturer at the Yong Pung How School of Law, Singapore Management University. Her research interests are in the area of financial law and regulation. She holds an LLB (Hons) from the National University of Singapore (NUS) and an LLM from the University of California, Berkeley.

Yaru Chia is a senior associate in the Derivatives, Structured Products & Financial Regulatory practice at Clifford Chance Singapore. She combines both regulatory and transactional experience (including advising on regulatory requirements in the conduct of financial services business both in the traditional financial products and digital assets space and drafting and negotiating of derivatives and securitisation transactions). She is also an adjunct research fellow at the Centre for Banking & Finance Law at the NUS Faculty of Law and graduated from the LLM (Corporate & Financial Services Law) programme at NUS as a Kwa Geok Choo Graduate Scholar. She is interested in legal reforms, innovation and all things FinTech-related.