COUNTRY COMPARATIVE GUIDES 2024

The Legal 500
Country Comparative Guides

Hong Kong

ENVIRONMENTAL, SOCIAL AND GOVERNANCE

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This country-specific Q&A provides an overview of environmental, social and governance laws and regulations applicable in Hong Kong.

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ENVIRONMENTAL, SOCIAL AND GOVERNANCE

1. Climate – the law governing operations that emit Greenhouse Gases (e.g. carbon trading) is addressed by Environment and Climate Change international guides, in respect of ESG: a. Is there any statutory duty to implement net zero business strategies; b. Is the use of carbon offsets to meet net zero or carbon neutral commitments regulated; c. Have there been any test cases brought against companies for undeliverable net zero strategies; d. Have there been any test cases brought against companies for their proportionate contribution to global levels of greenhouse gases (GHGs)?

a. There is no statutory duty or requirement to implement net zero business strategies in Hong Kong. However, the Hong Kong government has set a target of achieving carbon neutrality before 2050 (the Climate Action Plan 2050) and has been implementing various measures and initiatives to encourage businesses to adopt sustainable practices and reduce their carbon footprint such as the Hong Kong Carbon Audit Scheme and the Green Finance Certification Scheme. For Mainland China, the Central People's Government also sets out its plan to achieve carbon neutrality before 2060.

The Hong Kong Stock Exchanges and Clearing Limited (HKEX) updated its ESG reporting framework in 2019 and requires listed companies to disclose their ESG practices and performance in the ESG Report on an annual basis.

The HKEX ESG reporting framework has embedded key recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD), and the Green and Sustainable Finance Cross-Agency Steering Group has announced plans for mandatory TCFD-aligned climate-related disclosures for key sectors by 2025.

<u>Listed companies</u> Building on TCFD recommendations, the HKEX ESG reporting framework sets forth requirements for listed companies to report on their climate-related risks and opportunities, and to set targets for reducing greenhouse gas emissions. The HKEX has published "Net Zero Guide" and "Guidance on Climate Disclosures" to guide corporations to incorporate standards and methods to develop net-zero strategies in accordance with the Science Based Targets Initiative (SBTi). Specifically, on climate-related risks namely greenhouse gas (GHG) emission, listed companies are currently required, on a "comply or explain" basis, to disclose their policies on GHG emission and relevant key performance indicators (KPIs) on GHG Scope 1 (direct emissions) and Scope 2 (indirect emissions) in their ESG reports. Hong Kong has proposed to enhance requirements on listed companies in alignment with the Climate-related Disclosures Standard published in June 2023 by the International Sustainability Standards Board ("ISSB" or "ISSB Climate Standard"), to be effective in 2025. These will further focus on listed companies' governance, strategy, risk management, metrics and targets on climate, including disclosures on financial effects of climate-related risks and opportunities, their impact on business operations and strategy, supply chain, available skills and resources. In this context, there will be more disclosure expectation on any climate-related targets and transition planning, including net zero or science-based targets to reduce carbon emissions and any use of carbon credits or offsets.

<u>Funds</u> The Securities and Futures Commission (SFC) updated the "Fund Manager Code of Conduct" to require fund managers managing collective investment schemes to establish and maintain systems, policies and procedures to identify relevant climate-related risks, assess such risks on their investment strategy and fund and monitor and manage these risks on an ongoing basis. Specifically, where climate-related risks are relevant and material, a fund manager should disclose the steps taken to take into account relevant and material climate-related risks in their investment

management processes and risk management processes. Large Fund Managers with HK$8 billion are further expected to disclose portfolio carbon footprint of Scope 1 and Scope 2 GHG emissions where climate-related risks are relevant and material. Large Fund Managers are also encouraged to include Scope 3 (all other indirect emissions in a company's value chain) GHG emissions if data is available, and are expected to adopt and disclose its engagement policy in managing material portfolio climate-related risk.

Banks The Hong Kong Monetary Authority (HKMA) has since June 2022 introduced measures to integrate climate risk into its banking supervisory processes, covering banks' management of climate risk as well as transition planning considerations. In August 2023, the HKMA published high-level guidance to assist banks regulated as authorised institutions (AIs) in Hong Kong on net-zero transition planning. Further to this, AIs are expected to set transition objectives and targets that are aligned with a net-zero transition aligned with the goals of the Paris Agreement and based on science-based pathways. Other related principles require banks to set up robust governance framework and embed transition considerations into internal processes, devise appropriate initiatives and actions to achieve the objectives, engage with clients to better understand clients' transition strategies and pathways, perform reviews and updates, and maintain transparency of their transition planning process and/or transition plans.

Private companies Private companies in Hong Kong are subject to a mandatory annual directors' report under the Companies Ordinance (Cap. 622), which should contain information that is material for the members' appreciation of the state of the company's affairs, although companies that meet certain specified criteria may qualify for simplified reporting and be exempted from the said requirement. For good practice, it is recommended to include a business review section in the directors' report describing the principal risks and uncertainties facing the company, including climate-related risks. A company may use KPIs to analyse its business performance or position and discuss its environmental policies and performance along with its compliance with the relevant laws and regulations having significant impact on the company.

While there is currently no statutory duty to implement net zero business strategies in Hong Kong, Hong Kong government and regulatory authorities continue to introduce new measures and initiatives to encourage businesses to adopt sustainable practices and contribute to the goal of achieving carbon neutrality by 2050.

b. There are no specific regulations governing the use of carbon offsets to meet net zero or carbon neutral commitments in Hong Kong. However, the Hong Kong government acknowledges the use of carbon offsets as a way for businesses to reduce their carbon footprint and contribute to the goal of achieving carbon neutrality such as the net-zero electricity generation strategy, Buildings Energy Efficiency Ordinance, the Mandatory Energy Efficiency Labelling Scheme (MEELS), carbon audit guidelines, carbon footprint repository for listed companies in Hong Kong etc. There are also local carbon reduction initiatives such as the Carbon Reduction Certificates and Carbon Audit.

The HKEX has launched Core Climate, a voluntary carbon market for businesses to buy and sell carbon offsets. Projects listed on Core Climate are verified against international standards, such as the Verified Carbon Standard by Verra. Core Climate is currently the only carbon marketplace that offers HKD and RMB settlement for the trading of international voluntary carbon credits, driving accessibility to the market and further enhancing Hong Kong's role as a world-class offshore RMB hub and premier green and sustainable finance centre. There is also momentum driven by the Mainland's "Dual Carbon" goals and outcomes from the 26th United Nations Climate Change Conference (COP26) to establish a Guangdong-Hong Kong-Macao Greater Bay Area (GBA) Unified Carbon Market.

While the use of carbon offsets is not currently regulated in Hong Kong, it is important for businesses to ensure that any offsets they purchase meet international standards and are certified by reputable third-party organizations. The Hong Kong government has also encouraged businesses to prioritize reducing their own emissions first, and to use carbon offsets only as a last resort to achieve net zero or carbon neutral commitments.

c. No, ESG litigation is currently not common in Hong Kong, and there are no statutory duties to implement net zero strategies on companies in Hong Kong.

d. No, ESG litigation is currently not common in Hong Kong and there has been no statutory obligation relating to GHG emissions in Hong Kong.

2. Biodiversity – are new projects required to demonstrate biodiversity net gain to receive development consent?

There is no mandatory requirement for new projects to demonstrate biodiversity net gain to receive development consent in Hong Kong. However, the Hong Kong government has been promoting the concept of biodiversity net gain and has been encouraging developers to incorporate biodiversity enhancements into their projects. The Biodiversity Strategy and Action Plan (BSAP) 2016-2021 sets forth the principles of the Convention on Biological Diversity (CBD) (to which the People's Republic of China became a Party to and extended the CBD to Hong Kong in 2011), taking into account local needs and priorities and with a view to step up biodiversity conservation and to support sustainable development.

Listed companies are required to disclose policies on (a) the efficient use of resources, including energy, water and other raw materials (e.g. the consumption); and (b) methods to minimise impacts on the environment and natural resources (e.g. the effect of the company's activities have on biodiversity). Listed companies are therefore encouraged to disclose their impact on biodiversity.

3. Water – are companies required to report on water usage?

Disclosure on water usage is not mandatory for all companies in Hong Kong. Listed companies are required to, subject to materiality and on a comply-or-explain basis, disclose its policies on the efficient use of resources (e.g. water consumption) and the relevant KPIs on water consumption and intensity in its ESG report. Further, the Hong Kong government has implemented various measures to promote water conservation, such as water efficiency labelling for certain products and water-saving initiatives for buildings.

4. Forever chemicals – have there been any test cases brought against companies for product liability or pollution of the environment related to forever chemicals such as Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)?

No, ESG litigation is currently not common in Hong Kong and there had not been any test cases brought against companies for product liability or pollution of the environment related to forever chemicals such as PFAS in Hong Kong. There are laws, regulations and guidelines governing chemical waste and hazardous chemicals issued by the Environment Protection Department.

Listed companies are required to, subject to materiality and on a comply-or-explain basis, disclose policies and its compliance relating to discharges into water and land, and generation of hazardous and non-hazardous waste, with the relevant KPIs on total hazardous waste produced and, where appropriate, intensity. As such, listed companies are encouraged to decrease chemical waste production and comply with relevant laws and regulations when disposing such hazardous waste.

5. Circularity – the law governing the waste hierarchy is addressed by the Environment international guide, in respect of ESG are any duties placed on producers, distributers or retailers of products to ensure levels of recycling and / or incorporate a proportionate amount of recycled materials in product construction?

There are no specific duties placed on producers, distributors, or retailers of products in Hong Kong to ensure levels of recycling or to incorporate recycled materials in product construction. However, the Hong Kong government has implemented various initiatives to promote circular economy practices, such as the Waste Reduction Framework Plan, the Recycling Fund and Hong Kong Blueprint for Sustainable Use of Resources for 2013-2022.

Listed companies are required to, subject to materiality and on a comply-or-explain basis, disclose policies on (a) minimising their significant impacts on the environment and natural resources; and (b) policies on managing environmental and social risks of the supply chain, and description of practices relating to (i) engaging suppliers, (ii) identify environmental and social risks along the supply chain and (iii) policies used to promote environmentally preferable products and services when selecting suppliers, and how they are implemented and monitored. This includes waste prevention solutions and targets for waste reduction, including waste prevention and waste diversion. As such, listed companies are encouraged to adopt circular economy practices.

6. Plastics – what laws are in place to deter and punish plastic pollution (e.g. producer responsibility, plastic tax or bans on certain plastic uses)?

The Hong Kong government has implemented various measures to deter plastic pollution. The Product Eco-responsibility Ordinance (Cap. 603) was enacted in 2008 in order to implement the Producer Responsibility Scheme (PRS), which includes the Plastic Shopping Bag Charging Scheme and the Plastic Beverage Container Recycling Program. An Amendment Bill to the PEO has been introduced in 2023 to put in place a regulatory framework on the use of disposable plastic tableware, to be implemented with effect from 22 April 2024, and proposed bans on other single-use plastic products in a phased approach.

Listed companies are required to, subject to materiality and on a comply-or-explain basis, disclose their emissions of non-hazardous waste, the use of raw materials as well as the total packaging material used for finished products (e.g. plastic) and the relevant KPIs. Listed companies are therefore encouraged to adopt policies to reduce the use of plastic and/or to divert the materials to be reused, recycled, or composted.

7. Equality Diversity and Inclusion (EDI) – what legal obligations are placed on an employer to ensure equality, diversity and inclusion in the workplace?

The Hong Kong government has been promoting EDI through various legislations and measures, such as the Employment Ordinance (Cap. 57), the Race Discrimination Ordinance (Cap. 602), Disability Discrimination Ordinance (Cap. 487), Sex Discrimination Ordinance (Cap. 480) and Family Status Discrimination Ordinance (Cap. 527) to protect employees against discrimination and unfair treatment, as well as the Code of Practice Against Discrimination in Employment on the Ground of Race. The establishment of the Equal Opportunities Commission also sets to work towards equality, diversity and inclusion in the workplace.

Listed companies are required to, subject to materiality and on a comply-or-explain basis, disclose their employment policies and compliance with relevant laws and regulations relating to equal opportunity, diversity, anti-discrimination as well as policies to prevent child and forced labour.

Specifically on diversity, single gender boards are no longer accepted by the HKEX since July 2022 and all existing listed issuers are required to comply with a three-year transition period to appoint at least one director of a different gender by no later than 31 December 2024. Further, to improve transparency, the Corporate Governance Code published by the HKEX requires all listed companies to disclose and explain numerical targets and timelines for achieving gender diversity at both board level and across the workforce (including senior management); and to adopt a diversity policy, including any measurable objectives set for implementing the policy and progress on achieving those objectives.

8. Workplace welfare – the law governing health and safety at work is addressed in the Health and Safety international guide, in respect of ESG are there any legal duties on employers to treat employees fairly and with respect?

There are legal duties on employers in Hong Kong to ensure workplace health and safety, but there are no specific legal duties to treat employees fairly and with respect in the workplace (other than in relation to EDI covered under section 7).

Listed companies are required to, subject to materiality and on a comply-or-explain basis, disclose their policies and compliance with relevant laws and regulations that have a significant impact on the issuer relating to providing a safe working environment. In addition to the abovementioned laws and regulations to ensure equality, diversity and inclusion in the workplace, the Equal Opportunities Commission have published policy frameworks and guidelines for corporations such as guideline to formulate corporate policy on anti-sexual harassment to ensure employees are treated fairly and with respect.

9. Living wage – the law governing employment rights is addressed in the Employment and Labour international guide, in respect of ESG is there a legal requirement to pay a wage that is high enough to maintain a normal standard of living?

There are no legal requirements in Hong Kong to pay a living wage that is high enough to maintain a normal standard of living. However, the Hong Kong government has implemented a minimum wage system to protect low-wage workers.

10. Human rights in the supply chain – in relation to adverse impact on human rights or the environment in the supply chain: a. Are there any statutory duties to perform due diligence; b. Have there been any test cases brought against companies?

a. There are no specific statutory duties in Hong Kong to perform due diligence in relation to adverse impacts on human rights or the environment in the supply chain. However, listed companies are required to, subject to materiality and on a comply-or-explain basis, disclose their policies on supply chain management and the relevant KPIs. Further, the HKEX published the 2022 Analysis of ESG Practice Disclosure (2022 Analysis) to encourage listed companies to enhance disclosure on supply chain-related practices including the process for identifying significant environmental and social risks along the supply chain; actions taken or to be taken to mitigate or address the environmental and social risks along the supply chain; criteria for selection of suppliers, and how such factors promote green procurement; and measures for monitoring supply chain risks and green procurement practices. In relation to human rights in the supply chain, while there are no statutory obligations to ensure human rights are protected in the supply chain, the applicable laws and regulations to protect the rights of employees have been mentioned above.

b. No, ESG litigation is currently not common in Hong Kong and there has been no statutory obligation relating to supply chain management in Hong Kong.

11. Responsibility for host communities, environment and indigenous populations – in relation to adverse impact on human rights or the environment in host communities: a. Are there any statutory duties to perform due diligence; b. Have there been any test cases brought against companies?

a. There are no specific statutory duties in Hong Kong to perform due diligence in relation to adverse impacts on human rights or the environment in host communities. The concept of host communities and indigenous populations is relatively unfamiliar in Hong Kong. However, mineral companies intending to list on the HKEX, in particular, are subject to disclosure of information regarding project risks arising from environmental, social, and health and safety issues; compliance with host country laws, regulations and permits; historical experience of dealing with host country laws, practices, concerns of local governments and communities on the sites of the mines, exploration properties and relevant management arrangements. This would include (i) details of any requirement to rehabilitate the affected environment and regulations governing the provision of rehabilitation costs and reserves; and (ii) details of how the local community's concerns (e.g. potential pollution of local environment by the mining operation) have been addressed. As such, companies that may be exposed to host communities should consider such factors in their ESG report.

b. No, ESG litigation is currently not common in Hong Kong and there has been no statutory obligation relating to human rights or the environment in host communities in Hong Kong.

12. Have the Advertising authorities required any businesses to remove adverts for unsubstantiated sustainability claims?

Such sustainability claims are likely to fall within the ambit of Trade Description Ordinance (Chapter 362 of the Laws of Hong Kong, "TDO") if they are considered "advertisement" or "trade description" according to the statutory definition – section 2 of TDO defines "advertisement" to include a catalogue, a circular and a price list, while a "trade description" is widely defined as an indication of various aspects and features of a good or a service, including but not limited to the place and method of manufacture, composition, compliance with a certain standard, testing results, approval by certain persons.

The TDO deems a trade description "false" if it is false to a material degree or misleading and regulates greenwashing commercial practices (including the acts of advertising and marketing). Applying a false trade description, intentionally omitting material ESG information, and providing material ESG information in an unclear, unintelligible, ambiguous or untimely manner can be a criminal offence under various sections of the TDO (e.g. section 7(1), 7A(1) and section 13E(2)).

Alternative to initiating prosecution, the relevant authority may also enforce a civil compliance-based mechanism under section 30L of the TDO, under which, the relevant person is expected to undertake (a) not to continue or repeat the conduct or (b) not to engage in such conduct, or any conduct of a substantially similar kind, in the course of any trade or business.

Notably, the relevant authority has prosecuted and accepted undertakings from a bakery which promoted its products as "naturally made" and "no additive added" without any elaboration or further explanation, but was later discovered that its products contained artificial essences. The bakery undertook not to engage in conduct of that kind, or any conduct of a substantially similar kind, in the course of any trade or business for two years, and to put in place a compliance programme for its staff, together with measures for implementing the undertaking and complying with the requirements under the TDO.

13. Have the Competition and Markets

authorities taken action, fined or prosecuted any businesses for unsubstantiated sustainability claims relating to products or services?

No, currently there has not been such cases in Hong Kong.

14. Have there been any test cases brought against businesses for unsubstantiated enterprise wide sustainability commitments?

No, currently there has not been such cases in Hong Kong.

15. Is there a statutory duty on directors to oversee environmental and social impacts?

The Hong Kong Listing Rules now require that all listed companies embed ESG in their governance structures and directors of the listed companies will have overall responsibility for ESG strategy and reporting (including but not limited to the requirement to publish ESG report annually). Hong Kong case law supports the proposition that a breach of the Listing Rules can amount to a breach of a director's duty to exercise reasonable care, skill and diligence.

Separately, schedule 5 of the Companies Ordinance (Chapter 622 of the laws of Hong Kong) requires all registered companies in Hong Kong (unless exempted) to prepare an annual directors' report which, among other requirements, should include in the business review section, an outline on the state of the company's business operations "to the extent necessary for an understanding of the development, performance or position of the company's business" including but not limited to "a discussion on the company's environmental policies and performance, and the company's compliance with the relevant laws and regulations that have a significant impact on the company".

Directors must ensure that the company's financial statements and the accompanying directors' report properly reflect relevant and material ESG considerations where appropriate, in order to provide a "true and fair" view of the company's financial position, performance and prospects as required under section 380 of the Companies Ordinance.

16. Have there been any test cases brought against directors for presenting misleading information on environmental and social impact?

No, currently there has not been such cases in Hong Kong.

17. Are financial institutions and large or listed corporates required to report against sustainable investment criteria?

See above on Question 1.

18. Is there a statutory responsibility on businesses to report on managing climate related financial risks?

See above on Question 1.

19. Is there a statutory responsibility on businesses to report on energy consumption?

Listed companies may be required to report on information or data relating to energy consumption, subject to materiality and on a comply-or-explain basis, as one of the environmental key performance indicators to comply with the ESG reporting disclosure requirements under the Listing Rules.

20. Is there a statutory responsibility on businesses to report on EDI and / or gender pay gaps?

Listed companies may be required to report on information or data relating to EDI and/or gender pay gaps as one of the social key performance indicators to comply with the ESG reporting disclosure requirements under the Listing Rules. Also see above on Question 9, specifically the Corporate Governance Code of HKEX requires all listed companies to disclose and explain numerical targets and timelines for achieving gender diversity at both board level and across the workforce (including senior management); and to adopt a diversity policy, including any measurable objectives set for implementing the policy and progress on achieving those objectives.

21. Is there a statutory responsibility to report on modern day slavery in the supply

chain?

Listed companies may be required to report on information or data relating to modern day slavery in the supply chain (e.g. child labour, forced labour, exploitative labour contract etc.) as one of the social key performance indicators to comply with the ESG reporting disclosure requirements under the Listing Rules. See elaborated above on Question 12(a).

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