TREDNS IN ESG DISCLOSURE IN ASIA PACIFIC

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INTRODUCTION

What Is ESG?

- A wide range of constituencies—including investors, public/private companies, policy-makers, regulators, NGOs, and civil society—use corporate sustainability reporting to inform a wide range of decisions.
- These corporate sustainability factors can be defined as Environmental, Social, and Governance (ESG).
- ESG are the three key factors used when measuring the sustainability and ethical impact of an investment, a business, or a company.
- Investors increasingly regard ESG factors as a consideration in making investment decisions, in addition to financial returns.
- Many investors believe focus on ESG will enhance financial returns while donors believe that investments – instead of grants – can bolster impact.
- ESG reporting frameworks focus on accountability, transparency, and disclosure requirements.

Compliance – Key Component of ESG

- Investors increasingly expect companies, as part of the "G" in ESG, to have robust compliance and risk management programs to address traditional areas of compliance risk.
    - Anti-bribery and anti-corruption
    - Sanctions
    - Anti-money laundering
    - Cybersecurity and privacy
    - Third party risk management
- Human rights is increasingly an area of ESG compliance focus.
    - Prevention of modern slavery
    - Focus on supply chain
        - Transparency
        - Diligence
- A robust compliance program can protect against legal liability and protects against significant reputational risks.

Compliance Risks in ESG Activities

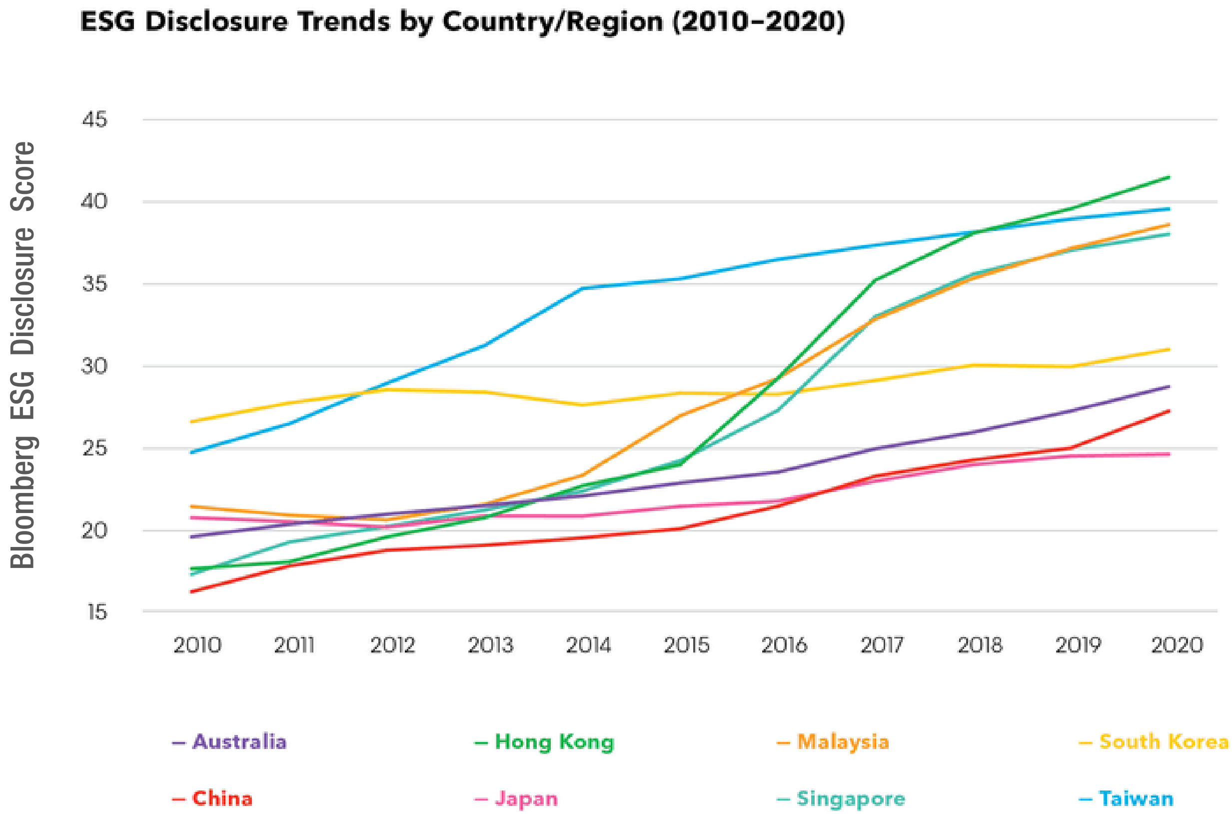
- ESG initiatives themselves can present unintended compliance risks.
- Most frequent compliance risks include corruption/bribery risks and human rights risks.
- Potential issues relate to:
  - Use of local partners in connection with sustainability initiatives;
  - Funding projects in countries considered high risk for corruption and/or human rights violations;
  - Use of business intermediaries or local agents; and
  - Interactions with local governments (possibly through partners or intermediaries).
- It is important to incorporate compliance risk assessment and mitigation measures in connection with sustainability initiatives to avoid unintended negative consequences from efforts to “do good.”

Why Does ESG Disclosure Matter?

- Regulatory requirements
  - Stock exchanges and securities authorities around the world have started setting out minimum parameters.
  - Failure to comply with the disclosure requirements could result in disciplinary action by the stock exchanges, government enforcement and/or private litigation.
- Enterprise value creation
  - ESG reporting enables companies to access a broader capital market and borrow at a lower cost.
  - The Global Sustainable Investment Alliance's latest investment review shows that sustainable investment topped US 35.5 trillion (United States, Canada, Japan, Australia and Europe) at the start of 2020.
- Brand integrity
  - According to the EY Future Consumer Index released in June 2021,
    - 84% of respondents say sustainability is important when making purchase decisions;
    - 61% of consumers want more information to help make better sustainable choices; and
    - 43% of global consumers want to buy more from organizations that benefit society, even if their products or services cost more.

Disclosure Trends in APAC

- Bloomberg uses ESG Disclosure Score to measure the amount of ESG data a company reports publicly.



Source: Bloomberg Professional Services

REGULATORY OVERVIEW

General Observations

- Regulatory requirements with respect to ESG disclosure vary from jurisdiction to jurisdiction in APAC.
- Regulatory requirements with respect to ESG disclosure are rapidly evolving.
- Environment has so far been the pillar of ESG that has gained the most attention.
- ESG disclosure requirements in some jurisdictions apply to entities other than equity issuers listed on stock exchanges.
- There is no consensus yet. Different jurisdictions in APAC have adopted different international or national reporting frameworks.

Disclosure Frameworks

- Task Force on Climate-related Financial Disclosure (the "TCFD")
  - Recommends all organizations with public debt or equity adopt its recommendations – others encouraged to as well
  - Recommends climate-related disclosure in an organization's public financial filings
- Value Reporting Foundation
  - U.S.-based independent non-profit organization developing accounting standards for disclosure of material, decision-useful sustainability information to investors
  - Sector-specific (77 industries in 11 sectors) standards for measuring sustainability and environmental indicators relevant to financial performance (the "SASB Standards")
- Global Reporting Initiative (the "GRI")
  - International independent organization focused on the intersection of business and sustainability
  - Promulgated both Universal Standards and Sector-specific Standards
- International Financial Reporting Standards Foundation (the "IFRS Foundation")
  - Formation of a new International Sustainability Standards Board (ISSB) to develop a comprehensive global baseline of high-quality sustainability disclosure standards to meet investors' information needs

Disclosure Regimes

Disclosure Approach	Jurisdiction
Mandatory	• Thailand (SEC Thailand) • United States (SEC U.S. and Nasdaq) • Malaysia (Bursa Malaysia) • Indonesia (Indonesian Financial Authority)
"Comply or Explain"	• Taiwan (Financial Supervisory Commission) • Philippines (SEC Philippines) • Japan (TSE)
Mixture of Mandatory and "Comply or Explain"	• Singapore (SGX) • Hong Kong (HKEX) • China (China Securities Regulatory Commission)
Voluntary	• South Korea (Financial Services Commission)

Definition of "Comply or Explain"

Jurisdiction	Definition of "Comply or Explain"
Japan (TSE)	"If there is a principle that is not appropriate to implement in light of each company's unique circumstances, the company will provide explanation of the **reasons for not implementing the principle.**"
Hong Kong (HKEX)	"If an issuer considers that it can adopt the Principles without applying the code provisions, it may deviate from the code provisions . . . provided that the issuer sets out . . . in the Corporate Governance Report in the annual reports . . . the **considered reasons for the deviation** and explain **how good corporate governance was achieved by means other than strict compliance with the code provision**. The explanation should provide a clear rationale for the alternative actions and steps taken by the issuer and their impacts and outcome."

Litigation and Enforcement Risks

Lessons from the U.S.

In the last couple of years, the U.S. started to see **stockholder derivative** and **investor suits** involving company disclosures concentrated in two areas:

- Board diversity disclosures; and
- Environmental, sustainability and climate change disclosures.

The SEC has announced formation of the Climate and ESG Task Force to

- Examine "misconduct in the ESG disclosure area," consistent with "increasing investor focus and reliance on climate and ESG-related disclosure and investment;"
- Proactively identify ESG-related misconduct.

For public companies, enforcement priority is on false statements regarding the progress of ESG target and/or omissions of disclosures of material events related to ESG issues.

- *E.g.*, In the Matter of Fiat Chrysler Automobiles (FCA) N.V. (September 28, 2020).

Enforcement, Litigation and Disciplinary Risks

- Depending on jurisdiction, litigation and/or enforcement risks similar to the ones in the U.S. could apply.
- There is also the risk that stock exchanges would take disciplinary action under their own rules against issuers that fail to make ESG disclosures as required.

Questions

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